



**Regular Session**

**RS**

**Milwaukie City Council**

**COUNCIL REGULAR SESSION**

City Hall Council Chambers, 10722 SE Main Street  
& Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

**REVISED AGENDA**

SEPTEMBER 19, 2023

**Council will hold this meeting in-person and through video conference.** The public may attend the meeting by coming to City Hall or joining the Zoom webinar, or watch the meeting on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits. **For Zoom login** visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-356>.

**To participate in this meeting by phone** dial 1-253-215-8782 and enter Webinar ID 841 6722 7661 and Passcode: 097479. To raise hand by phone dial \*9.

**Written comments** may be delivered to City Hall or emailed to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov). Council will take verbal comments.

**Note:** agenda item times are estimates and are subject to change.

**Page #**

1. **CALL TO ORDER** (6:00 p.m.)
  - A. **Pledge of Allegiance**
  - B. **Native Lands Acknowledgment**
2. **ANNOUNCEMENTS** (6:01 p.m.) **2**
3. **PROCLAMATIONS AND AWARDS**
  - A. **Recognition of Historic City Hall – Proclamation** (6:05 p.m.) **4**  
Presenter: Scott Stauffer, City Recorder
  - B. **Milwaukie High School Coach Aumueller – Remembrance** (6:10 p.m.)  
Presenters: Community Member & City Staff
  - C. **Vietnamese American Mid-Autumn Festival – Proclamation** (6:20 p.m.) **5**  
Presenters: Vietnamese Community of Oregon Representatives
4. **SPECIAL REPORTS**
  - A. **New Business Introduction: Spoke and Word** (6:30 p.m.) **7**  
Presenter: Cierra Cook, Spoke and Word
  - B. **New Business Introduction: Luna's Ice Cream** (6:40 p.m.)  
Presenter: Rachelle Whyte, Luna's Ice Cream
  - C. **New Business Introduction: Mama and Hapa's** (6:50 p.m.)  
Presenter: Ross Ching, Mama and Hapa's
  - D. **New Business Introduction: Freeman Barrelhouse** (7:00 p.m.)  
Presenter: Julie Molsom, Freeman Barrelhouse

**5. COMMUNITY COMMENTS** (7:10 p.m.)

To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov)), or in person to city staff.**

6. **CONSENT AGENDA** (7:15 p.m.)  
 Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.
- A. Approval of Council Meeting Minutes of:** (removed from the agenda)  
~~1. August 15, 2023, work session,~~  
~~2. August 15, 2023, regular session, and~~  
~~3. August 20, 2023, Council dinner.~~
- B. A Nomination for a City Representative to the Milwaukie Community Center Board – Resolution** 9
- C. Authorization of a Contract for Construction of the Washington Street Area Improvements Project – Resolution** 12
- D. Clarification of Solid Waste Rates – Resolution** 15
7. **BUSINESS ITEMS**
- A. Planning Department Natural Resources Assessment – Discussion** 19  
 (7:20 p.m.)  
 Staff: Laura Weigel, Planning Manager, and  
 Brett Kelper, Senior Planner
- B. Planning Department Workplan – Discussion (continued)** (8:20 p.m.) 29  
 Staff: Laura Weigel, Planning Manager
8. **PUBLIC HEARINGS**
- A. Design and Landmarks Committee (DLC) Code Update – Ordinance, 2<sup>nd</sup> Reading (continued)** (8:35 p.m.) 36  
 Staff: Laura Weigel, Planning Manager
9. **COUNCIL REPORTS** (8:45 p.m.)
10. **ADJOURNMENT** (9:00 p.m.)

**Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice**

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) or phone at 503-786-7502. To request Spanish language translation services email [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

**Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)**

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

**Executive Sessions**

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



**RS Agenda Item**

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# **Announcements**



## Mayor's Announcements – September 19, 2023

- **Sustainability Fair – Sat., Sep. 23 (10 AM – 2 PM)**
    - Milwaukie Environmental Stewards Group hosts this annual event
    - Learn more at [www.milwaukieesg.org/events](http://www.milwaukieesg.org/events)
  - **Fall Author Series – Emily Prado – Wed., Sep. 27 (6 PM)**
    - Debut essay collection, "Funeral for Flaca," was a winner of the 2022 Pacific Northwest Book Award
    - Ledding Library, 10660 SE 21<sup>st</sup> Ave.
  - **New City Hall Grand Opening – Fri., Oct. 6 (4 PM)**
    - Say goodbye to historic city hall (10722 SE Main St.)
    - Parade down Main St. to the new city hall (10501 SE Main St.) alongside special guests and the Milwaukie High School marching band
    - Cut the ribbon on the new city hall and tour the building while enjoying refreshments
  - **Park Open House – Scott, Balfour, and Bowman-Brae Final Plans – Sun., Oct. 8 (11 AM – 1 PM)**
    - View and comment on final plans for three developing parks (English and Spanish)
    - Free donuts, chai, or hot chocolate while supplies last, face painting, balloon artistry, family entertainment and more
    - Event location is Scott Park next to Ledding Library (10660 SE 21<sup>st</sup> Ave.)
    - For more information email [parkprojects@milwaukieoregon.gov](mailto:parkprojects@milwaukieoregon.gov) or call 503.786.7624
- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](http://WWW.MILWAUKIEOREGON.GOV) OR CALL 503-786-7555**



**RS Agenda Item**

**3**

# **Proclamations & Awards**

## PROCLAMATION

**WHEREAS** the City and Community of Milwaukie have been faithfully served by Historic City Hall, located at 10722 SE Main Street, since it opened for municipal operations in 1938; and

**WHEREAS** Historic City Hall, Milwaukie's third city hall building, was built on property that had been home to the community's first schoolhouses and was the last project in Oregon to be funded by the federal government's Public Works Administration (PWA), a part President Franklin D. Roosevelt's New Deal era programs; and

**WHEREAS** for 85 years City Council members and staff have called this building their professional home, spending countless hours in public meetings, community events, and workdays within this reliable solid wood-and-brick-façade structure; and

**WHEREAS** with the acquisition of a new city hall building, located at 10501 SE Main Street, the city no longer requires the use and ownership of Historic City Hall and has therefore declared the building to be surplus and are actively seeking a new owner to write the Historic City Hall building's next chapter; and

**WHEREAS** today, September 19<sup>th</sup>, 2023, marks the final City Council meeting in this Council Chambers and in this City Hall building.

**NOW, THEREFORE**, I, Lisa Batey, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim the **Deep Appreciation of Our Community for Historic Milwaukie City Hall**, and do hereby recommend all Milwaukians to give thanks to the building's 85 years of public service.

**IN WITNESS, WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 19<sup>th</sup> day of **September 2023**.

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Lisa M. Batey, Mayor

ATTEST:

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Scott S. Stauffer, City Recorder

RS 3. B. 9/19/23  
Presentation

# Remembering MHS Coach Roland Aumueller

Milwaukie City Council  
September 19, 2023  
Regular Session





# Remembering Coach Aum



# Remembering Coach Aum



# Remembering Coach Aum



# Remembering Coach Aum



# Thanks Coach!



## PROCLAMATION

**WHEREAS** after the end of the Vietnam War in 1975, the first Vietnamese immigrants came to the City of Milwaukie in the State of Oregon in search of opportunity and freedom, bringing Vietnamese customs and traditions which have been passed down through generations; and

**WHEREAS** the Vietnamese American community has made substantial contributions to cultural, religious, political, and business life throughout the State of Oregon, including in the City of Milwaukie; and

**WHEREAS** many Vietnamese Americans and other Asian families in the community will joyfully celebrate the Mid-Autumn Festival, also known as the Moon Festival and the festival for children. The Vietnamese Community of Oregon will celebrate with special foods and activities under the full moon, on Friday, September 29<sup>th</sup>.

**NOW, THEREFORE**, I, Lisa Batey, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim the **SEPTEMBER 24-30, 2023**, to be **VIETNAMESE AMERICAN MID-AUTUMN FESTIVAL CELEBRATION DAYS**, a time for celebrating our Vietnamese neighbors and their contributions to our community.

