



MILWAUKIE
Dogwood City of the West

DRAFT CODE AMENDMENTS COMMENTARY

Land Use and Development Review
(LUDR)
Tune-Up Project

January 2011 Draft
File No. ZA-10-02 & CPA-10-03

Milwaukie Municipal Code

Title 19 Zoning Ordinance
and
Title 2 Administration and Personnel
Title 3 Revenue and Finance
Title 12 Streets, Sidewalks, and Public Places
Title 13 Public Services
Title 14 Sign Ordinance
Title 17 Land Division Ordinance
Title 18 Flood Hazard Regulations

Milwaukie Comprehensive Plan

Chapter 1 Citizen Involvement
Chapter 2 Plan Review and Amendment Process

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Notes to the Reader:

This document explains the proposed code amendments. The “Draft Code Amendments” document shows the actual proposed amendments.

Proposed amendments that are not substantive in nature are not listed above or explained in this document, e.g. changing “minor quasi-judicial review” to “Type III review.”

ADMINISTRATIVE AMENDMENTS

The proposed amendments revise the names and section references of the City's land use review procedures in Title 19 Zoning Ordinance. Several other titles in the Milwaukie Municipal Code reference these review procedures. The proposed amendments revise these references in other portions of the code based on the proposed changes to Chapter 19.1000 Review Procedures.

The titles where these amendments occur are: Title 2, Administration and Personnel; Title 3, Revenue and Finance; Title 12, Streets, Sidewalks, and Public Places; Title 13, Public Services; Title 14, Sign Ordinance; Title 17, Land Division Ordinance; and Title 18, Flood Hazard Regulations.

Amendments to these titles affect only the references and do not affect the policy or content of regulations in these titles.

INTRODUCTORY PROVISIONS

Chapter 19.100

Chapter 19.100 in the proposed code contains introductory provisions that apply to multiple sections of the zoning code. It does not contain significant policy changes from the current code. The proposed Chapter 19.100 incorporates the current Chapter 19.200, 19.1100, and 19.1200. The current Section 19.1014 that governs permit approvals has also been moved to this chapter.

The proposed chapter codifies two current practices with regard to the application of the zoning map. The first establishes guidelines for determining the edge of zone boundaries along lot lines, right-of-way centerlines, and watercourses (see 19.907.4). The second clarifies that the zones displayed on the zoning map do not directly affect the use or development of the right-of-way.

DEFINITIONS AND MEASUREMENTS

Chapter 19.200

This chapter contains definitions of terms used in the zoning code and guidance about how to make measurements of buildings and setbacks. The existing definitions remain the same as they are in the current code. Four definitions were added:

- Contract purchaser
- High impact nonconforming use (related to the amended nonconforming use chapter)
- Low impact nonconforming use (related to the amended nonconforming use chapter)
- Nonconforming development - this term was previously included in a single definition for

non-conforming uses and non-conforming development. Nonconforming uses and nonconforming development

The code does not currently have a section for measurements. The provisions in the proposed amendments are comprised of some measurement provisions embedded in the current definitions section and a new definition dealing with horizontal measurement.

BASE ZONES

Chapter 19.300

The vast majority of this chapter is unaffected by the proposed amendments. The proposed changes are as follows:

- Rename the "Residential-Business-Office-Commercial zone" (R-1-B) to the "Residential-Business-Office zone". This name change clarifies that commercial uses are not allowed in this zone; changing the name will not change the types of uses allowed (or not) in this zone.
- Amend Figure 19.310-1 to reflect a portion of the Riverfront Park area that was rezoned from C-L to DOS by Ordinance 1981.
- Delete the current Subsection 19.315.4. This had provisions allowing the Planning Director to review and approve proposed uses in the Manufacturing zone. In the proposed code, this type of request in the Manufacturing zone or any other zone would be handled as a Director Determination, per 19.903.
- Establish a review procedure for development in the Manufacturing zone that is within 120 feet of residential areas. The current code implies that Planning Commission review is involved for such development, but does not clearly identify what type of land use application or review type is involved. The proposed code would handle review of such development in the Manufacturing zone through the new Development Review application.

OVERLAY ZONES

Chapter 19.400

There are no substantive changes to this chapter.

SUPPLEMENTARY DEVELOPMENT REGULATIONS

Chapter 19.500

19.504.6 Transition Area Measures

- The current code requires Planning Commission review of any multifamily, industrial or commercial development project adjacent to lower density zones. The proposed code would handle reviews of this type through the new Development Review process, which would make the Planning Director the decision maker not the Planning Commission. This lower level of review is appropriate given the clear and objective nature of the transitions measures.
- The current code is unclear whether the three transition measures are meant as guidelines or prescriptive requirements. The proposed code makes it clear that the transitions measures are standards that must be met.
- The current code lists three transition measures. The proposed code deletes all but one of these measures. The first measure has been deleted (roadways separating projects) because the City cannot require right-of-way dedication beyond what is legally allowed by law as described in the code (existing Chapter 19.1400). The third measure (gradual density change) has been deleted because a reduction in density has broader policy, procedural, and legal implications and is beyond the purview of a transition area requirement. Changes in density need to be consistent with the Comprehensive Plan.

