



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No. 2089

An ordinance of the City Council of the City of Milwaukie, Oregon, to amend Title 19 Zoning, Section 19.306 Limited Commercial Zone C-L, to allow eating establishments in certain areas of the C-L Zone (File #ZA-14-03).

WHEREAS, the C-L Zone along 32nd Ave provides a range of convenience services to neighborhood residents but does not allow eating establishments such as cafes, restaurants, coffee houses, and delis;

WHEREAS, the City of Milwaukie finds that permitting eating establishments in the C-L Zone would enhance the C-L district and the surrounding neighborhood;

WHEREAS, any impacts to the surrounding neighborhood can be mitigated by limiting the location and size of the eating establishments and by prohibiting drive through facilities; and

WHEREAS, the Planning Commission held a duly advertised public hearing on the amendments on November 25, 2014, with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes, and recommended approval; and

WHEREAS, the City Council held a duly advertised public hearing with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes;

Now, Therefore, the City of Milwaukie does ordain as follows:

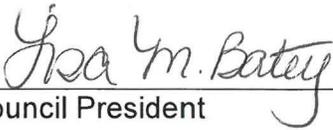
Section 1. Findings. Findings of fact in support of the proposed amendments to Title 19 are attached as Exhibit A.

Section 2. Amendments. Title 19 Zoning is amended as described in Exhibit B (strikeout/underline version) and Exhibit C (clean version).

Read the first time on 1/20/15, and moved to second reading by 4:0 vote of the City Council.

Read the second time and adopted by the City Council on 1/20/15.

Signed by the ~~Mayor~~ on 1/20/15.
Council President



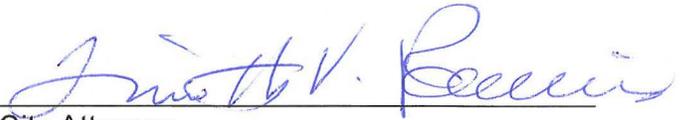
Council President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

Exhibit A

Findings in Support of Approval File #ZA-14-03, C-L Zone Text Amendment

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision regarding this application.

1. The applicant, Milwaukie City Council, has applied for a zoning ordinance text amendment to add eating establishments to the list of permitted uses in the C-L Limited Commercial Zone. The land use application file number is ZA-14-03.
2. As proposed, the text amendment would only apply to three commercial properties at the intersection of 32nd Ave and Olsen St. The properties are:
 - 9391 SE 32nd Avenue – occupied by an auto repair business (Luther Davis Auto Repair)
 - 9410 SE 32nd Avenue – occupied by a convenience store (Eric's Market)
 - 9401, 9423, and 9435 SE 32nd Avenue – occupied by a café/coffee shop and a dog grooming business (Liz's Creative Café and Cheryl's Canine Styling)
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902.5 Zoning Text Amendments
 - MMC Section 19.902.6 Zoning Map Amendments
 - MMC Section 19.1000 Review Procedures
 - MMC Section 19.1006 Type III Review
 - MMC Section 19.1008 Type V Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review (for the zoning map component) and Section 19.1008 Type V Review (for the zoning text amendment). A public hearing before the Planning Commission was held on November 25, 2014, as required by law. Type V hearing procedures were followed at the hearing.
5. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendment is proposed by the City of Milwaukie and was initiated by the City Planning Director on October 10, 2014.
 - b. MMC Section 19.1006 establishes requirements for Type III review and Subsection 19.1006.3.D.3 provides notice requirements that are specific to map amendments.
 - (1) MMC Subsection 19.1006.3.D.3.a requires a public notice to be provided 20 days prior to the public hearing. The owners of the subject properties, the owners of property within 400 feet of the subject properties, and the Ardenwald-Johnson Creek Neighborhood District Association were sent notice on November 5, 2014, 20 days prior to the public hearing.
 - (2) As required by MMC Subsection 19.1006.3.D.3.b., a Measure 56 notice was mailed to owners of the subject properties. The notice was sent on November 5, 20 days prior to the public hearing.
 - c. MMC Section 19.1008 establishes requirements for Type V review.

