

ORDINANCE NUMBER 481

AN ORDINANCE DIVIDING THE CITY OF MIWAUKIE, OREGON, INTO DISTRICTS; PRESCRIBING THE USES TO WHICH PROPERTY IN SUCH DISTRICTS MAY BE PUT; REGULATING, RESTRICTING AND PROHIBITING THE LOCATION OF INDUSTRIES, TRADES, APARTMENT HOUSES, TWO FAMILY HOUSES, AND SINGLE FAMILY HOUSES; AND THE KEEPING OF LIVESTOCK; REGULATING AND RESTRICTING THE AREA AND DIMENSIONS OF LOTS AND YARDS; THE ERECTION, ALTERING AND MAINTENANCE OF BUILDINGS, AND THE HEIGHT AND ALIGNMENT THEREOF; PROVIDING FOR THE ESTABLISHMENT OF BUILDING SET BACK LINES; PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES, OR PARTS OF ORDINANCES IN CONFLICT THEREWITH, AND DECLARING AN EMERGENCY.

THE CITY OF MIWAUKIE DOES ORDAIN AS FOLLOWS:

SECTION 1. SHORT TITLE.

This ordinance shall be known as the "Zoning Ordinance of the City of Milwaukie, Oregon" and the map herein referred to shall be known as the "Zoning Map of the City of Milwaukie, Oregon." Said map and all explanatory matter thereon are hereby adopted and made a part of this ordinance.

SECTION 2. SCOPE. No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located, except as otherwise provided herein. No permit for the construction or alteration of any building shall be issued unless the plans, specifications, and intended use of such building conform in all respects with the provisions of this ordinance.

SECTION 3. MINIMUM REQUIREMENTS FOR GENERAL WELFARE.

The provisions of this ordinance shall be deemed the minimum requirements to encourage the most appropriate use of land; to conserve and stabilize the value of property; to provide adequate open spaces for light and air; to prevent undue concentration of population; to lessen the congestion on streets; to facilitate adequate provisions for community utilities and facilities such as transportation, water, sewerage, schools, parks and other public requirements and to promote the public safety, health, convenience, comfort, prosperity and general welfare of the people of the city of Milwaukie, Oregon.

SECTION 4. DUTY OF ENFORCEMENT. It shall be the duty of the zoning officer, who shall be designated by the council, to see that this ordinance is enforced.

SECTION 5. OCCUPANCY PERMIT. No vacant land shall be occupied or used, and no building hereafter erected shall be occupied or used, nor shall the use of a building be changed from a use limited to one district to that of any other district as defined by this ordinance until an occupancy permit shall have been issued by the building inspector. No permit for excavation or laying foundation for any building shall be issued before application has been made for an occupancy permit.

An occupancy permit for the use of vacant lands, or the change in use of land, shall be applied for before any such land shall be occupied or change occurs in its use. An occupancy permit shall be issued within ten days after application therefore has been made if such use is in conformity with this ordinance.

SECTION 6. TEMPORARY USE.

The City Planning Commission may, upon such petition, notice and hearing as it may deem proper, recommend to the Council the granting of a temporary permit to use certain specified property for a purpose not authorized in the district in which such property is located. Such temporary permit may be granted by motion or resolution, and shall be revocable at the will of the council, or extended for a time specified in the grant thereof, and it may be granted subject to such other limitations and conditions as the Council may impose.

SECTION 7. ILLEGAL OCCUPANCY. Any use of a premises or building which deviates from or violates any of the provisions of this ordinance shall be termed an illegal occupancy and the person or persons responsible therefore shall be subject to the penalties herein provided.

SECTION 8. CONTRACT PURCHASERS DEEMED OWNERS.

A person or persons purchasing property under contract, for the purpose of this ordinance, shall be deemed to be the owner or owners of the property covered by the contract, the City Planning Commission may require, satisfactory evidence of such contract of purchase.

SECTION 9. AMENDMENTS. The Council may, from time to time, on its own motion or own petition, after public notice and hearing, amend the regulations and change the districts herein established. Every such proposed amendment shall be referred by the Council to the City Planning Commission for report. Any such amendment that has failed to receive the approval of the City Planning Commission shall not be passed, except by a two-thirds vote of the Council. The Council or the City Planning Commission may initiate proposed changes in zones, which changes may be made only after notice to the owners of the properties affected and after a public hearing. All changes, except those initiated by the Council or the City Planning Commission shall be made only upon petition wherein the signatures of the owners of 50 percent or more of the area of each block in which the changes are to be made, including at least 50 percent of the area to be changed, are signed, and said petitions shall show addresses and descriptions of property owned sufficient for the identification thereof.