**IN WITNESS, WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 19<sup>th</sup> day of **September 2023**.

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Lisa M. Batey, Mayor

ATTEST:

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Scott S. Stauffer, City Recorder



**RS Agenda Item**

**4**

## **Special Reports**



**SPOKE & WORD**  
BOOKS

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invites you to our

**GRAND  
OPENING**

**SAT. OCTOBER  
21ST 2023**

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From 10am - 6pm  
10863 SE Main St.  
Milwaukie, OR





**SPOKE & WORD**  
**BOOKS**

# Who We Are



# Our Values

**Community.** We actively seek out ways to support our local community.

**Growth and Innovation.** We are committed to continually develop ourselves by seeking out new ideas and stories that challenge us and help us grow.

**Balance.** We care for each other and support a healthy balance between family, work, and play.

**Transformation and Resiliency.** We value freedom of expression, and are committed to influencing positive change through good faith discourse.

**Solidarity.** We prioritize supporting other small businesses through mutually beneficial partnerships and doing trade with local small business whenever possible.

**Diversity.** We celebrate diversity in our community and strive to offer books that reflect the diversity of our local community and our world.

- We believe Black and trans lives matter
- We are a safe place for the queer community
- Our books reflect our understanding that all bodies are good bodies, including fat and disabled bodies
- We understand that joy and self-love are revolutionary for our queer, Black, trans, disabled, fat, and Indigenous communities. We make space for stories that reflect our pleasure, our joy, and our remarkable lives.



# What You'll Find in the Shop

**New and used books, all genres, for adults and children**

## **We feature authors like:**

- Louise Erdrich
- Kurt Vonnegut
  - bell hooks
- Colleen Hoover
  - Neil Gaiman
- George Orwell
  - Jane Austen
- Stephen King
- Frank Herbert
- George R.R. Martin
- Casey McQuinston
- Brandon Sanderson
  - James Baldwin
  - Douglas Adams
  - Phillip Pullman

## **We generally don't carry commercial authors with large print runs like:**

- James Patterson
  - Dan Brown
  - Sue Grafton
- David Baldacci
- John Grisham

## **You'll also find:**

- Unique and Locally produced Gifts
  - Cards
  - Indoor Plants
- Vintage Furniture

# Events and Partnerships



The  
**Clackamas**  
Bookshelf

- **In Store Events**
  - Book Signings
  - Author Readings
  - Poetry Reading
  - BOOK CLUBS!
  
- **Offsite Events**
  - Cultural Events
  - Weddings
  - School Book Fairs



**SPOKE & WORD**  
BOOKS

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invites you to our

# **GRAND OPENING**

**SAT. OCTOBER  
21ST 2023**

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From 10am - 6pm  
10863 SE Main St.  
Milwaukie, OR

# Contact Us!



[cierra@spokeandwordbooks.com](mailto:cierra@spokeandwordbooks.com)

spokeandwordbooks.com

facebook.com/spokeandwordbooks

instagram.com/spokeandwordbooks



**Mama & Hapa's**  
ZERO WASTE SHOP

**RS 4. C. 9/19/23**  
**Presentation**

The business of doing good:  
Making sustainability accessible





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# What Change Do We Want to Make?

- Think more critically about an object's "lifecycle" and impact vs. its primary use
- Use less plastic — but not all plastics are created equally
  - Some plastics have a useful purpose
  - Others are "single-use plastic"





# Why Recycling Won't Save Us

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It's time to move on  
from recycling (plastics)...

...and put more stress on reusing.

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9%

Of plastic is actually recycled.

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## Why Recycling Isn't Ideal.

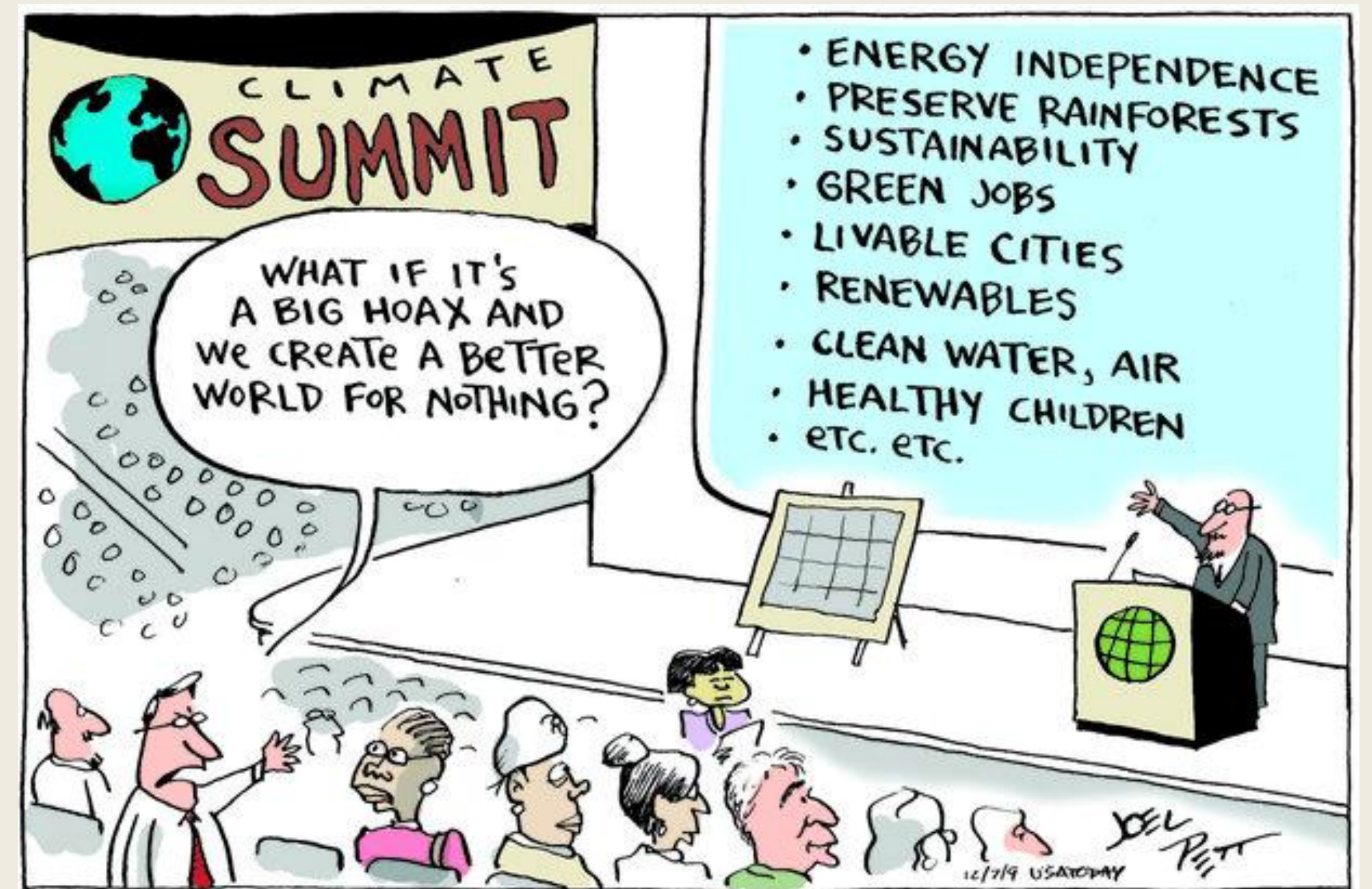
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- It's difficult to sort different kinds of plastic and contamination is a problem
- Wish-cycling can be worse than throwing in the trash

# What's the point of using less plastic?

## We have plenty of landfill space!

- Plastic is made from petroleum
- Plastics break down into tiny “microplastics”
- A lot of plastic is burned, contributing to greenhouse gasses
- Making and disposing of plastic disproportionately affects poor countries/populations
- Harm wildlife
- It has ancillary effects
  - Makes one think consciously and intentionally about the way resources are used and reveals the entire life cycle of an object.