- (1) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment and review. Opportunity for public comment and review has been provided. Public notice in the form of email to the Neighborhood District Associations, a Measure 56 notice to property owners, a public notice to property owners within 400 feet, and information on the City website have publicized the Planning Commission's hearing on the proposed amendment to encourage comment by any interested party.
 - (2) MMC Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public. A notice of the Planning Commission's November 25, 2014, hearing was posted as required on October 24, 2014.
 - (3) MMC Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The Planning Director has determined that the proposal affects a discrete geographic area and notice was provided to individual property owners within 400 ft of the site. The notice was sent on November 5, 2014.
 - (4) MMC Subsection 19.1008.3.B and C require notice of a Type V application to be sent to Metro 45 days prior to the first evidentiary hearing and to the Department of Land Conservation and Development 35 days prior to the first evidentiary hearing. This notice was sent to Metro and DLCD on October 10, 2014.
 - (5) MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the application would affect the permissible uses of land for those property owners. A Measure 56 notice was sent to the affected property owners on November 5, 2014.
 - (6) MMC Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held a duly advertised public hearing on November 25, 2014, and passed a motion recommending that the City Council approve the zoning ordinance text amendment. The City Council held a duly advertised public hearing on January 20, 2015, and approved the text amendment.
6. MMC Section 19.902.5. Zoning Text Amendments
- a. MMC 19.902.5.A establishes the review process for zoning text amendments.
The code states that changes to Title 19 shall be subject to Type V review per MMC 19.1008.
 - b. MMC 19.902.5.B establishes five criteria (listed below) for approval of changes to the zoning ordinance text. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.
 - (1) The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
The proposed code amendment to add eating establishments to the list of permitted uses in the C-L Limited Commercial Zone does not conflict with any provision of the Milwaukie Municipal Code. All other code provisions can operate and be enforced with this change.
 - (2) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

- a) The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

- b) Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

- c) Objective #10 – Commercial Land Use – Convenience Centers states:

To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.

- d) Policy 3 under Objective #10 reads:

Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.

The proposed zoning text amendment is consistent with the relevant goals, objectives, and policies of the Comprehensive Plan for the following reasons:

- *Eating establishments in the C-L Zone will expand service facilities in the community;*
- *Expanding the list of uses in the C-L Zone to include eating establishments encourages new commercial uses within an existing commercial area and takes advantage of existing access and service;*
- *Adding eating establishments to the list of uses in the C-L Zone provides neighborhood residents with easy accessibility to an expanded range of services without expanding the geographic area of the zone; and*
- *The proposed text amendment includes safeguards to minimize impacts on adjacent properties. Safeguards include: 1. The use is limited to three properties; 2. The size of any individual eating establishment is limited to no more than 3,250 sq ft; and 3. No drive through facilities are permitted.*

- (3) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (4) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reasons. The proposed text amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed under the existing set of uses in the C-L Zone. The C-L Zone presently allows convenience stores as an outright permitted use. Convenience stores are recognized as having a relatively high capacity for trip generation. According to the Institute of Traffic Engineers Trip Generation Manual (7th edition), convenience stores generate approximately 77 trips per 1,000 sq ft during the PM peak hour. The Trip Generation Manual indicates that the potential peak trips generated by the types of eating establishments that might locate in the C-L Zone would be lower than what could be generated by convenience stores. The types of eating establishments considered include high turnover restaurants (18 trips per 1,000 sq ft in the PM) and coffee shops (73 trips per 1,000 sq ft in the AM). The trip numbers are for uses that do not have drive through service.

- (5) The proposed amendment is consistent with relevant federal regulations. No federal regulations are relevant to the proposed zoning text amendment.

7. MMC Section 19.902.6. Zoning Map Amendments

- a. MMC Section 19.902.6.A sets forth the review procedures for Zoning Map Amendments. The proposed C-L Zone Text Amendment has been developed in a manner that it applies to only 3 properties located at the intersection of 32nd Ave. and Olsen St. The properties together comprise approximately 23,132 sq ft in area. Because the proposal applies to such a small area and so few properties, it has an effect similar to that of a zoning map amendment.

MMC 19.902.6.A.1 states:

"Generally, Zoning Map amendments that involve 5 or more properties or encompass more than 2 acres of land are legislative in nature and subject to Type V review. Zoning Map amendments that involve fewer properties and encompass a smaller area of land are quasi-judicial in nature and subject to Type III review".

MMC 19.902.6.A.2 states:

"Changes that affect both the Zoning Map and the text of Titles 14, 17, or 19, or other land use regulations within the Milwaukie Municipal Code shall be evaluated through a Type V review per section 19.1008. These changes are subject to the approval criteria of Subsections 19.902.5.B and 19.902.6.B".

The proposed amendments are text amendments that apply to only 3 properties and thus have the effect of a Zoning Map amendment. Therefore, findings have been prepared to address the criteria of both Subsections 19.902.5.B and 19.902.6.B. ~~The original set of findings address MMC 19.902.5.B and this set of supplemental findings address MMC 19.902.6.B.~~

- b. MMC 19.902.6.B establishes eight criteria (listed below) for approval of changes to the zoning map. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.