Whenever the owners to 50 percent of the land in any of the area shall present a petition duly signed, to the Council, requesting an amendment of the regulations prescribed for such areas, it shall be the duty of the Council to vote upon such amendment within ninety days of the filing of the same by the petitioners with the city Recorder.

A petition for change of zone shall be referred to the City Planning Commission by the city Recorder and the City Planning Commission shall check such petition for sufficiency and shall make a report embodying its recommendation. No petition shall be approved by the Council until the City Planning Commission has submitted a report relative to the same, and the City Planning Commission must submit such report within sixty days of the filing of the petition with the city Recorder.

The City Planning Commission shall afford persons particularly interested, and the general public, an opportunity to be heard at a time and place specified in a notice of hearing published in the manner required by Section 95-2404, O. C. L. A., 1940, and the final report of the City Planning Commission shall be directed to the Council. If a protest against such amendment be presented, duly signed by the owners of 25 percent of the land within such area proposed to be altered, such amendment shall not be passed except by a two-thirds vote of the Council.

SECTION 10. APPEALS FROM RULINGS ON PERMITS. Any interested citizen or administrative officer of the city may appeal to the Council from any ruling pertaining to the granting or denial of any permit applied for hereunder when such ruling is adverse to his interests, by filing with the city Recorder, within ten (10) days from such ruling, a written notice of appeal. Such written notice shall state with reasonable accuracy, the particular ruling from which appeal is made, and state the grounds therefore. Thereupon the city Recorder shall forthwith obtain all papers constituting the record upon which the action appealed from is based, and refer the same to the City Planning Commission, which shall, within ten (10) days, submit its written recommendation thereon together with the record to the Council. Said Commission or the Council may receive such additional evidence as either deems relevant to the issues involved. Upon receiving such recommendation and record, and within 30 days, and after a public hearing thereon, the Council shall have power to affirm, overrule, or alter any such ruling.

SECTION 11. PENALTY FOR VIOLATION. The owner or owners of any building or premises, or part thereof, where anything in violation of this ordinance shall be placed, or shall exist, or be maintained, and any architect, builder or contractor who shall assist in the commission of any such violation, and all persons or corporations who shall violate or maintain any violation of any of the provisions of this ordinance or who shall fail to comply therewith, or with any requirements thereof, or who shall build in violation of any detailed statement of plan submitted and approved thereunder, shall for each and every violation or non-compliance be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than fifty (\$50.00) dollars, or be imprisoned in the city jail not to exceed ten (10) days, or by both such fine and imprisonment. Each day that a violation of this ordinance continues shall be considered a separate offense.

SECTION 12. CONFLICTING PROVISIONS. All ordinances or parts or ordinances in conflict herewith are hereby repealed.

SECTION 13. VALIDITY Should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not effect the validity of the ordinance as a whole or any part thereof, other than the part declared invalid.

PART II

SECTION 14. DEFINITIONS. The following words and phrases when used in this ordinance shall have the meanings respectively ascribed to them in this section, excepting those in instances where the context clearly indicates a different meaning.

Words used in the present tense include the future, the singular number includes the plural; and the plural the singular, the word or includes the word plot and the word building includes the word structure.

SINGLE FAMILY DWELLING. A single family dwelling is a building used or arranged for use as the home or abode of but one family and in which not more than five boarders or lodgers are accommodated.

TWO FAMILY DWELLING. A two family dwelling is a building used or arranged for use as the home or abode of but two families, living independently of each other, and in which not more than five boarders or lodgers shall be accommodated by each family.

PRIVATE GARAGE. A private garage is a garage for not more than three automobiles, for storage only, and intended for private use, but in which space may be rented for storage only, of not more than two non-commercial automobiles, by other than the occupants of the buildings to which such garage is accessory.

NON-CONFORMING BUILDING OR USE. A non-conforming building or use is one that does not conform with the regulations provided herein for a given use district.

LOT. A lot is a parcel of land in a single or a joint ownership, occupied by not more than one building and the accessory buildings or uses customarily incident to it, including open spaces required herein.