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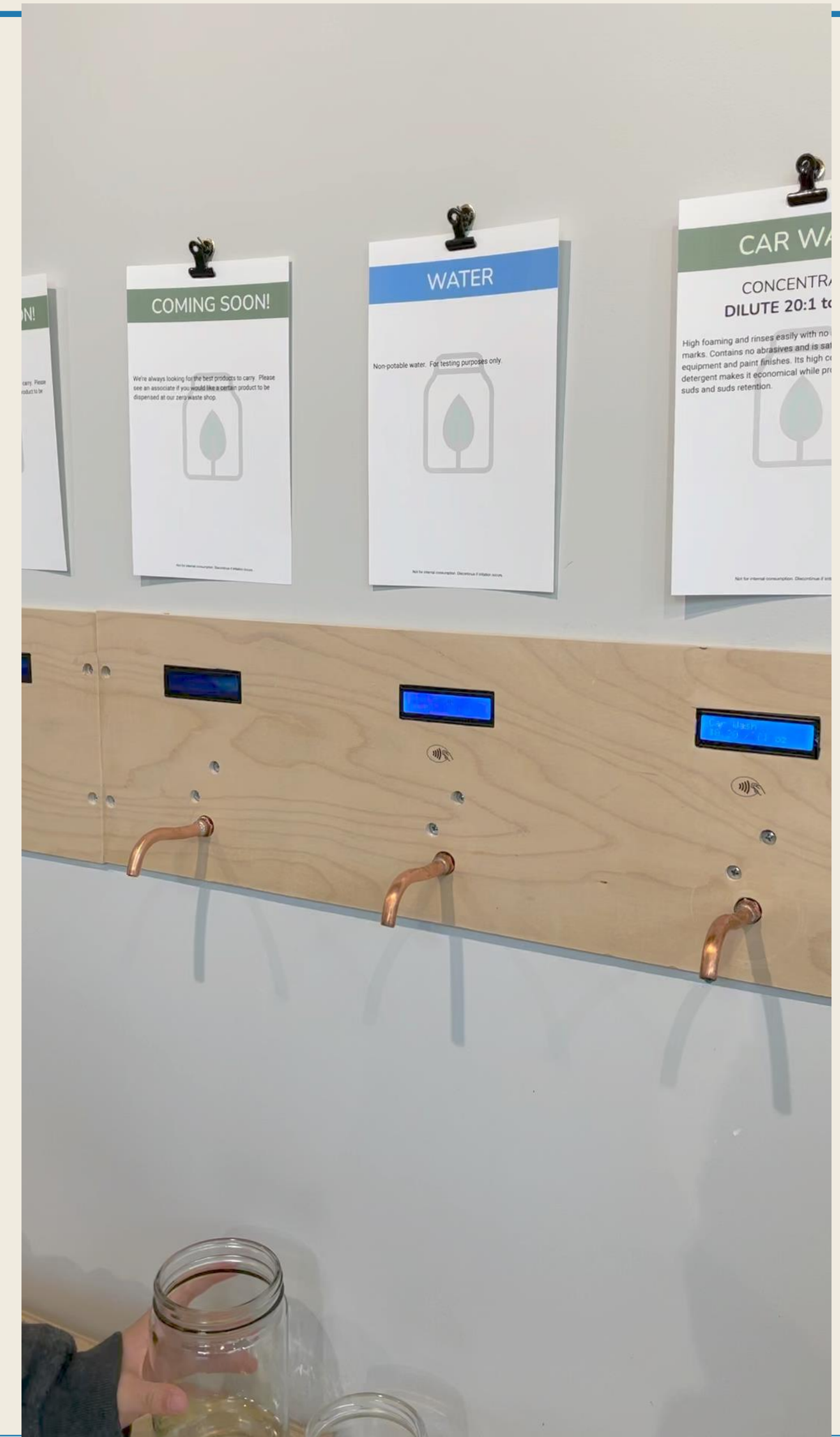
# The Rise of the Zero Waste Shop

- Stop the need for recycling at the root
- Buy products that can be reused
  - (reusable metal cutlery or coffee cup)
- A place where only the most eco-conscious people shop
  - Pricey
  - Cumbersome
  - Few and far between



# Zero Waste for The Masses

- We created a simple, consumer friendly way to get many of your household items without the need for packaging.
  - If you want a brush, we sell just the brush
- Make “eco-friendly” more accessible
- Wanted to make it simpler so we set 4 goals



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# Zero Waste for The Masses

## Our 4 Goals

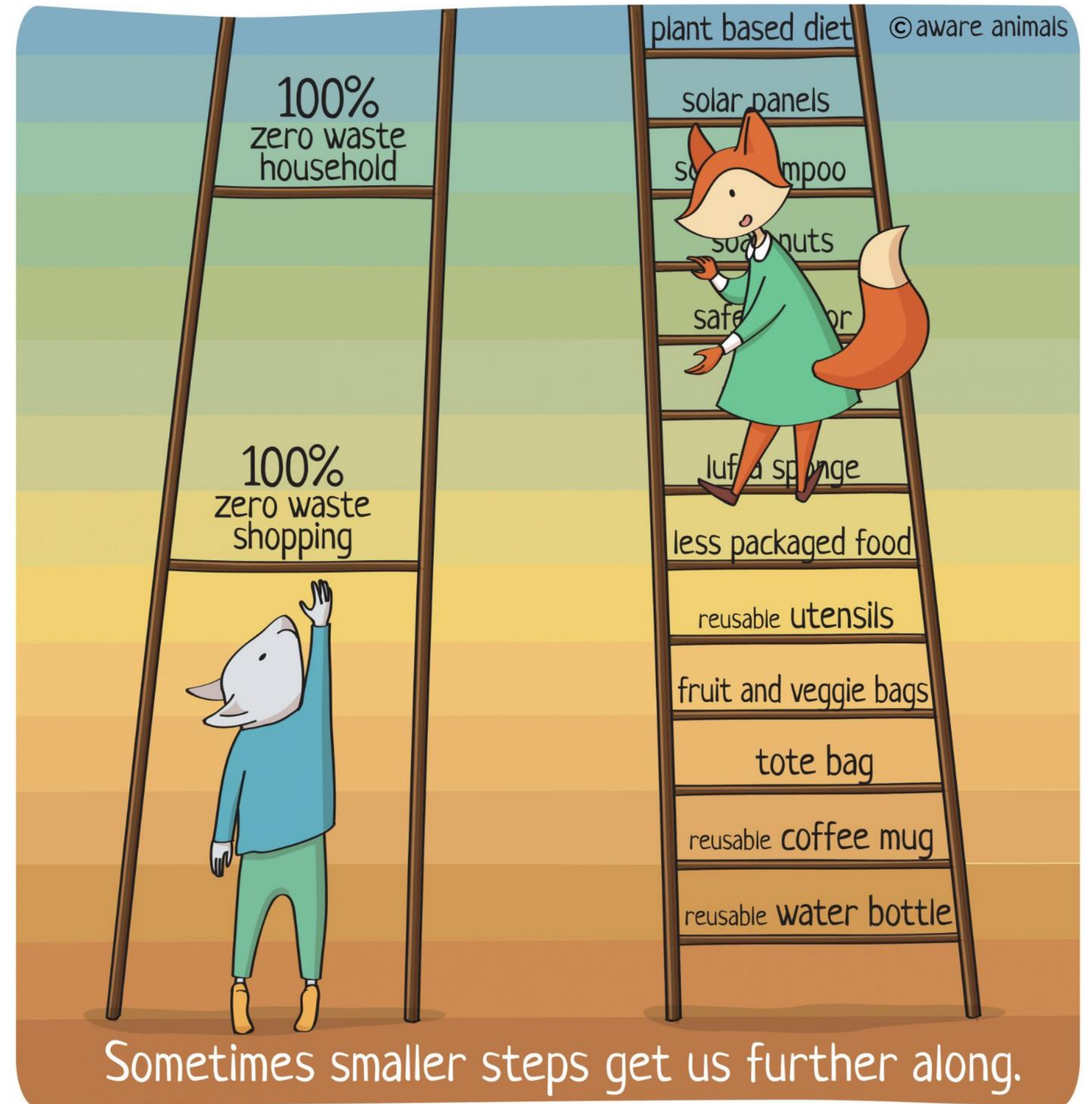
1. Beg people to donate jars, clean them, and offer them free to customers
2. No weighing
3. Be about the same price as a grocery store
4. Be near you





With all the problems in the world, is this one worth tackling?