19.506 MANUFACTURED DWELLING SITING AND DESIGN STANDARDS

The amendments to this section are procedural and do not affect the regulations that apply to manufactured dwellings. The information in Table 19.506.1 is extraneous. The content of the first column in the table is covered by the proposed new phrase in Subsection 19.506.4 that manufactured homes are allowed outright wherever a single family detached dwelling is allowed. The submission of a permit for a permanent residence is required for approval of a temporary dwelling, which therefore defines the zones in which a temporary dwelling could be located. Finally, the manufactured dwelling park provisions already limits the zones in which these parks are allowed.

With the deletion of Subsection 19.506.7.A, placement of a manufactured dwelling will be reviewed as a development permit without a land use application. This is consistent with the review of other residential dwellings. Any land division requires review of the standards in Title 17, and it is not necessary to have this as a separate reference in Subsection 19.506.7.B.

OFF-STREET PARKING AND LOADING

Chapter 19.600

There are no substantive changes to this chapter.

PUBLIC FACILITY IMPROVEMENTS

Chapter 19.700

One amendment is proposed to Subsection 19.703.2. It changes the listing of one type of review for compliance with Chapter 19.700 as its own type of review and moves it to a subset of another review type. The separate listing was somewhat confusing. The amendment does not change the review process or cost from what is in the current code.

NONCONFORMING USES AND DEVELOPMENT

Chapter 19.800

Nonconforming uses and development do not conform to the City's current land use and development regulations either because they were established prior to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed. The City's current policies on nonconforming uses and development describe property owners' rights to maintain, alter, expand, demolish, and rebuild a nonconforming use, structure, or site improvement. The proposed code replaces the City's existing chapter governing nonconformities in its entirety. It continues to address all of the property owners' rights listed above and adds a process whereby the City may amortize high-impact nonconforming uses.

Summary of Proposed Key Policy Changes:

19.802.1 Nonconforming Uses and Development

Moves the nonconforming determination section out of this chapter and into the proposed Section 19.903. Section 19.903 contains provisions for Director Determinations on nonconforming and other similar determinations. The nonconforming use determination process will still work the same way.

19.804.1 Nonconforming Uses

Continues the existing policy of allowing nonconforming uses to remain, while requiring land use review by the Planning Commission to alter or expand a nonconforming use, or to change one nonconforming use to another nonconforming use.

19.804.2 Nonconforming Development

Deletes the special process, currently in Subsection 19.801, by which a property owner may ask permission to alter or extend a nonconforming structure. The current code requires conforming structures to request a variance in order to vary from development standards, whereas nonconforming structures have the ability to vary from the standards without having to go through the same level of review. This "extra flexibility" runs counter to the purpose of this chapter, which is to nudge nonconformities toward conformance, not to grant special rights. As proposed, alterations to nonconforming structures may still be allowed; however, they would be subject to the same variance process and approval criteria as conforming structures.

19.805 Rebuilding Nonconforming Uses and Development

- Allows more flexibility for replacement of nonconforming uses or structures destroyed by accident or natural hazard. The proposed changes are consistent with the ORS and the City Attorney's recommendation.
- Increases the time frame within which nonconforming uses lose their nonconforming status through discontinuance or abandonment from 6 months to 12 months. The proposed code may result in the perpetuation of some nonconforming uses; however, the current code may have the unintended consequence of resulting in long-term vacancies or underutilization of property, especially in the downtown area. Extending the time frame to 12 months is also consistent with the time frame available to property owners to rebuild a nonconforming structure that was accidentally destroyed, which would be especially important in situations where a nonconforming use occupied a nonconforming structure that was accidentally destroyed.

19.806 Amortization of Nonconforming Uses

Provides a process whereby high impact nonconforming uses may be amortized or otherwise discontinued. Amortization allows for a property owner to realize a return on their financial investment into a nonconforming use (e.g., the cost of capital investments, value of property and site improvements). The amortization process requires that the nonconforming use be discontinued once the owner has received a reasonable return on their investment from the operation of the nonconforming use.

LAND USE APPLICATIONS

Chapter 19.900

The proposed Chapter 19.900 is a new chapter in the zoning ordinance. The main purpose of this chapter is to consolidate the various land use applications in the zoning code into one area. This will make the entire zoning ordinance easier to navigate and make it easier to quickly find information about a land use application. This organizational approach has been used by many jurisdictions in the region who have recently rewritten their codes.

The introductory section in the chapter contains a comprehensive list of all land use applications and identifies where the application is found in the code. The sections within this chapter describe the applicability, procedures, and approval criteria for each land use application. The sections are organized in a consistent manner to make the information easy to navigate.

Some types of applications are not proposed for relocation into this chapter. Such applications were not relocated because they have specific applicability or approval criteria that are explained in nearby sections of code. Applications located in other parts of the code are referenced in the table to aid code users in identifying and locating the applications.

AMENDMENTS TO MAPS AND ORDINANCES

Section 19.902

This section establishes the criteria and process for how the City changes land use regulations and the Comprehensive Plan. The proposed code replaces the City's existing chapter governing map and ordinance amendments in its entirety, but remains very similar to the chapter it is replacing.

Summary of Proposed Key Policy Changes:

19.902.2 Applicability

This section identifies what actions are considered amendments. (Staff anticipates making changes to this section following the January 25, 2011 Planning Commission hearing to allow some discretion regarding what constitutes a comprehensive plan map change. There are a variety of maps in the comprehensive plan, and not all changes to the maps are necessarily amendments that need legislative or even quasi-judicial approval.)