CORNER LOT. A corner lot is a lot or portion of a lot not more than 50 feet wide at the junction of and fronting on two intersecting streets, except that in new additions where lots are platted wider than 50 feet, the corner lots shall be with width of the platted lot. Any portion of lot more than fifty (50) feet distant from that street with the greater frontage shall comply with the provisions of this ordinance applicable to interior lots.

INTERIOR LOTS. An interior lot is a lot other than a corner lot.

DEPTH OF LOTS. The depth of a lot is the mean distance from the street line of the lot to its rear lines measured in the general direction of the side lines of the lot.

STREET LINE. The street line is the dividing line between the street and the lot.

REAR YARD. A rear yard is an open, unoccupied space on the same lot with a building, between the rear line of the building and the rear line of the lot, unobstructed upward.

SIDE YARD. A side yard is an open unoccupied space on the same lot with a building, situated between the building and the side line of the lot and extending through from the street to the rear yard, or where no rear yard is required, to the rear line of the lot.

HALF STORY. A half story is a story of a building which is situated within a sloping roof, the usable floor area of which does not exceed two-thirds of the floor area of the story immediately below it.

BUILDING AREA. The building area is the maximum horizontal projected area of a building and its accessories.

PARKING. A parking is the space on a street between the established sidewalk lines and the established curb lines.

SET BACK. A space, between the street line and any portion of a building which area shall be unoccupied by structures except that eaves, cornices, steps, platforms and porches having no roof covering and not being over 42 inches in height may project within this space. Fences and hedges not over 42 inches high are permitted within this area.

PART III

SECTION 15. USE DISTRICTS. For the purpose of this ordinance the City of Milwaukee is hereby divided into four types of districts, designated as follows:

1. Commercial Zone.
2. Industrial Zone.
- 3-R-1. Single Family Residence Zone.
- 3-R-2. Multiple Family Residence Zone.

The boundaries of these zones are hereby established as shown on the official zoning map which accompanies this ordinance and is on file in the office of the City Recorder.

Unless otherwise shown on the zoning map of the city the boundaries of the zones are lot lines, center lines or streets or alleys, railroad right-of-way lines, or corporate limit lines as they exist at the time of the enactment of this ordinance.

SECTION 16. RESTRICTIONS WITHIN ZONES.

1. COMMERCIAL ZONE

In the commercial zone no building or premises shall be used and no building shall be hereafter erected or structurally altered unless otherwise provided in this ordinance except for one or more of the following uses:

- Any use permitted in the residential zone.
- All dwellings.
- Apartment houses.
- Boarding houses and lodging houses.
- Hotel motor courts.
- Churches.
- Schools.
- Hospitals and sanitariums, except those for the insane and similar special use.
- Educational and charitable institutions.
- Private clubs, lodges and fraternities.
- Nurseries and greenhouses.
- Public garages, service stations.
- Retail stores and shops.
- Recreational enterprises.

2. INDUSTRIAL ZONE.

A.—That in order to conserve the limited amount of available areas suitable for industrial development, this ordinance does further set up certain industrial classifications in which areas it is intended to discourage the use of land and the construction of improvements thereon for other than industrial purposes; it being realized that the use of the above described industrial areas for purposes other than industrial purposes, must decrease the amount available for such potential industrial areas in the districts governed by this zoning ordinance, and such other uses will inevitably create problems in the supplying of community services to such other occupants; and that unavoidable friction between such other occupants and the necessary accompaniments cannot be but inimical to the health, welfare and desirable living conditions to the people of the community:—

Therefore in the industrial zone no land, building or premises shall be used for any other purpose than industrial and agricultural purposes, except as hereinafter provided.

A.1—In event that the lands, buildings or premises used for agricultural purposes, then all those persons who gain the greater portion of their livelihood from the premises so used, shall be permitted to maintain their residences on said premises and may sell the agricultural products of the premises on the premises, and may maintain on the premises suitable accommodation for the sale of such produce and for residential purposes.

A.2—In event that the lands, buildings or premises are used for industrial purposes, then suitable accommodations may be provided for the housing the necessary watchmen and maintenance crews; and there may be maintained on the premises suitable accommodations for the sale of all products made, manufactured or processed on said premises; and for the sale of such other products as might be incidental thereto. There also may be maintained on the premises such restaurants, cafeterias or other eating places as may be convenient to serve the employees of such industry; either by the employer or by concessionaries of the employer.