 Aware Animals



# Zero waste hypocrites are ok!



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Thank You!

Questions?

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**RS Agenda Item**

**5**

**Community Comments**

Greetings City Council.

By now, you have received a link for comments on the Seth Lewelling Elementary School Safe Routes To School (SRTS) draft. The plan went out for community review this past month, consistent with the last two years of regular community engagement.

Here is the link to the draft plan:

<https://oregonsaferoutes2023.altago.site/milwaukie/>

As well as the public input map from early spring 2023:

<https://odotsrts.altaplanning.cloud/>

We urge you to not only examine the recommendations for traffic safety but also look at the residents' comments to gain a thorough understanding of their concerns and needs for pedestrian bicycle safety in the area around Seth Lewelling Elementary School.

The next steps are:

1. The project team and Alta Planning will prepare a final draft of the Action Plan for formal presentation and seek approval this fall from Milwaukie City Council as the Road Authority.
2. The final plan that city council approves will serve as the template for the application to the Oregon Department of Transportation/SRTS program Construction Grant Program. The next cycle for submitting applications opens December 2023-January 2024 and closes in early spring of 2024.

There is urgency for the council to review and submit this plan as SRTS funding cycles are on 2-year intervals. That means if the city does not submit a Construction Grant application for this coming cycle, it will be at least 2 years before the next one. The uncertainties of not acting on this application --- inflation, increased competition, end of funding source, etc. --- will produce a missed opportunity and an unnecessary delay.

The Lewelling NDA urges the council to thoroughly review and submit this plan. It is the result of over two years' partnership among community residents, local businesses, the NDA Traffic Safety committee, Seth Lewelling Elementary School, Clackamas County, and the city of Milwaukie to investigate and prepare a sound and thorough plan for safe streets in Lewelling. We look forward to assisting you in this effort.

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Lewelling NDA

Camden Mckone – Lewelling NDA Chair

Nick d'Alonzo – Project Member, SRTS Seth Lewelling Action Plan



**RS Agenda Item**

**6**

# **Consent Agenda**

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Date Written:** Sept. 7, 2023

**Reviewed:** Nicole Madigan, Deputy City Recorder

**From:** Scott Stauffer, City Recorder

**Subject:** **Milwaukie Community Center / Community Advisory Board Nomination**

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**ACTION REQUESTED**

As outlined in the Milwaukie Municipal Code (MMC), Council is asked to consider approving a resolution making a nomination to the Milwaukie Community Center / Community Advisory Board (C/CAB).

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

[February 1, 2022](#): Council nominated Milwaukie resident Wilda Parks to serve as the city's representative on the C/CAB.

In July 2023, staff received confirmation that the city's representative on the C/CAB, Wilda Parks, is interested in continuing to serve in this role.

**ANALYSIS**

As outlined in MMC 2.20.020(B), Council nominates individuals to fill the city's position on the C/CAB and the North Clackamas Parks and Recreation District (NCPRD) Board, the Clackamas Board of County Commissioners (BCC), makes the final appointment.

C/CAB terms begin November 1 and end October 31. Parks has served as the city's representative on the C/CAB since being first appointed in 2022 and is eligible for reappointment. Parks was initially appointed to a partial term and for the purposes of term limits, if appointed, would begin a first full-term.

Parks has lived in Milwaukie since 1998, is a retired chamber of commerce executive, and served on the city's Planning Commission before serving on the City Council from 2015-2020.

**BUDGET, WORKLOAD, AND CLIMATE IMPACTS**

There are no fiscal, workload, or climate impacts associated with the recommended actions.

**COORDINATION, CONCURRENCE, OR DISSENT**

Staff worked with Council members to confirm this nomination.

**STAFF RECOMMENDATION**

Staff recommends the following appointment:

**C/CAB:** 3-year terms, limit of 2 consecutive terms, the NCPRD Board may waive the term limit.

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
-	Wilda Parks	11/1/2023	10/31/2026



**ALTERNATIVES**

Council could decline to make the recommended appointment, which would result in a continued vacancy on the board.

**ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, NOMINATING WILDA PARKS TO SERVE AS THE CITY'S REPRESENTATIVE TO THE MILWAUKIE COMMUNITY CENTER / COMMUNITY ADVISORY BOARD (C/CAB).**

**WHEREAS** Milwaukie Municipal Code (MMC) 2.20.020(B) states that one of the twelve members of the Milwaukie Community Center / Community Advisory Board (C/CAB) will be nominated by the City Council; and

**WHEREAS** the term for the city's representative to the C/CAB is set to end on October 31, 2023, and the current representative has confirmed their interest in being reappointed to the position; and

**WHEREAS** the MMC states that the City Council's nominee will be considered for approval by the North Clackamas Parks and Recreation District (NCPRD) Board and the Clackamas Board of County Commissioners (BCC); and

**WHEREAS** the City Council has nominated the following individual for appointment to the board:

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
-	Wilda Parks	11/1/2023	10/31/2026

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the individual named in this resolution is nominated for appointment by the NCPRD Board and BCC as the city's representative the C/CAB for a term that will expire on October 31, 2026.

Introduced and adopted by the City Council on **September 19, 2023**.

This resolution is effective immediately.

ATTEST:

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Lisa M. Batey, Mayor

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Reviewed:** Jennifer Garbely, Assistant City Engineer

**From:** Tessie Prentice, Civil Engineer / Landscape Architect

**Subject:** **Washington Street Area Improvements Project Alternative Bid**

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**Date Written:** Sept. 9, 2023

**ACTION REQUESTED**

Council is asked to approve the attached resolution to execute a contract with Landis & Landis Construction to construct the Washington Street Area Improvement Project.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

The project is included in the 2023 to 2028 Capital Improvement Plan (CIP) and the 2023-2024 Biennium Budget adopted by Council on June 7, 2022.

At the March 7, 2023 regular session, Council approved [Resolution 15-2023](#) acting as the local contract review board, adopting findings and allowing the use of the best value construction method for the Washington Street Area Improvements project.

**ANALYSIS**

The objective of the Washington Street Area Improvements project is to provide pedestrian connectivity and improve safe access; repair and replace underground facilities and pavement to good condition; and decrease ongoing operational needs. The summary of work includes:

- Storm pipe replacement on Washington Street,
- Storm system installation on Madison Street.
- Spring Creek culvert replacement under Washington Street.
- Wastewater sewer pipe replacement on Washington Street.
- Water main pipe replacement on Washington Street.
- Pressure reducing valve and vault installation between water pressure zones on Washington Street.
- Sidewalk and curb ramp improvements on 27<sup>th</sup> Avenue, 35<sup>th</sup> Avenue, Edison Street, and Washington Street.
- Grind and inlay of asphalt concrete on 27<sup>th</sup> Avenue, Edison Street, and Washington Street.

Staff completed an alternative bid process approved under Resolution 15-2023. Six proposals were received by the solicitation deadline and are summarized below:

	Contractor	Total Bid Amount	Best Value Score
1	Landis & Landis	\$7,129,801.00	88.4
2	Tapani	\$7,995,000.00	87.3
3	Emery & Sons	\$9,127,912.80	81.0
4	Granite	\$11,176,176.00	74.8
5	Canby Excavating	\$8,524,700.00	74.0
6	Pacific Excavation	\$9,429,900.00	62.3
	Engineer's Estimate	\$8,650,000	

**BUDGET IMPACT**

This project is funded in the 2023-2028 CIP. Identified funding sources are the city's Street Surface Maintenance Program , Safe Access for Everyone , State Gas Tax Fee in Lieu of Construction , Water, Wastewater, and Stormwater funds. Additional water and wastewater scope was identified during project design. Water funds will be transferred from the Harvey Street Improvements project and sewer funds will be transferred from the Waverly Heights sewer reconfiguration project. Both these projects are ,currently in design and the construction funds will be replaced for these projects in the 2025-2030 CIP.