19.902.3 Comprehensive Plan Amendments

The proposed code relocates the Comprehensive Plan amendment approval criteria from Chapter 2 of the Comprehensive Plan. Moving criteria into the zoning code will improve efficiency by having all approval criteria in the same place. Some minor modifications have been made to make the criteria easier to apply during the hearing process.

(Staff anticipates making changes to this section following the January 25, 2011 Planning Commission hearing to allow for some comprehensive plan map amendments to be processed as quasi-judicial decisions. Currently, all comprehensive plan map amendments are reviewed through the major quasi-judicial process. The anticipated change would have some flexibility to process site-specific map changes as quasi-judicial matters, while using the legislative process for map amendments affecting a larger area. This would parallel the process described for zoning map amendments, as described below.)

19.902.4 Municipal Code Amendments

This subsection contains the process and criteria for zoning text amendments, which are fairly straightforward and remain mostly unchanged from the current code. The proposed code distinguishes between zoning map and zoning text amendments and provides separate approval criteria for each. Approval criteria that more relate to site-specific zoning map amendments were relocated into Subsection 19.902.5.

19.902.5 Zoning Map Amendments

The proposed code changes the way zoning map amendments are processed. As proposed, zoning map amendments (or zone changes) are treated differently depending upon the size of the area proposed for rezoning. Changes that affect large geographic areas are considered legislative policy decisions. Changes to smaller areas are considered quasi-judicial in nature because they apply existing policies to specific properties. Legally, there is no definitive threshold for what constitutes a legislative zone change versus a quasi-judicial zone change. The review process in the proposed code reflects this variability but provides some guidance and defers to the City Attorney to make the decision about which process is appropriate.

19.902.5.B

The proposed code modifies the zoning map amendment approval criteria to focus less on the specifics of what development might occur within a zone and more on the general compatibility of the proposed zone in relation to existing surrounding zones. It is presumed that any future development would comply with the relevant standards and criteria required by its designated zone.

CODE INTERPRETATIONS AND DIRECTOR DETERMINATIONS

Section 19.903

The current code includes provisions for both director's interpretations of code provisions and director's determinations of the status of structures, uses, and lots with regard to their legality. Because these processes are similar in nature and level of review, the proposed code places both of these provisions into one section. The proposed section adds new language to interpretations and determinations to establish the applicability, procedures, and approval criteria for these processes.

Summary of Proposed Key Policy Changes:

19.903.1 Purpose

The purpose statement establishes parameters for Code Interpretations by stating that an interpretation is not a substitute for the legislative process of amending the code, but that it can be used for interim situations where a code change is needed until the legislative amendments can be made.

19.903.3 Review Process

- The Code Interpretation process includes factors on which a code interpretation can be based to aide the decision process (see 19.903.4.A).
- The Code Interpretation process includes notice of a Code Interpretation to the Planning Commission and City Council (19.903.3.B.2). The current code does not require this notice.
- The Director's Determination process incorporates two existing types of determinations (nonconforming status and legality of lots) and adds two other types (similar use determinations and an 'other' category). Each type has its own decision criteria (see 19.903.B.1-4). This change empowers the Planning Director to make these types of determinations and is in direct response to the community's requests for these types of determinations.

COMMUNITY SERVICE USES

Section 19.904

There are no substantive changes proposed to the Community Service Use section. It is being relocated from the chapter describing use zones and overlay zones to the chapter containing land use applications. This move recognizes the fact that a community service use is a type of use and not a zone. The process for approving a community service use is akin to the process for approving a conditional use and does not result in the application of a new zone or overlay zone to a property.

CONDITIONAL USES

Section 19.905

The City's policies on conditional uses currently reside in Chapter 19.600, Conditional Uses. The proposal deletes the old Conditional Use chapter and creates a new set of policies in the Applications chapter. The proposed code does not change the types of uses that require Conditional Use approval. The proposed code does make important changes to how the City would consider minor changes to existing conditional uses, evaluate the status of existing conditional uses, and 'sunset' discontinued conditional uses.

Summary of Proposed Key Policy Changes:

19.905.3 Review Process

For proposed new conditional uses, Planning Commission approval would still be required. The proposal also establishes the review process for other types of proposals involving a conditional use, such as a major or minor modification to an existing conditional use. These new review requirements are analogous to the existing review requirements for modifications to Community Service Uses.

19.905.5 Conditions of Approval

The proposed code authorizes the decision maker(s) to impose conditions that are necessary to make a conditional use compatible with its surroundings. The list is intentionally broad so as to provide guidance to decision makers and to inform code users about the broad range of conditions that may be considered. The current code has the same basic policy approach but with a much shorter list of possible conditions.

19.905.7 Review of Existing Conditional Use Permits

The proposed code clarifies and slightly revises the City's current procedures for handling conditional uses that are out of compliance with their approvals or are having unanticipated impacts. The general approach is to notify the conditional use operator and have them voluntarily correct the situation. The matter may be elevated to the Planning Commission for review if the owner does not correct the problem or if the correction is ineffective.

19.905.8 De Facto Conditional Use Status and Loss of Conditional Use Status

The proposed code clarifies the current code regarding de facto conditional uses. It grants conditional use status to a legally established use that is listed as a conditional use in the current code but did not undergo conditional use review.

