



Oregon

Theodore R. Kubugoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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Fax (503) 378-5518

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NOTICE OF ADOPTED AMENDMENT

03/27/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Larry French, Plan Amendment Program Specialist

SUBJECT: City of Milwaukie Plan Amendment
DLCD File Number 001-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, April 10, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Katie Mangle, City of Milwaukie
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative
Thomas Hogue, DLCD Regional Representative
Angela Lazarean, DLCD Urban Planner

<paa> YA/ph

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

MAR 23 2009

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **City of Milwaukie**

Local file number: **ZA-09-01**

Date of Adoption: 3/17/2009

Date Mailed: **3/19/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 1/9/2009

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The adopted amendment restricts retail trade uses in mapped Title 4 Industrial Areas in the City's Manufacturing zone M. Individual retail trade uses are restricted to 5,000 sf, and multiple retail trade uses on the same site are restricted to 20,000 sf.

Does the Adoption differ from proposal? Yes, Please explain below:

The proposal struck out the entirety of 19.314.3.C and number the new language 19.314.3.C. The adopted amendment retains 19.314.3.C with the exception of the phrase "or Industrial" and renumbers the new language 19.314.3.D. This change was necessary to maintain compliance with retail restrictions on Title 4 Employment Areas within the M zone.

Plan Map Changed from: **N/A** to:

Zone Map Changed from: **N/A** to:

Location: **All Metro-designated Title 4 Industrial Areas** Acres Involved:

Specify Density: Previous: **N/A** New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file No. 001-09(17314)[15449]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

City of Milwaukie
Metro

Local Contact: **Katie Mangle**

Phone: **(503) 786-7652** Extension:

Address: **6101 SE Johnson Creek Blvd**

Fax Number: **503-774-8236**

City: **Milwaukie, OR**

Zip: **97206-**

E-mail Address: **manglek@ci.milwaukie.or.us**

ORDINANCE NO. 1996

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19 ZONING ORDINANCE TO LIMIT RETAIL USES ON REGIONALLY SIGNIFICANT INDUSTRIAL LAND (FILE #ZA-09-01).

WHEREAS, it is the City's policy to reserve industrial lands for manufacturing, industrial, distribution, and supporting land uses, for the purpose of preserving land supply for industrial uses and ensuring adequate opportunity for uses with high employment density; and

WHEREAS, the proposed amendments to Title 19 increase protections for designated regionally significant industrial areas as shown on Milwaukie Comprehensive Plan Title 4 Lands Map, April 6, 1999; and

WHEREAS, the proposed amendments to Title 19.314 bring the Milwaukie Municipal Code into compliance with Title 4 of the Metro Urban Growth Management Functional Plan; and

WHEREAS, the City's Municipal Code must be in compliance with Title 4 by April 3, 2009; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on February 24 and March 10, 2009, the Milwaukie Planning Commission conducted a public hearing, as required by Zoning Ordinance Section 1011.5 Legislative Actions, and adopted a motion in support of the amendment; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

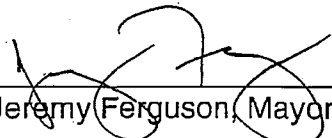
Section 1. Findings. Findings of fact in support of the proposed amendment(s) are attached as Exhibit A.

Section 2. Title 19 Zoning Ordinance Text Amendment. The Zoning Ordinance is amended as described in Exhibit B (strikeout version) and Exhibit C (clean version).

Read the first time on 3/17/09, and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the City Council on 3/17/09.