**WORKLOAD IMPACT**

None. The city's engineering team will oversee the construction process. Additional on-call construction management services are available if needed.

**CLIMATE IMPACT**

Construction activity has a significant impact on the environment due to emissions from transport of materials, heavy equipment uses, and the manufacturing of materials such as asphalt concrete pavement and underground utility pipes.

**COORDINATION, CONCURRENCE, OR DISSENT**

Managers from engineering, public works, and finance reviewed and approved the project scope and budget.

**STAFF RECOMMENDATION**

Staff recommend that Council award the Washington Street Area Improvements project contract to Landis & Landis Construction with a project budget authorization of \$7,529,783.

**ALTERNATIVES**

Council could choose to:

1. Award the project as presented,
2. Reject all bids in the public interest and direct staff to revise and rebid the project during a more favorable period, or
3. Reject all bids in the public interest.

**ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING A PUBLIC IMPROVEMENT CONTRACT WITH LANDIS & LANDIS CONSTRUCTION IN THE AMOUNT NOT TO EXCEED \$7,529,783 FOR CONSTRUCTION OF THE WASHINGTON STREET AREA IMPROVEMENTS PROJECT (CIP-2021-A13).**

**WHEREAS** the City of Milwaukie has identified the Washington Street Area Improvements project in the 2023 – 2028 capital improvement plan; and

**WHEREAS** the City of Milwaukie has identified funding for the project in the 2023 – 2024 biennium budget; and

**WHEREAS** the project is consistent with the City of Milwaukie Safe Access for Everyone program, Street Surface Maintenance Program, and Water, Wastewater, and Stormwater Master Plans; and

**WHEREAS** a formal competitive selection process using the best value construction bid process adopted by the city in Resolution 15-2023 for the Washington Street Area Improvements project; and

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the city manager or designee is authorized to execute a contract with Landis & Landis Construction for construction of the Washington Street area improvements, waive any irregularities, and authorize the city engineer or assistant city engineer to administer the project in accordance with the public improvements contract in the amount not to exceed \$7,529,783.

Introduced and adopted by the City Council on **September 19, 2023**.

This resolution is effective immediately.

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Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Reviewed:** Justin D, Gericke, City Attorney

**From:** Toby LaFrance, Finance Director

**Subject:** **Clarification of Yard Debris Fees**

**Date Written:** Sept. 8, 2023

**ACTION REQUESTED**

Council is asked to approve a resolution clarifying yard debris pick up fees in the Solid Waste Section 17 of the city's Consolidated Fees and Charges. No other portions of the Consolidated Fees and Charges table are impacted.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

[June 7, 2022](#): Council adopted the fiscal year (FY) 2023 and FY 2024 Fees and Charges.

[August 1, 2023](#): Council adopted revisions for FY 2024 to Sections 7, 11, 14, & 17 of the Consolidated Fees and Charges.

**ANALYSIS**

When the rates related to yard debris pickup were adopted on June 7, 2022, there were three categories of fees. The first category was the monthly rate for weekly pickup of a 60-gallon cart. The next category was the amount to charge if an occasional second cart/can of yard debris was put out. The third category was how much to charge per month to have a second cart/can of yard debris picked up every week.

When revisions to four sections of the table were updated on August 1, Section 17 for Solid Waste Fees was updated for FY 2024 based on requirements in municipal code and a resulting rate study by the city's rate consultant. With that study, the first two categories saw increases in fees and the third category was consolidated with the second category; however, the label for the second category was not updated to reflect the change.

Staff was contacted by Waste Management regarding the change, and it was agreed that clarification would be helpful. Approval of the resolution will update the second category from "extra can of yard debris" to "monthly fee for permanent second cart/can or individual instance of extra cart/can of yard debris." This will combine both the second and third categories of fees into a single fee.

**BUDGET IMPACT**

None.

**WORKLOAD IMPACT**

None. This will provide clarity to the waste haulers in Milwaukee.

**CLIMATE IMPACT**

None.

**COORDINATION, CONCURRENCE, OR DISSENT**

Waste Management was helpful in pointing out the need for clarification and developing the new language that is being incorporated into the fee table.

**STAFF RECOMMENDATION**

Staff recommends approval of the attached resolution.

**ALTERNATIVES**

Council can reject the resolution and instruct staff to find an alternative solution.

**ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CLARIFYING SECTION 17 OF THE CONSOLIDATED FEES AND CHARGES.**

**WHEREAS** the Consolidated Fees and Charges are adopted as part of the fiscal year (FY) 2023 and FY 2024 budget process; and

**WHEREAS** certain portions of the Consolidated Fees and Charges were updated on August 1, 2023, including Solid Waste; and

**WHEREAS** while two of the revised fees were combined and made subject to a single fee, the description of that single fee needs further clarification.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the following portion of Section 17 of the Consolidated Fees and Charges be updated as follows:

<b>Non-Customer Services:</b>	<b>Fiscal Year 2023 Fee</b>	<b>Fiscal Year 2024 Fee</b>
Recycling only:		
Weekly curbside collection of recyclables	\$4.70	\$7.70
Yard debris subscription service annual rate must be paid in full in advance of service		
60 gallon cart	\$5.70	\$6.50
Monthly fee for permanent second cart/can or individual instance of extra cart/can of yard debris	\$2.60	\$4.90
	\$3.85	
<i>Monthly rates are for weekly service.</i>		
<i>This service is provided only within the Urban Growth Boundary.</i>		
<i>The subscriber is required to pay for one year of service in advance.</i>		

Introduced and adopted by the City Council on \_\_\_\_\_.

This resolution is effective on \_\_\_\_\_.

\_\_\_\_\_  
Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott S. Stauffer, City Recorder

\_\_\_\_\_  
Justin D. Gericke, City Attorney





**RS Agenda Item**

**7**

**Business Items**

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Reviewed:** Joseph Briglio, Community Development Director

**From:** Laura Weigel, Planning Manager, and  
Brett Kelper, Senior Planner

**Subject:** Natural Resource Assessment Update

**Date Written:** Sept. 5, 2023

**ACTION REQUESTED**

Council is asked to review the proposed approach for the Natural Resource Assessment project and provide feedback.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

For a more comprehensive overview of the history and evolution of the city's natural resources regulations, see Attachment 1.

[August 18, 2020](#): Council adopted the [2040 Comprehensive Plan](#), including many goals and policies regarding natural resources and environmental quality.

**ANALYSIS**

The Natural Resource Assessment project was scheduled to get underway after the first and second phases of the Comprehensive Plan implementation were either complete or underway. We are now at that juncture.

**Background**

Natural resources are identified as an overlay on the city's zoning map and are regulated by Milwaukie Municipal Code (MMC) Section 19.402. The regulations seek to minimize adverse impacts to riparian, wildlife, and wetland resources, many of which have been negatively affected by development over time. The regulations also seek to restore and improve natural resources where possible, while balancing property rights and development needs of the city.

Natural resources are distinguished as water quality resource (WQR) areas and habitat conservation areas (HCAs) and are identified on the natural resources administrative map (NR administrative map). The NR administrative map was created to be separate from the zoning map to avoid the need for a formal zoning map amendment process every time new or revised natural resource data was obtained. The WQR and HCA resources are also shown as an informal layer on the zoning map to facilitate clear communication about property constraints.

WQRs include wetlands, rivers, lakes, streams, springs, and other landscape features with a watershed area of at least 50 acres, as well as a mapped vegetated corridor that buffers each protected water feature. The width of the vegetated corridor varies depending on the type of protected water feature, upstream drainage area served, and slope adjacent to the protected water feature. The WQR regulations were adopted in 2002 and are very protective, requiring all but a handful of restoration activities and maintenance of existing development in WQR areas

to go through a discretionary review process. For WQR features, the NR administrative map serves as a general indicator of the WQR location; the specific location of vegetated corridors must be determined in the field in accordance with MMC Table 19.402.15.