- (1) The proposed amendment is compatible with the surrounding area based on the following factors:

- a. Site location and character of the area.
- b. Predominant land use pattern of the area.
- c. Expected changes in the development pattern of the area.

The proposed amendments apply to three properties that are currently in commercial use and zoned C-L Limited Commercial. The area to the north and south along the west side of 32nd Ave is also zoned C-L. The areas to the east and west along Olsen St. are zoned R-7 Low Density Residential and are occupied by single family homes. The proposed amendment does not result in any expansion of commercial use into the adjoining neighborhoods. The change simply adds eating establishments to the list of permitted uses for the three subject properties. This change should have a positive effect on the character of the area by increasing opportunities for the siting of restaurants, coffee houses, and delis in walkable proximity to a residential area.

- (2) The need is demonstrated for uses allowed by the proposed amendment.

A need exists for the proposed amendment given that the property at SE corner of 32nd Ave. and Olsen St. is currently occupied by Liz's Creative Café – a small coffeehouse and café. The business has strong community based support and is the location where Ardenwald-Johnson Creek Neighborhood District Association meetings are held.

- (3) The availability is shown of suitable alternative areas with the same or similar zoning.

It is assumed that this criterion refers to the lack of availability of other suitable areas. Properties to the north and south of the subject properties on the west side of 32nd Ave. are also zoned C-L Limited Commercial. The current C-L zoning prevents any of these properties from being used for eating establishments. The subject properties include a site that is already being used as a café and it has proven to be a well suited location for the use.

- (4) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

The subject properties are already being used for commercial purposes. The proposed amendment does not create any additional demands on public transportation, public utilities, or public services. The application was referred to the City Engineering and Building departments for review and no service-related issues were identified.

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

The Milwaukie Transportation Systems Plan identifies 32nd Ave. as a "collector street". Olsen St. to the east is identified as a "neighborhood route" and to the west as a "local street". The proposed amendments are expected to have no impact on the functional classification and level of service of any of these streets.

In addition, the proposed amendments are found to be consistent with the State of Oregon Transportation Planning Rule. The proposed amendment does not

impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed under the existing set of uses in the C-L Zone. The C-L Zone presently allows convenience stores as an outright permitted use. Convenience stores are recognized as having a relatively high capacity for trip generation. According to the Institute of Traffic Engineers Trip Generation Manual (7th edition), convenience stores generate approximately 77 trips per 1,000 sq ft during the PM peak hour. The Trip Generation Manual indicates that the potential peak trips generated by the types of eating establishments that might locate in the C-L Zone would be lower than what could be generated by convenience stores. The types of eating establishments considered include high turnover restaurants (18 trips per 1,000 sq ft in the PM) and coffee shops (73 trips per 1,000 sq ft in the AM). The trip numbers are for uses that do not have drive through service. No transportation impact study was found to be necessary for this amendment.

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The Comprehensive Plan Land Use Map designates the subject properties as C-Commercial. The C-L Limited Commercial Zone is consistent with that plan designation. The proposed amendment does not change the C-L designation for the subject properties.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

- a) The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

- b) Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

- c) Objective #10 – Commercial Land Use – Convenience Centers states:

To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.

- d) Policy 3 under Objective #10 reads:

Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.

The proposed zoning text amendment is consistent with the relevant goals, objectives, and policies of the Comprehensive Plan for the following reasons:

- *Eating establishments in the C-L Zone will expand service facilities in the community;*
- *Expanding the list of uses in the C-L Zone to include eating establishments encourages new commercial uses within an existing commercial area and takes advantage of existing access and service;*

- *Adding eating establishments to the list of uses in the C-L Zone provides neighborhood residents with easy accessibility to an expanded range of services without expanding the geographic area of the zone; and*
- *The proposed text amendment includes safeguards to minimize impacts on adjacent properties. Safeguards include: 1. The use is limited to three properties; 2. The size of any individual eating establishment is limited to no more than 3,250 sq ft; and 3. No drive through facilities are permitted.*

- (7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule. See the discussion above under Criterion 5 for the reasons the proposal complies with the rule.