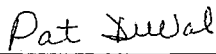
Signed by the Mayor on 3/17/09



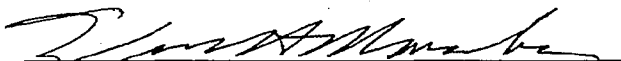
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

Document1 (Last revised 2/6/2008)

ATTACHMENT 1 Exhibit A
Recommended Findings in Support of Approval
Casefile # ZA-09-01, Metro Title 4 Compliance Amendments

1. The City of Milwaukie has proposed amendments to Section 19.314 Manufacturing zone M of Title 19 Zoning Ordinance.
2. The proposed amendments would bring Milwaukie's zoning ordinance into compliance with Title 4 of the Metro Urban Growth Functional Management Plan.
3. The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).
 - MMC 19.900 Amendments
 - MMC 19.1101.5 Legislative actions
4. Sections of the Milwaukie Municipal Code not addressed in these findings are found to be not applicable to the decision on this application.

Public notice has been provided in accordance with MMC Subsection 19.1011.5 Legislative Review. The Planning Commission held a public hearing on February 24, 2009. The February 24, 2009 public hearing was re-opened on March 10, 2009 to review the revised amendments. The City Attorney confirmed that no general public notice was necessary for the Planning Commission to re-open the hearing but notice was provided to those who participated at the February 24, 2009 hearing.

The City Council has held a public hearing on March 17, 2009, as required by law.

5. Section 19.901 Initiation of amendments

MMC 19.901 requires that an amendment to the Milwaukie zoning text be initiated by the City Council, Planning Commission, or by a property owner. This text amendment is proposed by the City of Milwaukie and was initiated by the Planning Commission at the first public hearing.

The criterion for compliance with the requirements of MMC 19.901 is met.

6. Section 19.902 Amendment procedure

- A. MMC 19.902.1.A requires that proposed amendment applications be heard at a public hearing and follow the procedures outlined in MMC Subsection 19.1011.5 Legislative actions.

The Planning Commission held a public hearing for this application on February 24, 2009, the earliest practicable meeting after the application was submitted. The City Council will hold a public hearing on March 17, 2009, within 40 days of the Commission's recommendation on this application.

- B. MMC 19.902.1.B establishes standards for providing notice to Metro of any proposed amendment to the comprehensive plan or zoning ordinance.

Notice to Metro was provided 45 days in advance of the scheduled City Council hearing. A report containing the analysis of the application's consistency with the Metro Urban Growth Functional Plan has been delivered to Metro.

The criteria for compliance with the requirements of MMC 19.902 are met.

7. Subsection 19.904.1 Requirements for zoning text amendment proposals

A. MMC 19.904.1 requires that proposals for zoning text amendments provide written evidence that the following requirements are satisfied:

- i. Applicable requirements of MMC Section 19.1003 Form of Petitions, applications and appeals, which specify the form of petitions, applications, and appeals.

City staff submitted an application on the prescribed form. Because the application is for a zoning code text amendment and no development is proposed, the other portions of MMC 19.1003 are not applicable.

- ii. Reasons for requesting the proposed text amendments.

The proposed code amendments focus on revisions to MMC 19.314 Manufacturing zone M. The proposed revisions are designed to bring the City's M zone regulations into compliance with new requirements in Title 4 of the Metro Urban Growth Management Functional Plan. The amendments limit the types and scale of non-industrial uses in designated Industrial Areas. Metro's deadline for Title 4 compliance for April 3, 2009.

- iii. Explanation of how the proposed text amendments are consistent with other provisions of this title.

The proposed text amendments are minimal and affect only property located within the M zone and within designated Industrial Areas. The proposed text amendments limit non-industrial uses on sites within designated Industrial Areas in the M zone. No other uses or sites are affected.

- iv. The approval criteria of MMC 19.905.

The applicable approval criteria of MMC 19.905 are addressed below.

The criteria to comply with the requirements of MMC 19.904 are met.

8. Section 19.905 Approval criteria for all amendments

MMC 19.905 establishes the approval criteria for zoning text amendments. The applicable criteria are evaluated as follows:

- A. The proposed amendments must conform to applicable comprehensive plan goals, policies and objectives and be consistent with the provisions of City ordinances, Metro Urban Growth Management Functional Plan, and applicable regional policies.