HCAAs include wetlands, riparian areas, and fish and wildlife habitat. HCAAs were initially designated by Metro based on a combination of vegetative cover inventory and analysis of habitat value and urban development value. The HCA regulations were adopted in 2011 and were crafted to provide a clear and objective review option for residential development that allows some by-right disturbance of HCAAs. For HCA resources, the locations on the NR administrative map are considered to be correct unless demonstrated otherwise.

### **Comprehensive Plan Goals and Policies for Natural Resources**

The Comprehensive Plan includes goals and policies related to natural resources, many of which are already being actualized and/or that can be further addressed in some fashion by Planning staff as part of this Natural Resource Assessment. They include the following:

- **Policy 3.1.4** – Periodically update the city’s inventory of wetlands, floodplains, fish and wildlife habitat and corridors, and other natural resources through both technology and in-field verification.
- **Policy 3.2.1** – Support programs and regulations to enhance and maintain the health and resilience of watersheds, riparian and upland zones, and floodplains.
- **Policy 3.2.4** – Require a detailed analysis, including alternatives, of how development will avoid impacts to natural resources. If impacts cannot be avoided, include a detailed analysis of how development will minimize and mitigate impacts to the natural resources.
- **Policy 3.2.6** – When considering development proposals, consider changes in water flow, quantity, and duration of flow associated with both development and climate change and evaluate the downstream impacts of development in upland areas.
- **Policy 3.3.4** – Protect and enhance riparian vegetation that provides habitat and improves water quality along creeks and streams through the use of best available science and management practices to promote beneficial ecosystem services, such as managing water temperature and providing woody debris for habitat.
- **Policy 3.3.5** – Require mitigation that restores ecological functions and addresses impacts to habitat connectivity as part of the development review process.
- **Policy 3.4.3** – Provide flexibility in the division of land, the siting and design of buildings, and design standards in an effort to preserve the ecological function of designated natural resources and environmentally sensitive areas and retain native vegetation and trees.
- **Policy 3.5.4** – Identify additional opportunities for partner agencies and environmental organizations to provide early feedback and recommendations on reducing environmental impacts associated with development.

For many of the other natural resource policies in the Comprehensive Plan, the largest portion of work necessary for implementation will require the development of a more robust natural resources program beyond the current capacity and scope of the public works natural resources division. Such a program is not under the planning department’s purview and includes tasks such as the development of a wildlife/habitat connectivity plan, partnering with outside agencies to support natural resource protection, proactive stormwater management, and

expanded tree and habitat protection and outreach related to climate-friendly and native species.

### **Outstanding Issues with the Natural Resources Code**

Staff have been tracking issues related to the natural resources code and map since before the recent update to the Comprehensive Plan and intend to address them as part of this assessment.

One of the complicating aspects of MMC 19.402 is the need to manage two types of designated natural resources that are grounded in two different statewide planning goals (water quality and habitat). When the city updated its code in 2011 to include HCA requirements, it did not overhaul the existing WQR standards because that was beyond the scope of the project. As a result, the code is complicated and not easy to navigate, internally or externally. *Staff proposes reorganizing the code to make it easier to navigate.*

Additionally, the language of the WQR model code provided by Metro did not include many exemptions from review for WQR disturbance and did not establish a clear and objective review path for needed housing. This is problematic, as a clear and objective path is required by the state for residential development. *Staff proposes developing clear and objective standards for proposed WQR disturbance involving residential projects.*

In 2022, the city adopted regulations for trees on private property in residential zones (MMC Section 16.32.042), creating some overlap where residential properties have WQR or HCA resources. There is a resulting need to ensure that the two codes are not in conflict and are consistent, including for tree removal in WQR/HCA areas on residential properties. *Staff proposes to identify opportunities to streamline the process and better coordinate on tree code implementation with the Public Works natural resources division.*

See Attachment 2 for a list of other specific code items that staff have noted as needing attention.

### **Issues with the NR Administrative Map**

As noted above, the NR administrative map serves as a general indicator of the location of WQR features but shows the specific location of HCA resources.<sup>1</sup> For standard development projects (as opposed to simpler questions about tree removal or exempt activities), determining the exact location of WQRs usually requires engaging a professional natural resource specialist who can find the top-of-bank location or work through the state's wetland delineation process. For HCAs, minor adjustments to the map can be made relatively easily with documentation of discrepancies between the map and on-the-ground conditions. However, more detailed verifications of HCA boundaries require a complete reassessment of the site using the methodology originally applied by Metro, though that methodology involves maps that have not been maintained and were not very detailed to begin with. *Staff proposes to establish a new, more accurate methodology for detailed verifications of HCAs.*

The state requires communities to provide an inventory of wetlands in their jurisdiction. The city has never conducted a formal local wetlands inventory (LWI), which would be reviewed and approved by the Oregon Department of State Lands. However, the NR administrative map uses a combination of data from Metro and the state and national wetland inventories that is sufficiently detailed to avoid the need for conducting an LWI.

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<sup>1</sup> The HCA information on the NR administrative map is based on data received from Metro that included many inaccuracies due to the large scale of the Metro survey.

Where wetlands have not been formally delineated, some inaccuracies are to be expected. Since the delineation process takes time and includes some expense, activities proposed on adjacent properties can be complicated. Although a proposal to disturb an identified wetland certainly triggers the need for a formal delineation, the current code is not clear about how close a proposed development can be before a formal delineation is required. *It would be useful to clarify this aspect of MMC 19.402 and to provide a more accurate identification of those wetlands that have not been delineated, particularly where adjacent to multiple surrounding lots that are impacted by the associated vegetated corridor.*

Stormwater facilities and retention areas—including natural wetlands and constructed wetlands or detention facilities (on public or private property)—present certain challenges with respect to natural resource protection. Some stormwater facilities are currently categorized as WQRs on the NR administrative map while others are not. Although MMC 19.402 provides direction about what review is needed to construct or modify stormwater facilities when they are in designated natural resource areas, the code does not indicate what might trigger a new assessment of whether a stormwater facility meets the definition of protected water feature. The NR administrative map should consistently and accurately represent (or exclude, as appropriate) these various types of stormwater facilities for resource protection. *Staff proposes to develop a methodology for classifying stormwater facilities as WQRs or HCAs that provides an appropriate level of protection.*

#### **Proposed Next Steps/Project Approach**

This work will require outside expertise in natural resources and code writing. Planning staff will coordinate with the selected consultant(s) to further assess the situation, identify specific needs, and develop a scope of work. The approach will include efforts to reach out to and engage affected property owners, especially where proposed changes may add or increase restrictions.

*Does Council have any question regarding the project approach for the natural resource assessment?*

*Are any tasks missing?*

#### **BUDGET IMPACT**

Planning has included at least \$75,000 in the budget to hire consultants to assist in the work outlined above. The final budget will be better understood as staff develop the scope of work.

#### **WORKLOAD IMPACT**

The city has accounted for the Natural Resources Assessment in the department work program.

#### **CLIMATE IMPACT**

The city's natural resource protections help preserve, restore, and enhance tree canopy and other vegetation in riparian and wetland areas, which is critical for reducing and mitigating climate change. Assessing the state of the existing regulations will help determine where improvements are needed to provide better protection and further limiting climate impacts.

#### **COORDINATION, CONCURRENCE, OR DISSENT**

The Natural Resources Assessment will be led primarily by staff from the planning department. Consultation with the city attorney will be necessary to ensure that any proposed new regulations do not represent takings or otherwise disproportionately impact the owners of property with WQR and/or HCA resources. Planning staff will also continue to consult with public works throughout the project.

**STAFF RECOMMENDATION**

Work with a consultant(s) to assess the existing natural resources code and NR administrative map, with appropriate community engagement, and drafting of a package of recommended code amendments.

**ALTERNATIVES**

Not applicable.