Underline/Strikeout Amendments

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.306 LIMITED COMMERCIAL ZONE C-L

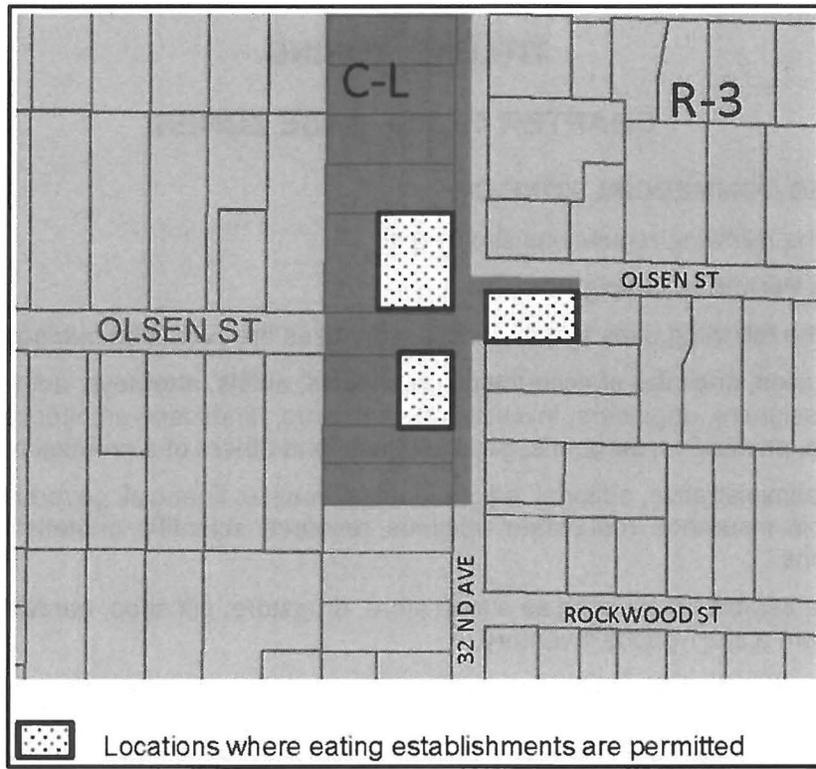
In a C-L Zone the following regulations shall apply:

19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- A. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature.
- B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific, or statistical organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- D. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station.
- E. Eating establishments, when located on a site depicted in Figure 19.306.1.E, and provided the floor area does not exceed 3,250 sq ft and the use does not include drive-through facilities.

Figure 19.306.1.E
Eating Establishment Locations in the C-L Zone



EF. Any other use similar to the above and not listed elsewhere.

Clean Amendments

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.306 LIMITED COMMERCIAL ZONE C-L

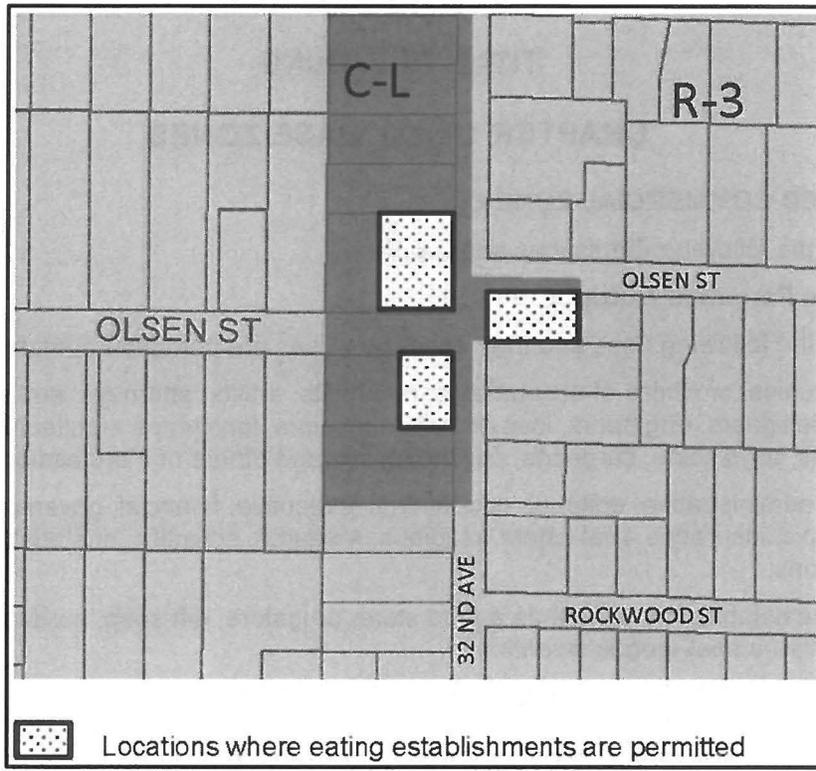
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- B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific, or statistical organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- D. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station.
- E. Eating establishments, when located on a site depicted in Figure 19.306.1.E, and provided the floor area does not exceed 3,250 sq ft and the use does not include drive-through facilities.

Figure 19.306.1.E
Eating Establishment Locations in the C-L Zone



EE. Any other use similar to the above and not listed elsewhere.