Compliance with City Policy:

The proposed amendments will not change current City land use policy. The amendments are consistent with applicable comprehensive plan goals, policies and objectives. Specifically, the following comprehensive plan goals apply to this application:

- i. Chapter 2 – Plan Review and Amendment Process, Objective 2 – Implementing the Plan: *Implement this Plan through appropriate ordinances and action.*
 - Policy 1. Amend existing ordinances and adopt new ordinances to carry out the policies of this Plan as necessary.

The amendments ensure that the City's zoning code comply with Title 4 of the Metro Urban Growth Management Functional Plan. The proposed revisions for inclusion in this amendment will accomplish the following:

- Limit non-industrial uses on lots included in mapped "Industrial" areas as shown on Milwaukie Comprehensive Plan Title 4 Lands Map, April 6, 1999
 - Protect Title 4-designated Industrial Areas for manufacturing and other industrial activities
- ii. Chapter 4 – Land Use – Economic Base and Industrial/Commercial Land Use Element, Objective 4 – Industrial Land Use: *To encourage new industries to locate within the three major industrial areas of the City, in order to take maximum advantage of existing access and public facilities serving industry.*

- Policy 3. Lands designated for industrial use as shown on Map 7, Land Use, should be reserved for industrial, manufacturing, distribution, and supporting land uses.

The City's existing Manufacturing zone regulations currently restrict any non-industrial development to 60,000 sf or less and require that any use in an industrial zone be at least 25% industrial. The proposed amendments reduce the maximum floor area of non-industrial development in designated Industrial Areas to less than 5,000 sf for individual stores, branches or other retail outlets. Multiple stores, branches or other retail outlets would be restricted to a total of 20,000 sf floor area.

- Policy 4. Lands located in "Employment" or "Industrial" areas shown on the Milwaukie Comprehensive Plan Title 4 Lands Map are reserved for manufacturing, industrial, distribution, and supporting land uses, for the purpose of preserving land supply for industrial uses and ensuring adequate opportunity for uses with high employment density.

The purpose of the proposed amendment is compliance with new requirements in Title 4 by placing restrictions on non-industrial uses on lands located in "Industrial" areas shown on the Milwaukie Comprehensive Plan Title 4 Lands Map.

Compliance with Metro Policy:

The amendments are consistent with Title 4 of Metro's Urban Growth Management Functional Plan. Cities are required to comply with policies in the Functional Plan, as required by Section 5.e.2 of the Metro Charter. The City's Zoning Ordinance is currently in compliance with each of the following Titles in the Framework Plan. Specifically, the following Metro titles apply:

- iii. Title 4 – Industrial Lands and Other Employment Areas

MMC Title 19 complies with Metro's Title 4 regulations.

- B. The proposed amendments will meet or can be determined to reasonably meet applicable regional, state, or federal regulations.

The City has complied with all applicable procedural and substantive standards imposed by Metro, as discussed above. The primary purpose of the proposed amendments is to revise applicable code sections related to non-industrial development in designated

Industrial Areas to ensure compliance with new requirements in Title 4 of the Metro Urban Growth Management Functional Plan.

The Oregon Statewide Planning Goals apply to the proposed amendments as follows:

i. Goal 1 – Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City has an adopted and acknowledged amendment process and is following that process in making these amendments. The proposed amendments do not change the City's citizen involvement program. Public hearings on the proposed amendments have been held and public notice was published twice prior to each hearing as required by the Milwaukie Comprehensive Plan. In addition, all owners of property within designated Title 4 Industrial Areas were sent notice of the public hearings.

Goal 2 – Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The proposed amendments do not change the City's land use planning process.

ii. Goal 9 – Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

The proposed amendments improve the City's implementation of Statewide Planning Goal 9. The proposed amendments are specifically designed to ensure that City ordinances relating to non-industrial development in designated Industrial Land areas comply with new requirements in Title 4 of the Metro Urban Growth Management Functional Plan.

The criteria for compliance with the applicable requirements of MMC 19.905 are met.