The proposed code includes new provisions regarding the expiration of a use's conditional use status. Under the current code, conditional uses do not have an expiration date if the use changes or is discontinued. The proposed code would automatically remove conditional use status for properties that undergo a change in use. It would also remove conditional use status for properties where the use is discontinued for 3 years. The discontinuation

clause applies only to non-residential conditional uses that receive conditional use approval or become de facto conditional uses after the proposed regulations are enacted.

19.905.9.A Standards Governing Conditional Uses

- There are no amendments to most of the development standards governing specific conditional uses.
- The standards for a Type II Accessory Dwelling Unit have been moved from this portion of the code to Subsection 19.910.2 along with other standards and application procedures for residential land use applications.
- One policy change to the standards governing conditional uses amends the yard requirements for conditional uses in residential zones. Instead of requiring that conditional uses in residential zones have a yard width equal to at least two-thirds the height of the principal structure, the proposed code allows for the Planning Commission to impose additional yard width requirements as a condition of approval to address impacts related to building height, mass, and proximity to residential land uses. Staff believes that the current approach is unnecessarily rigid and ineffective and that the proposed approach effectively empowers the Planning Commission to determine the most appropriate yard width requirements on a case-by-case basis.

DEVELOPMENT REVIEW

Section 19.906

Adding the Development Review section to the zoning ordinance would change how the City performs its development review function, particularly for larger projects. Development Review is a new application whose purpose is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions. Under the current code, the City processes a sizeable number of permits on an ad-hoc basis at the staff level. This review sometimes includes decisions on discretionary criteria that should occur with some level of public notice. The Development Review process will also provide structure to an ad hoc process that creates frustration and uncertainty for developers, contractors, and property owners.

The proposed Development Review application formalizes the City's current practices where appropriate, and allows for public notice where appropriate. It is not meant to add additional process, expense, or time to the permit approval process any more than is necessary to adequately and legally implement the City's land use and development standards.

In most instances, the average property owner who is seeking permits from the City would not experience any change in the way the City issues permits. Some types of projects that currently only require building permit review, such as construction of new buildings in the Manufacturing zone or Business Industrial zone, would trigger Type II Development Review under the proposed code. This is appropriate because these projects are being asked to comply with criteria that are not clear and objective. The Type II Development Review process will enable staff to appropriately evaluate and condition a development project to mitigate impacts or meet discretionary design standards.

Establishing a development review process to handle discretionary standards will also allow the City to adopt more discretionary standards in the future. These types of standards, which typically apply to commercial and multifamily development, require greater flexibility and judgment in the review process, and can ultimately lead to projects that have higher quality design and are more in keeping with the character of the existing area.

The new development section outlines the procedures for the review and indicates that approval is contingent upon meeting all applicable development standards. The specific development standards that any given project would have to meet will still reside elsewhere in the code. The majority of the City's development standards reside in the following five chapters:

- Base zones (19.300)
- Overlay zones (19.400)
- Supplementary Development Regulations (19.500)
- Off-street parking and loading (19.600)
- Public Facility Improvements (19.700)

Summary of Proposed Key Policy Changes:

19.906.2.A Type I Review

The proposed code requires Type I Development Review prior to or concurrent with the issuance of development permits. As proposed, development projects triggering Type I Development Review are reviewed against standards that are clear and objective and/or require a minimal amount of professional judgment. Setback requirements are an example of a clear and objective standard because compliance can be verified with an objective measurement. An example of a standard requiring limited professional judgment is the on-site walkway standard that exempts required walkways for areas ". . . between buildings or portions of a site that are not intended or likely to be used by pedestrians. . . ." The meaning of this regulation is clear though its implementation does require the exercise of some professional judgment.

In some instances, a Type I Development Review may be the first and only land use review required for a development project. In other instances, a Type I Development Review may be a project's second land use review and come after a project's approval by the Planning Commission or Planning Director. In the case of the latter, the Planning Director may waive the follow-up Type I Development Review if the project adequately addressed all applicable development standards in the initial land use review process. Whether it is a project's first or second land use review, the purpose of the Type I Development Review is to ensure that a project meets all applicable development standards prior to the issuance of development permits.

19.906.2.B Type II Review

The proposed code requires Type II Development Review in a limited number of situations or upon the request of an applicant. The primary difference between Type I and Type II review is that Type II review includes evaluation of a development project against discretionary standards or criteria. Type II reviews allow for more notice and more detailed review and, as proposed, would typically be triggered by larger-scale development

projects. Type II review, as proposed, would not typically be required for development proposals that required other Type II or III land use reviews.

19.906.2.C Exemptions

Certain types of development are proposed to be exempt from the development review process. Exemptions are proposed because these types of development have either a limited review by the Planning Department (e.g. tenant improvements, right-of-way work, or temporary events), or are reviewed against a limited number of clear and objective development standards. Development exempted from the development review application is still required to comply with all applicable development standards prior to the issuance of development permits.

19.906.3 Review Process

The proposed code establishes how the development permit review application fits within the overall land use approval and development permit review processes. Development review may be a concurrent application or may be required after other land use approvals are obtained. For most large development projects, a development review application will likely be needed prior to the issuance of development permits.

19.906.4 Approval Criteria

The proposed code provides appropriate approval criteria for Type I and II development review applications. They facilitate a thorough review of a development project against all applicable development standards and conditions of approval from prior land use approvals.

Type I reviews are a review against standards that are clear and objective or require a minimal amount of professional judgment. This should be a straightforward "checklist" type of review to ensure that a project meets the numerical development standards of the code.