B.—All industries that have been declared nuisances by statute, ordinance or by any court of competent jurisdiction, or which may be obnoxious or offensive by reason of the emission of odors, dust, gas, smoke or noise hereby are expressly excluded; as are also those industries that may by reason of excessive waste products become a serious problem to the sanitary facilities of the City; provided that the Planning Commission shall have the power to grant conditional and revocable permits for any such use within the industrial zone, after public hearing and examination of the proposed location, and upon due proof to the satisfaction of the commission that the maintenance of such use will not be unduly detrimental to the adjacent and other nearby property.

3. RESIDENTIAL ZONE 3-R-1

In the residential zone no building or premises shall be used and no building shall hereafter be erected or structurally altered, unless otherwise provided in this ordinance except for one or more of the following uses:

1. One family dwelling.
2. Libraries and art galleries.
3. Parks (including park buildings)
4. Accessory buildings and uses, such as are ordinarily appurtenant to single family dwellings, shall be permitted including one private garage, when located not less than fifty (50) feet from the front lot line nor less than twenty (20) feet from any flanking street line, or when attached to or within the dwelling.

5. The office of a physician, dentist, or other professional person when located in his or her dwelling, also home occupations engaged in by individuals within their dwellings are permitted provided that no window display is made or any sign shown other than one not exceeding two square feet in area, which if illuminated, shall be of non-flashing low candle power design, and shall bear only the name and occupation of the occupant.

The renting of rooms for lodging purposes only, for the accommodation of not to exceed eight persons, in a single family dwelling may likewise be permitted with the approval of the Commission subject to review by the Council.

6. Signs not exceeding eight square feet in area pertaining to the leasing, rental, or sale of building or premises are likewise permitted, provided, however, that such signs shall be erected flat against the building or painted upon the side thereof; and if illuminated shall be of non-flashing low candle power design. All other signs, signboards and billboards are prohibited, provided however, that signboards, billboards and other forms of outdoor advertising may be allowed by special permit for a period of five years or less, issued by the Commission after examination of the location and upon due proof to the satisfaction of the Commission that such signboard, billboard or other advertising will not be unduly detrimental to adjacent and surrounding property, but the same front and side yard provisions as required for buildings must be observed.

7. Nothing herein contained shall be deemed to prohibit the use of vacant property for gardening or fruit raising.

8. Special uses: Special permits are required from the Commission for the following uses:

- (a) Circuses, fairs and carnivals.
- (b) Nursery or greenhouses.
- (c) Telephone exchange.
- (d) Electric substations.
- (e) Churches.
- (f) Schools (public or private)
- (g) Lodge buildings and fraternity houses.
- (h) Playgrounds and parks.
- (i) Two family dwellings.

Such permits are to be issued after the Commission has been satisfied as to the propriety of such use. The Commission may limit the duration of such permits as it may deem advisable.

9. Yard requirements:

Front yard. There shall be a front yard having a minimum depth of twenty (20) feet.

Rear yard. There shall be a rear yard having a minimum depth of twenty (20) feet.

Side yard. There shall be a side yard of not less than five (5) feet in width on each side of a building.

10. Site area requirements:

Every building hereafter erected or structurally altered which is located in the residential zone shall provide a lot area of not less than 50 by 100 feet, in area. And new Additions hereafter dedicated shall have no lots less than 60 by 100 feet in area.

11. Height restrictions:

The height of dwellings in the residential zone shall be limited to two and one-half stories. The height of accessory buildings shall be limited to one and one-half stories. The height of all other buildings shall not exceed three (3) stories or thirty-five (35) feet in height unless each side yard is increased over the minimum by an additional five feet for every five feet, or fraction thereof, additional height over thirty-five feet.

12. Keeping of livestock shall be prohibited except in buildings that fully comply with building and sanitary codes; and special permits from the commission shall be required for the keeping of any and all livestock except that a family flock of chickens may be kept in a number not to exceed fifty (50).

3-R-2. MULTIPAL FAMILY RESIDENTIAL ZONE.

1. In the 3-R-2 Residential Zone no building or premises shall be erected or structurally altered or use changed unless it fully complies with all the requirements for Type III buildings as set forth in the Uniform Building Code.

2. No building in 3-R-2 residential zone shall be constructed less than ten feet (10) distant from any street, and shall be eligible for any occupancy except the following:

1. Public garages.
2. Service stations.
3. Retail or wholesale businesses.
4. Any industrial use.

PART IV

SECTION 17. REDUCTION IN AREA OF LOTS. No lot shall be reduced in area so that yards less than the minimum required under this ordinance shall result.