**ATTACHMENTS**

1. History of natural resources regulations
2. Code-fix list for natural resources

## ATTACHMENT 7. A. 1.

### History of Natural Resources Regulations

#### CONTEXT

Many of Milwaukie's riparian, wildlife, and wetland resources have been adversely affected by development over time. Natural resource regulations seek to minimize additional adverse impacts and to restore and improve resources, where possible, while balancing property rights and development needs of the city. Natural resources are identified as an overlay on the City's zoning map and are regulated by Milwaukie Municipal Code (MMC) Section 19.402. Natural resources are distinguished as Water Quality Resources (WQR) areas and Habitat Conservation Area (HCA) and are identified on the natural resources administrative map (NR administrative map).

Oregon has two statewide land use planning goals that relate to natural resources:

- Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces)
- Goal 6 (Air, Water, and Land Resources Quality)

To ensure that local jurisdictions establish regulations that are consistent with the state law and administrative rules, Metro incorporated the natural resource aspects of these goals into two parts of the Urban Growth Management Functional Plan:

- Title 3 (Water Quality and Flood Management<sup>1</sup>)
- Title 13 (Nature in Neighborhoods)

WQRs are Goal 6 resources (Metro Title 3) and include wetlands, rivers, lakes, streams, springs, and other features with a watershed area of at least 50 acres, as well as a mapped vegetated corridor that buffers each protected water feature. HCAs are Goal 5 resources (Metro Title 13) and include wetlands, riparian areas, and fish and wildlife habitat.

#### LOCAL REGULATORY HISTORY

- **1989**—The Natural Resource Overlay Zone (NR) was adopted (Ord. 1667) as Section 3.21 in the code, renumbered in 1991 to 19.322. This was an implementation of Goal 6.
  - Included a map and list of NR sites recognizing riparian areas, wetland areas, and habitat areas.
  - Applied to entire properties near water bodies and wetlands (e.g., Kellogg Lake, Kellogg Creek, Johnson Creek, Willamette River, Minthorn Springs, etc.) without more specific distinction of the resources themselves.
  - Required a land use application for regulated activities anywhere on a property with the NR designation, unless a more specific delineation was completed (minor quasi-judicial review process).

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<sup>1</sup> MMC Title 18 establishes the City's flood hazard management standards, which were most recently updated in 2021 to ensure continued consistency with the relevant requirements of the Federal Emergency Management Agency (FEMA). Staff will be addressing the city's flood management practices and compliance with that aspect of Title 3 in a separate report.

- Provided development standards and requirements for site surveys. Allowed natural resource management plans for long-term developments. Allowed on-site density transfer and clustering, within maximum density standards of the underlying zone.
- Allowed off-site transfer of density and variances from various standards (setbacks, building height, lot coverage, etc.) for density transfer or clustering. Modifications to NR designations were allowed as part of the application review process; otherwise, proposed changes had to go through the standard amendment procedure.
- **2002**—The Water Quality Resource (WQR) regulations were adopted (Ord. 1912) to replace the NR overlay zone (Section 19.322).
  - Reduced application requirements for projects that will not have an impact on water resources.
  - Allowed different activities with different levels of review:
    - Permitted Outright = activities with no adverse impact on protected water features such as resource enhancement, change of use, normal maintenance and review, and activities not located within the floodplain or vegetated area.
    - Staff Review (Type I or Type II) = activities that do not disturb the vegetated corridor, removal of invasive nonnative vegetation, removal of dangerous trees, placement of stormwater facilities designed in accordance with city standards, partitions, and modification of nonconforming structures.
    - Planning Commission Review (Type III) = activities that may impact protected water features such as new roads and accessways, new public facility construction, other new development, increase in footprint of structures located in the vegetated corridor, subdivisions, and variance requests.
- **2011**—The Habitat Conservation Area (HCA) regulations were adopted (Ord. 2036) to incorporate Metro’s Title 13 regulations (Nature in Neighborhoods) and implement Goal 5. *(Metro adopted Title 13 in 2005 and established a timeline for compliance by local jurisdictions. The City began implementing the Title 13 model code on an interim basis in June 2009 while developing more permanent regulations.)*
  - Designated HCAs with mapping intended to show actual resource locations. City staff corrected the map in some areas where it was clear there was no natural resource (such as where the overlay covered parking areas or existing structures).
  - Established a clear and objective track for review of proposed HCA disturbance (an alternative to discretionary review). This includes an outright allowance of some limited disturbance of HCA, with a prescribed ratio for mitigation plantings.
  - Beyond a few 150-sq-ft exemptions, most disturbance of WQR areas remained subject to discretionary review.



## ATTACHMENT 7. A. 2.

### Code-Fix List for Natural Resources

#### Disturbance/Mitigation

- Address the issue of tracking cumulative exempt “new disturbances” of water quality resource (WQR) and habitat conservation area (HCA) resources, to prevent them from adding up to significant disturbances over time.
- Make it clearer that temporary disturbance of WQR and HCA resources must be restored (particularly for exempt activities in MMC 19.402.4).
- Clarify that the mitigation tables in MMC 19.402.11.D can be used as a guide for mitigation plantings in situations where HCA disturbance goes through discretionary review.
- For violations or unauthorized disturbance, consider whether there should be a more rigorous mitigation requirement (such as an expanded mitigation area, higher planting ratio, off-site mitigation fee, etc.). Or is it enough to simply get the disturbed area restored?
- Revisit the WQR classifications of Good/Marginal/Poor in MMC Table 19.402.11.C to clarify mitigation requirements for each.
  - Are there disincentives for disturbing Good WQRs? Is the requirement for a mitigation impact plan for Good WQRs intended to set a higher bar (more than simple restoration and mitigation plantings)?
  - How should the presence of invasive plants be factored into the evaluation of WQR condition (when considering existing vegetation and tree canopy)?
  - Confirm whether a requirement to remove “noxious materials” as part of mitigation includes removing invasive plants.
- Consider adjusting the minimum size of replacement trees for Mitigation Option 1 in MMC 19.402.11.D.2.a (based on the size of trees being removed) as compared to mitigation plantings in general (standard in MMC 19.402.11.B.3). Also, consider whether it is appropriate to allow bare-root plantings for large-scale mitigation efforts instead of the larger-sized specimens that seem more appropriate when removing/replacing larger trees.
- Consider requiring a replacement tree planting for exempt tree removal, at least in certain situations (such as for invasive tree removal). If we make that change, consider lifting the three-tree limit for exempt nuisance tree removal.
- Consider whether there is a way to incentivize the preservation of existing non-invasive trees (beyond the tree code in MMC 16.32).

#### Review Process and Other

- Determine whether there are any exempt activities that still warrant a construction management plan even when an erosion control permit is not required.
- Consider whether there should be some limitations on fences that may present barriers to larger fauna (habitat corridor issue).

- Clarify what process is involved if the City wants to initiate a WQR or HCA boundary verification, including the issue of property owner authorization for these applications (since any map changes will affect property regulation). Should we be using a Type III or Type V process as if it were a zone change, even though the natural resource administrative map is not the zoning map?
- Reevaluate the residential cluster development option in MMC 19.402.14.C—with the new middle housing allowances, this kind of adjustment option may no longer be necessary. If it remains, revisit the calculation of net buildable area and whether floodplains should be excluded (as they are in the definition of “net acre” in MMC 19.201).