Type II reviews likely include a review against clear and objective standards, but also include a review against subjective and/or context-sensitive criteria. Since the Type II review process provides for referral and public notice, nearby residents, neighborhood district associations, and other agencies have the chance to comment on whether the approval criteria are met.

DOWNTOWN DESIGN REVIEW

Section 19.907

There are no substantive changes proposed for this section of code. In the existing code, it is located at the end of the section for the downtown base zones. Since it is a discrete type of land use application, it is more appropriately located in the new applications chapter.

EXTENSIONS TO EXPIRING APPROVALS

Section 19.908

This would be a new set of policies to address an extension of the time frame for which an approval is valid. As proposed, if an approved land use decision has not been utilized after a specified period of time, it would automatically expire. This is intended to protect the community from some of the problems associated with land use approvals that don't expire, which include the following:

- Project construction is delayed for a long period of time resulting in extended disruption to neighbors and visual blight.
- Surrounding conditions change between land use approval and construction, and the project has unmitigated impacts on the neighborhood, a natural resource area, or the transportation network.
- Neighborhood surprised when the project is constructed years after an approval has been issued.

To balance the need and desire for expiration of approvals, the proposed code includes a formal process for reviewing and possibly extending the time period during which land use approvals are valid on a case-by-case basis.

Summary of Proposed Key Policy Changes:

19.908.3 Review Process

- Allows for the extension of approvals, but only if requested and approved before the permit approval's expiration date.
- Provides for Type II review process for applications that were originally approved through either the Type II or III review process. This will provide for the most appropriate public notice and opportunity for comment. Applications originally approved through the Type I review process would have their extension requests processed through the Type I process.

19.908.4 Approval Criteria

- Allows for an extension only after it has been determined that conditions in and around the proposed development site are substantially the same.

MODIFICATIONS TO EXISTING APPROVALS

Section 19.909

Usually, projects that involve construction seek land use and development review permits when the project design is 30-60% complete. It is not uncommon for development plans to change after land use approval and during development permit review as the applicant completes more detailed design and engineering plans. Though the City expects some evolution and change to development plans after land use approval, the City has not had a clear policy on how to handle these changes. The current proposal creates a formal process for handling plan modifications. It codifies staff's existing practice of reviewing some modifications administratively and sending others back to Planning Commission for review.

Summary of Proposed Key Policy Changes:

19.909.3 Review Process

- Allows the Planning Director to determine when a modification is substantial enough to warrant more formal review and approval.
- Creates two categories of modifications—major and minor—and requires Type III review of major modifications and either Type I or II review for minor modifications. For minor modifications, the proposed code allows the Planning Director to process the application through the review level that provides for the most appropriate public notice and opportunity for participation.
- Limits the scope of review of the modification to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.

RESIDENTIAL DWELLINGS

Section 19.910

This section of code organizes 4 existing land use application types into one section. The common element is that these are all types of single family residential development that require land use approval. No substantive changes are proposed to any of the application types.

VARIANCES

Section 19.911

Variations are meant to provide relief from specific code provisions that prevent reasonable development or impose undue hardship. The proposed code replaces the City's existing variance chapter in its entirety with the intention of fixing the following problems:

- The existing code does not contain a purpose statement for variations.. A purpose statement is important as a guide to the City's policy toward granting variations, and provides context for the overall variance process.
- The existing approval criteria for variations are extremely rigid and allow for limited discretion even when being reviewed by the Planning Commission. They do not allow variations that would result in better projects and/or have indiscernible impacts, and they have the effect of not allowing small adjustments to standards on any but the most complex sites.
- Type II and Type III variations currently have the same approval criteria, which makes administrative variations equally as difficult to approve as variations granted by the Planning Commission.
- The existing home improvement exception standards are unclear, overly complex, and unfair. They create a special kind of variance that is available only to a certain subset of homeowners (not available to commercial or rental property).

Summary of Proposed Key Policy Changes:

The table on the following page summarizes the differences between the current and proposed variance provisions. The variations allowable for single family dwellings under the existing home improvement exception process are not reflected in the comparison.

Commentary on Proposed Code Amendments

Variance Provisions		Current Code	Proposed Amendments
Type II Variances	Eligible Variances	10% of any numeric standard	40% of side yard 25% of front, rear, or street side yard 10% of lot coverage minimum vegetation 10% of lot width or depth 10% of a lot frontage standard
	Approval criteria	Property has unusual conditions over which the applicant has no control No feasible alternatives and is the minimum necessary for reasonable property use Impacts are mitigated as practicable	Not detrimental to surrounding properties Will not interfere with future transportation or utility projects Variance sustains integrity of existing site design Impacts are mitigated as practicable
	Review Authority	Planning Director	Planning Director
Type III Variances	Eligible Variances	Any provision of zoning or land division code (use exceptions processed separately)	Most provisions of zoning or land division code, some exceptions (19.911.2) and (use exceptions processed separately)
	Approval criteria	Same as Type II approval criteria	<u>Discretionary criteria:</u> Variance meets 1 or more: Avoids/minimizes impacts to surrounding properties; has desirable public benefits; and/or creatively responds to built or natural environment Impacts are mitigated as practicable <u>Hardship Criteria:</u> Minimum necessary to allow reasonable economic use Minimum necessary to allow uses similar to other comparable properties Impacts are mitigated as practicable
	Review Authority	Planning Commission	Planning Commission

19.911.1 Purpose

Adds a purpose statement.