SECTION 18. ONLY ONE PRINCIPAL BUILDING ON ANY LOT. No dwelling shall be erected on a lot which does not abut at least one street for at least twenty-five (25) feet. No building in the rear of a principal building on the same lot may be used for residential purposes, except for employees of the occupants of the principal building and their immediate families.

Trailer houses and trailer camps hereby are expressly prohibited; and auto courts may be constructed only by special permit of the Commission and the issuance of such permit may be reviewed by the Council.

SECTION 19. YARD SPACES SHALL NOT OVERLAP. No part of a yard or other open space required about any building for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space required under this ordinance for another building.

SECTION 20. LOT RECORD EXAMINATION. Where the owner of a lot or lots of official record at the time of the enactment of this ordinance does not own sufficient space in said lot or lots to enable him to conform to the yard and other requirements of this ordinance, such lot or lots may be used as a building site, provided, that the yard, space and other requirements shall conform as closely as possible in the opinion of the Planning Commission to the requirements for the district in which the property is located.

SECTION 21. FRONT YARDS. The front yard requirements of this ordinance shall not apply within any district where the average depth of the existing yard front yard on developed lots, located within one hundred (100) feet on each side of the lot and within the same block and zoning district and fronting on the same street as such lot, is greater or less than the minimum required front yard depth. In such cases the depth of the front yard on such lot shall not be less than the average existing front yard depths on the developed lots.

SECTION 22. EXCEPTIONS TO HEIGHT LIMITS. The height limitations of this ordinance shall not apply to church spires, bellries, cupolas, and domes not for human occupancy, monuments, water towers, observation towers, transmission towers, windmills, chimneys, smokestacks, derricks, conveyors, radio towers, masts, flagpoles and aerals.

SECTION 23. EXISTING BUILDINGS AND NON-CONFORMING USES. When a property or an existing building at the time of the passage of this ordinance, has a use which was legal prior to the passage of this ordinance, such use may continue, even though it be not in conformity with the zoning regulations. If however, the use of the building or premises is changed, it shall be changed to a use conforming to the zoning regulations, and after such change, it will not be permissible to change back again to the original non-conforming use. A non-conforming use shall not be extended, but the extension of a use to any portion of a building which was arranged or designed for such non-conforming use at the time of the passage of this ordinance shall not be deemed the extension of a non-conforming use. If a non-conforming use be discontinued for the period of one year, the same cannot be again continued.

A building arranged, designed or devoted to a non-conforming use at the time of the passage of this ordinance may not be re-constructed or structurally altered to an extent exceeding in aggregate cost during the lifetime of the building 50% of the value of the building unless the use of such building be changed to a conforming use. A non-conforming advertising sign, if removed from the premises, may not be replaced. No exterior sign aggregating more than six square feet in area shall hereafter be erected or created to advertise a non-conforming use.

A non-conforming use, if changed to a more restricted non-conforming use, shall not thereafter be changed to a less restricted use.

When a building having a non-conforming use is damaged by fire or other cause so that the total deterioration exceeds 60 per cent of the cost of replacing the building using new materials, then such building shall not be rebuilt, unless such building in its construction and uses conform fully to the requirements of this ordinance and other ordinances of the city as applied to new buildings and uses in the district in which it is to be located. When a building having non-conforming use is damaged by fire or other cause to an extent which will permit rebuilding, such construction must commence within six months of date of damage and be completed within one year of such date if the use is to continue as a non-conforming use.

SECTION 24. COMPLETION OF BUILDINGS. Nothing in this ordinance shall require any change in

the plans, construction, alteration or designed use of a building upon which construction has actually begun within thirty (30) days previous to the passage of this ordinance and the ground story framework of which, including the second tier of beams, shall have been completed. However, such entire building must be completed in accordance with the original plans within one year (1 year) from the date of commencing construction, to avoid compliance with this ordinance.

SECTION 25. It hereby is adjudged and declared that existing conditions are such that this act is necessary for the immediate preservation of the public peace, health and safety; and, owing to the urgent necessity of maintaining the public credit, an emergency hereby is declared to exist, and this ordinance shall take effect and be in full force and effect from and after its passage by the Council and approval by the Mayor.

Passed by the Council this 24th day of June, 1946.

Approved by the Mayor this 24th day of June, 1946.

FRED SPERR, Mayor

ATTEST:

ELLEN MARTIN, Recorder