9. Subsection 19.1011.5 Legislative Actions

MMC 19.1011.5 outlines the procedures for processing legislative land use policies and plans. The City has followed the procedures for notification and decision making outlined in this section.

The criteria for compliance with the requirements of MMC 19.1011.5 are met.

10. The application was referred to the following department and agencies on January 22, 2009: Milwaukie Building Department, Milwaukie Engineering Department, Clackamas County Fire District #1, the Lewelling Neighborhood District Association Chairperson and Lewelling Land Use Committee. The comments received are summarized as follows:

- No comments

ATTACHMENT 1 Exhibit B

**Revised Proposed Code Amendments
Strikeout Version**

TITLE 19 ZONING ORDINANCE

CHAPTER 19.300 USE ZONES

19.314 MANUFACTURING ZONE M

19.314.2 Preexisting Uses and Developments

Notwithstanding the provisions of Chapter 19.800, Nonconforming Uses, prohibited uses and structures located in any mapped "Employment" or "Industrial" area, as shown on the Milwaukie Comprehensive Plan Title 4 Lands Map, that were lawfully in existence prior to May 6, 1999, and would be impacted by amendments prohibiting retail uses in excess of sixty thousand (60,000) square feet, are considered to be approved uses and structures for the purposes of this section. If such a preexisting use or development is damaged or destroyed by fire, earthquake, or other natural force, then the use will retain its preexisting status under this provision, so long as it is substantially reestablished within three (3) years of the date of the loss.

Notwithstanding the provisions of Chapter 19.800 Nonconforming Uses, prohibited uses and structures located in any mapped "Industrial" area, as shown on the Milwaukie Comprehensive Plan Title 4 Lands Map, that were lawfully in existence prior to date of adoption of this ordinance, may continue and expand to add up to twenty (20) percent more floor area and ten (10) percent more land area than exists on the above-stated date. This expansion requires a conditional use review.

19.314.3 Prohibited Uses

- A. Any use which has a primary function of storing, utilizing, or manufacturing explosive materials or other hazardous material as defined by the Uniform Fire Code, Article 80;
- B. New residential construction, churches, public schools;
- C. Retail uses greater than sixty thousand (60,000) square feet gross floor area per building or business are prohibited on all lots included in mapped "Employment" or "Industrial" areas as shown on Milwaukie Comprehensive Plan Title 4 Lands Map, April 6, 1999.
- D. All lots included in mapped "Industrial" areas, as shown on Milwaukie Comprehensive Plan Title 4 Lands Map, April 6, 1999, carry the following additional restrictions:
 1. Individual retail trade uses greater than five thousand (5,000) square feet gross floor area per building or business are prohibited.
 2. Multiple retail trade uses that occupy more than twenty thousand (20,000) square feet gross floor area are prohibited, whether in a single building or in multiple buildings within the same project.
 3. Facilities whose primary purpose is to provide training to meet industrial needs are exempted from this prohibition.

ATTACHMENT 1 Exhibit C

**Proposed Code Amendments
Clean Copy**

TITLE 19 ZONING ORDINANCE

CHAPTER 19.300 USE ZONES

19.314 MANUFACTURING ZONE M

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Notwithstanding the provisions of Chapter 19.800 Nonconforming Uses, prohibited uses and structures located in any mapped "Industrial" area, as shown on the Milwaukie Comprehensive Plan Title 4 Lands Map, that were lawfully in existence prior to [date of adoption of this ordinance,] may continue and expand to add up to twenty (20) percent more floor area and ten (10) percent more land area than exists on the above-stated date. This expansion requires a conditional use review.

19.314.3 Prohibited Uses

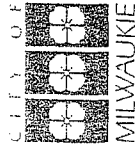
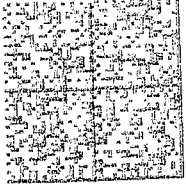
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CITY OF
MILWAUKIE

Planning Department
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

TO:

Attn: Plan Amendment Specialist
Dept. of Land Conservation and
Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540