19.911.2 Applicability

Clarifies which standards are eligible for variances.

19.911.3 Review Process

- Allows small variances that are not detrimental to surrounding properties through a Type II review process, such as small variances to lot coverage and yard requirements. It does not allow variances to building height to be reviewed through the Type II process.
- While the proposed Type II variance allows for some of the variances that would currently be allowed as a Home Improvement Exception (HIE), it requires other variances that would have been eligible for a HIE to go through a Type III variance process.

The HIE allows for up to a 50% reduction in a required front, street side, or rear yard. The proposed Type II variance allows for only a 25% reduction, and no less than a 15 foot setback. An R-7 property would only be eligible for a 5 foot front or rear yard reduction in the proposed code, where a 10 foot reduction would be possible under the existing HIE provisions. R3, R2 and R1 properties that were eligible for an HIE for front or rear yard reductions would not be eligible for a Type II variance because their minimum required front and rear yard depth is already 15 feet. Any front or rear yard variances for these properties would require Planning Commission review.

- Allows variances that improve the function or design of a project through a Type III review process.

19.911.4 Approval Criteria

- Creates new approval criteria for both types of variances that allow for an appropriate amount of discretion based on the associated level of review.
- Folds the existing home improvement exception provisions into the new variance approval criteria, which have the effect of allowing comparable types of requests through the new streamlined variance approach.

19.911.5 Use Exceptions

- 19.911.5.A adds a provision that the existing use exception process cannot be used to allow a use that is prohibited by the underlying base zone.
- The remaining criteria have been amended for clarity. The existing criteria contained archaic language that was very difficult to apply even on a discretionary basis. The proposed amendments retain two basic criteria that evaluate if the request arises from a unique situation that the property owner cannot control and whether it is

possible that a permitted or conditional use could use the property.

REVIEW PROCEDURES AND ADMINISTRATION

Chapter 19.1000

Review procedures provide the basic framework for how the City conducts land use and development permit review. They determine what kinds of projects trigger land use review, who receives notices about hearings and decisions, when the City has to make a land use decision, and who makes the final decision (e.g. Planning Director, Planning Commission, or City Council).

The City's current review procedures are problematic in a number of ways. Generally, the existing language tends to be inconsistent, unclear, and incomplete. Furthermore, some of the procedural language may not be fully in compliance with state statutes that regulate land use review. The intent of these proposed amendments is to clarify and streamline the City's review procedures and ensure consistency with state statutes. The current proposal replaces the City's existing Administrative Provisions chapter (Chapter 19.1000) in its entirety.

The City currently has five types of land use reviews: Type I, Type II, Minor Quasi-judicial, Major Quasi-judicial, and Legislative. The current proposal eliminates the distinction between major and minor quasi-judicial and renames the review types as follows:

- Type I Review: Administrative review process, decided by Planning Director
- Type II Review: Administrative review process with public notice, decided by Planning Director
- Type III Review: Quasi-judicial review process with public notice and hearing, decided by Planning Commission
- Type IV Review: Legislative review process with public notice and hearing, decided by City Council; also used for some quasi-judicial reviews

The current Major Quasi-judicial land use review is used by the City solely for processing Zoning Map and Comprehensive Plan map amendments and requires a hearing before both the Planning Commission and City Council. Having a separate land use process for amendments is redundant and can create additional, unnecessary process (i.e., two public hearings when one is sufficient). The draft language proposes to process map amendments through either the Type III or Type IV procedure, depending on the scale and scope of the amendment, which will provide for a more streamlined review process for small-scale zone changes.

For each review type, the proposed code provides the following information in a consistent format:

- Preapplication conference requirements

- Application requirements
- Public notice requirements (if applicable)
- Decision authority
- Decision-making requirements
- Appeal procedures

The following is a more detailed overview and summary of key changes being proposed for each section of this chapter:

Summary of Proposed Key Policy Changes:

Section 19.1001 General Provisions

This section introduces the four land use review types, outlines who can initiate a land use application, provides an overview of how applications are reviewed, and establishes a general process for how decisions are made.

One notable proposed change in this section is that it provides for the automatic expiration of approved land use decisions that have not been utilized after a specified time period. Depending on the type of application, approvals will generally expire after two to four years unless an extension is granted by the City. Extension requests will require a separate application pursuant to proposed new language in Chapter 19.908. This is a significant change from the current code language, which only addresses certain types of approvals (conditional use, exceptions/variances, and nonconforming use approvals) and provides just six months before they expire.

A second important change is the appeal authorities for land use decisions (see Table 19.1001.5). As proposed, the Planning Commission would be the City's final authority for appeals of Type I and Type II decisions. Currently, appeals of Type I and Type II decisions may be appealed to Planning Commission and then to City Council. The appeal authority for Type III and Type IV decisions is unchanged.

Section 19.1002 Preapplication Conference

The intent of this language is to codify the City's existing practice of requiring a preapplication conference for certain types of land use applications. The proposed language does not represent any changes to current policy, but simply clarifies which types of land use reviews require a preapplication conference. Generally, a preapplication conference is optional for Type I applications and is required for Type II, III and IV applications. The City may waive the preapplication conference requirement for proposals that are not considered complex.

Section 19.1003 Application Submittal

This section establishes submittal requirements for applications, outlines the

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completeness review process, and addresses resubmittal of previously denied applications. Much of the city's existing code language pertaining to application submittal is located in various parts of the code. This new language is intended to consolidate submittal requirements into one section.

This section also contains proposed language regarding the procedures for handling modifications to land use applications that are currently under review by the City (see Section 19.1003.6).

One noteworthy change in the proposed language is that it allows an applicant 180 days to submit additional materials for an application that has been deemed incomplete by the City (see Section 19.1003.3.E). The current code allows only 15 days; however, state statute (ORS 227.178) requires 180 days before an application can be considered void.

Section 19.1004 Type I Review

This section lays out the procedure for a Type I land use review, which is an administrative review that does not require public notice or a hearing. The proposed language for a Type I review is generally similar to the City's current language in terms of noticing requirements, decision authority and appeals. One departure from the existing language relates to the decision timelines; current code states that the City will issue a decision within 10 days of application submittal. The proposed language states that the City has 120 days to issue a final decision (see Section 19.1004.5). The 120-day period is consistent with state law. While the City will strive to issue Type I decisions quickly, it is more appropriate to use state law in the code rather than the City's internal customer service goals. The 120-day period is used consistently throughout all review types in the proposed Procedures chapter.

Section 19.1005 Type II Review

For a Type II review, the proposed code retains the general level of notice and process as the current code. Noteworthy changes to the Type II review are:

- Proposed language requires the applicant to post a sign on the subject property to display relevant development proposal information (see Section 19.1005.3.C).
- Proposed language codifies City staff's current practice of referring applications to Neighborhood District Associations for their review and comment (see Section 19.1005.3.A).
- Proposed language eliminates the ability of the public, Planning Director, and/or Design and Landmarks Committee to elevate an application to the Planning Commission for a hearing. However, it continues to allow an applicant or aggrieved party to appeal the decision to the Planning Commission for a hearing.
- Proposed language provides notice of application submittal in lieu of tentative notice of decision, effectively maintaining the same level of opportunity for public comment,

notice of decision, and appeal (see Section 19.1005.3). Mailing a notice rather than a tentative notice of decision provides staff a better opportunity to send a clear and concise notice to citizens. It may also reduce the processing time for a Type II decision by two weeks.

Section 19.1006 Type III Review

The following changes are included in the proposed Type III procedure:

- As mentioned previously, the Type III procedure combines the City's existing Minor and Major Quasi-judicial procedures into one. This affects how changes to the Zoning Map are processed. In the proposed code, Zoning Map amendments that affect only small areas can be processed as a Type III application. This will allow some zoning map amendments to be heard and reviewed only by the Planning Commission, instead of requiring a hearing before the Planning Commission and then before City Council. The Type IV procedure presented in the next section will be used to process legislative (broader impact, multiple parcels) Zoning Map and/or Comprehensive Plan map amendments.
- Proposed language eliminates any requirement for a newspaper notice. Though required only for two specific land use reviews, the City's practice has been to publish a hearing notice in the newspaper for all Type III hearings. City staff has determined that newspaper notice is not an effective or comprehensive method for issuing public notice.
- Language regarding the Design and Landmarks Committee (DLC) as a decision making body has been removed. The proposed code clarifies that the DLC's public meeting process is an additional step in the review of downtown design review applications (see Section 19.1010).
- Proposed language codifies City staff's current practice of referring applications to Neighborhood District Associations for their review and comment (see Section 19.1006.3.B).

Section 19.1007 Type IV Review

The proposed Type IV section contains a considerable amount of new language relative to the existing code and is intended to clarify and strengthen the legislative process for the City. The proposed language is consistent with the existing code in that it requires two public hearings, one before the Planning Commission and one before City Council. Public noticing requirements are also consistent with current practice and are codified in greater detail in this proposal, including DLCD, Measure 56, and Metro noticing requirements (see Section 19.1007.2).

(Staff anticipates making changes to this section following the January 25, 2011 Planning Commission hearing. The currently proposed Type IV review contains one process for review of legislative applications and another for review of quasi-judicial applications.

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Staff anticipates revising the chapter to include a separate review type to allow for Planning Commission recommendation and City Council decisions on quasi-judicial applications. This would be similar to the current Major Quasi-judicial process in MMC Subsection 19.1011.4. This would primarily be use for comprehensive plan and zoning map amendments, and would also include amortization of high impact nonconforming uses.)

This section also contains a number of changes from current code and City practice, including:

- More directive language regarding public involvement. Aside from newspaper notice, the current code has almost no requirements for public notice or involvement in legislative amendments. The proposed language eliminates the newspaper notice requirement, and instead adds language that requires opportunity for public review and input at an early stage in the amendment process (see Section 19.1007.3.B). The proposed code language is not prescriptive about what must be done, but is clear that substantive public involvement is required.
- Proposed language clarifies that any person, organization, or governmental body can initiate a legislative application. This is consistent with current practice but is not explicit in the current code.
- Proposed language requires that the initial public hearing before the Planning Commission be held within 180 days of a complete application (see Section 19.1007.5.B). The 180-day timeline is consistent with state law.

Section 19.1008 Public Hearings

The proposed Public Hearings language outlines the process for public hearings in the City. This section is intended to clarify and consolidate such provisions and ensure consistency with state statutes. Generally, the City's hearing bodies rely upon their bylaws for specific rules of procedure. This proposed language is more general in nature and contains provisions that should apply at all public hearings, regardless of the hearing body. There are no significant departures from existing practice represented in the proposed language; rather, it is intended to consolidate language and provide a more comprehensive explanation of the hearings process. The section provides clarification on the following:

- Proposed language states that the City is responsible for scheduling hearings, providing public notice, preparing minutes, and mailing decision notices for all hearings.
- Proposed language includes provisions for challenging the impartiality of a member of the hearing body at a hearing (Section 19.1008.4).
- Proposed language explains ex-parte contact and the rules for disqualification of a hearing body member (Sections 19.1008.6-7).
- Proposed language outlines the provisions for continuance of a hearing (see Section 19.1008.10).

Section 19.1009 Appeals

The proposed Appeals section outlines the conditions under which an appeal may be filed and provides specific information for different types of appeals (Type I, Type III, etc.). The proposed language clarifies the appeals process and ensures consistency with state requirements. The following is a summary of the appeals processes for different review types:

- Parties that can appeal a decision are specifically listed in the appeal procedures for each review type. The requirements for filing an appeal are also included (see Section 19.1009.1).
- The code establishes two types of appeal hearings that define the scope of the appeal, standard of review, and rights of parties to raise new arguments (see Section 19.1009.3).
- Appeal of a Type I decision can only be made by the applicant and goes to the Planning Commission for a public hearing (Section 19.1009.3).
- Appeal of a Type II decision may be initiated by the applicant or any person/organization who feels adversely impacted or aggrieved by the decision. This language is consistent with state law. Type II appeals go to a public hearing before the Planning Commission for the final, local decision (Section 19.1009.4). This is a change from the current code, as it would give Planning Commission the final decision making authority on ministerial decisions that are appealed. Any appeal after that would go to the Land Use Board of Appeals (LUBA).
- Appeal of a Type III decision may be made by the applicant or a party with standing (Section 19.1009.5). Standing is granted to any party who participated by providing oral testimony or written comment/evidence on the record during the hearing or public comment period. This language is consistent with state law. A Type III appeal goes to public hearing before the City Council for a "review of the record." This is a change from the current code, as it would limit the scope of the appeal to what was in the record. New arguments would be allowed, but new evidence would not be allowed. Any appeal after that would go to the Land Use Board of Appeals (LUBA).

Section 19.1010 Design Review Meetings

This section of the proposal would add a new section specific to the Design and Landmarks Committee and their consideration of downtown design review applications. Many of the procedures listed in this section are slight modifications of the hearing procedures in Section 19.1008. The key provisions of this new section are:

- Design review meetings have notice requirements similar to the notice requirements for a Type III application. The mailed notice would come 10 days before the meeting (see Section 19.1010.2).

Commentary on Proposed Code Amendments

- The requirements for a design review recommendation are specified (see Section 19.1010.10).
- Rules have been added to ensure that a design review meeting can be held within the timeframe required by the 120-day land use clock. If a meeting cannot be scheduled in a timely manner and an extension to the 120-day clock is not granted by the applicant, the proposed code authorizes the Planning Director to issue the design review recommendation (see Section 19.1010.1).

Related Code Amendments

Since the Procedures chapter works in concert with many other provisions of Title 19, amendments to this chapter could not be done in isolation. Consequently, additional amendments to other chapters are being proposed to effectively implement the new Procedures chapter and improve the overall functioning of Title 19. These related amendments are located in the proposed Chapter 19.900 and are summarized below so as to give the reader a more comprehensive understanding of all the procedural changes being proposed and how they relate to one another. Actual draft language for these related sections is provided separately.

Development Review. The purpose of this Type I and Type II application is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions.

Extensions to Expiring Approvals. The purpose of this Type I and Type II application is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

Modifications to Existing Approvals. The purpose of this Type I, Type II, and Type III application is to provide an appropriate and efficient review process for evaluating minor and major modifications to approved land use applications and development plans after approvals have been obtained but prior to issuance of development permits.

COMPREHENSIVE PLAN

Chapter 1 Citizen Involvement & Chapter 2 Plan Review and Amendment Process

The proposed amendments to the Comprehensive Plan affect limited procedural aspects of public notice and the Comprehensive Plan amendment process. Though a broader evaluation of the City's public involvement policies may be timely and warranted, the proposed amendments are less ambitious. The focus of these amendments is to remove procedures and criteria from the Comprehensive Plan that are more appropriately located in the zoning code and to keep the broader policies that will continue to drive the City's land use and development review process in the Comprehensive Plan.

Only the numbered objectives of the Comprehensive Plan for which amendments are proposed are shown in the draft amendments. All other sections are proposed to remain as written.

Summary of Proposed Key Policy Changes:

Chapter 1, Objective #3

The proposed amendments to this objective make the Comprehensive Plan less specific about the exact means of how communication with the public occurs, while maintaining the overall quality and openness of the communication. The proposed amendments to the zoning code (Subsection 19.1007.3.B) enforce the public involvement principles of this objective by requiring that there be opportunity for public input and involvement in the amendment process.

Chapter 2, Objective #1

The proposed amendments to this objective remove the specific evaluation criteria and procedural steps involved with amending the Comprehensive Plan from the plan itself. These items are proposed for relocation to the zoning code.

The specific approval criteria for amendments are proposed for relocation to Section 19.902, Amendments to Maps and Ordinances. The procedural portions of the amendment process are proposed for relocation to Chapter 19.1000, Review Procedures and Administration.