### **Coordination with Tree Code (MMC 16.32)**

- Regarding native plants and invasive/nuisance plants, the tree code (MMC 16.32) references three lists: the Oregon Noxious Weed List, Milwaukie Invasive Tree List, and City of Milwaukie Rare or Threatened Tree List. Previously, MMC 19.402 referenced only the Milwaukie Native Plant List, for which we utilized the Portland Native Plant List, which includes both native plants and invasive/nuisance plants. The Oregon Noxious Weed and Invasive Tree lists were added in a recent update, but the way they were added to MMC 19.402.2.G leaves the natural resources code without a clear primary reference to native species, which is critical to the proper implementation of MMC 19.402 and mitigation plantings.
- There are some conflicts or duplications for tree removal in WQR/HCA areas on residential properties. For example, there is no fee for tree removal based on MMC 19.402, but there may be Urban Forestry mitigation fees. In some cases, both a Type I NR tree removal application and an Urban Forestry permit may be needed. There may also be situations where the Urban Forester’s determination is that a tree cannot be removed even though it otherwise meets the NR standards for Type I removal.
- For the removal of hazardous trees (emergency and non-emergency), The Planning Manager has the authority to determine when a tree presents a non-emergency hazard and should be removed (MMC 19.402.6.A.1.a). Implicit with that authority are determinations of emergency tree situations (MMC 19.402.4.A.6). Now that the City has an Urban Forester, the Planning Manager has a resource that can be consulted for assistance in assessing emergency/non-emergency situations.
  - Should the Urban Forester formally replace the Planning Manager as the decision-maker for these situations? Should we at least add “or designee” to the code language to highlight that someone besides the Planning Manager may be instrumental in making these determinations?
  - Given the other responsibilities of the Urban Forester, how much internal coordination can Planning do for hazardous/emergency assessments in limited situations?
- For Type I tree removal applications, consider referencing the list of information needed in MMC 16.32.042.I.4 or making a more specific list in MMC 19.402.6.A that is consistent with

the info needed in MMC 16.32. Currently, the two applications do not ask for exactly the same things.

- Is there an opportunity to use the Urban Forester to confirm dead/dying/diseased tree situations instead of requiring a formal arborist report? Or does the requirement of MMC 16.32 for a formal arborist's report in similar situations make this a non-issue?

# NATURAL RESOURCES ASSESSMENT UPDATE

City Council Regular Session  
September 19, 2023

Laura Weigel, Planning Manager  
Brett Kever, Senior Planner



# COMPREHENSIVE PLAN—NATURAL RESOURCES AND ENVIRONMENTAL QUALITY

## ENVIRONMENTAL STEWARDSHIP & COMMUNITY RESILIENCY

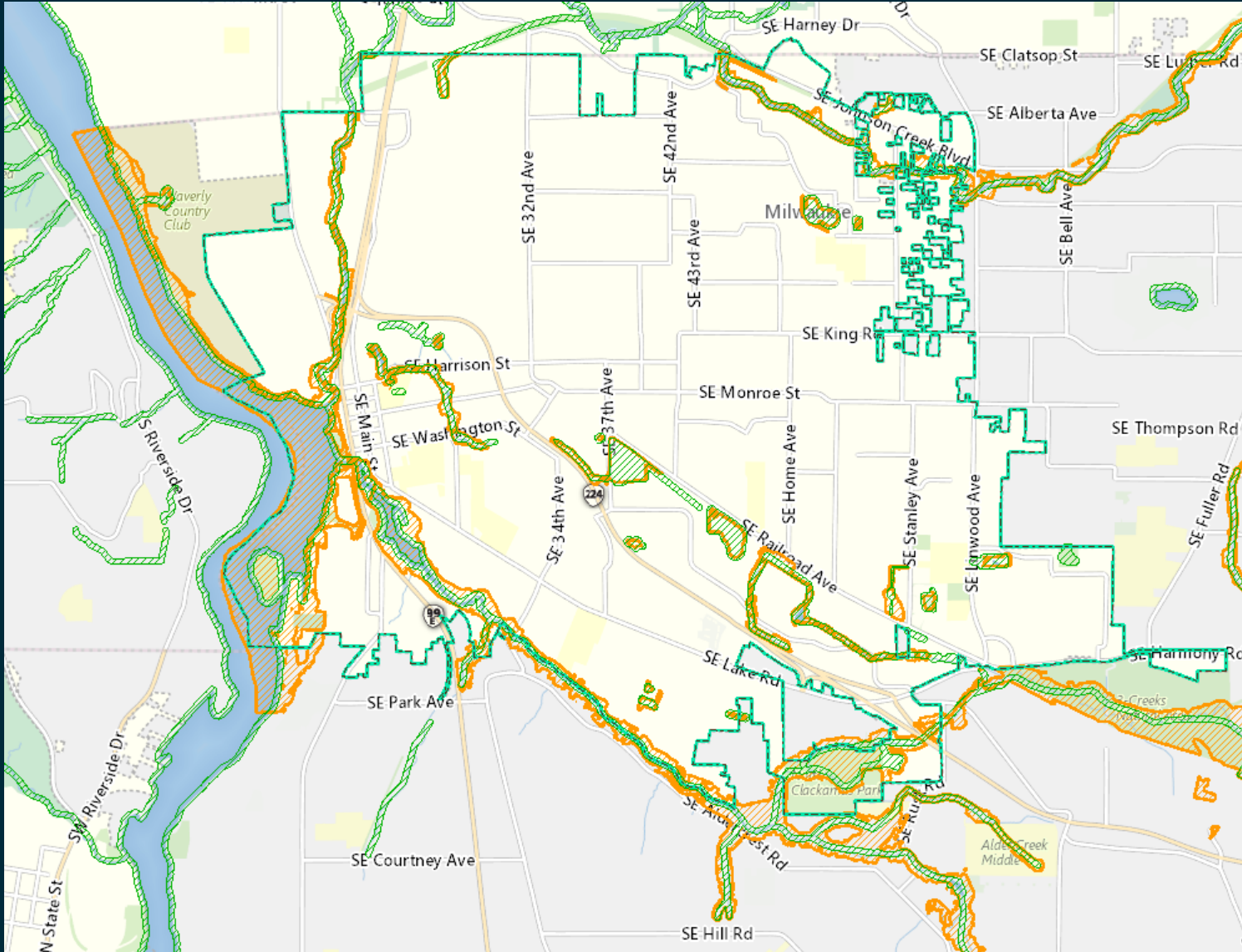


Photo: Mark Gambo

## Goals

1. Awareness and Education
2. Water Quality and Resources
3. Flora and Habitat
4. Healthy Urban Forest
5. Sustainable Design and Development
6. Air, Noise, and Light Quality

# NATURAL RESOURCES IN MILWAUKIE



- Water Quality Resource (WQR)
- Habitat Conservation Area (HCA)
- Focused on creeks, streams, wetlands
- Standards established in MMC 19.402
- Since 1990 reviewed over 200 applications

## CRITICAL NEEDS FOR NR CODE

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- Clear & objective standards for housing development
- Better integration with new tree code
- NR code needs to be easier for applicants and staff to work with



## OTHER IMPORTANT NEEDS FOR NR CODE

- Establish more accurate methodology for HCA verifications
- Provide a more accurate identification for wetlands that have not been delineated





## OTHER MAPPING NEEDS

- Develop a clear classification for stormwater facilities as WQRs or HCAs



## PROPOSED ACTION

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- Work with a consultant for further assessment and scoping
- Expected timeline = Adoption of amendments by winter 2024/2025

**Questions?**

**Are there additional needs?**



## SECTION 3 – NATURAL RESOURCES & ENVIRONMENTAL QUALITY

*Protect, conserve, and enhance the quality, diversity, quantity, and resiliency of Milwaukie's natural resources and ecosystems, and maintain the quality of its air, land, and water. Utilize a combination of development regulations, incentives, education and outreach programs, and partnerships with other public agencies and community stakeholders.*

**Policy 3.1.4** – Periodically update the city's inventory of wetlands, floodplains, fish and wildlife habitat and corridors, and other natural resources through both technology and in-field verification.

**Policy 3.2.1** – Support programs and regulations to enhance and maintain the health and resilience of watersheds, riparian and upland zones, and floodplains.

## COMPREHENSIVE PLAN GOALS

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**Policy 3.2.4** – Require a detailed analysis, including alternatives, of how development will avoid impacts to natural resources. If impacts cannot be avoided, include a detailed analysis of how development will minimize and mitigate impacts to the natural resources.

**Policy 3.2.6** – When considering development proposals, consider changes in water flow, quantity, and duration of flow associated with both development and climate change and evaluate the downstream impacts of development in upland areas.

**Policy 3.3.4** – Protect and enhance riparian vegetation that provides habitat and improves water quality along creeks and streams through the use of best available science and management practices to promote beneficial ecosystem services, such as managing water temperature and providing woody debris for habitat.

## COMPREHENSIVE PLAN GOALS

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**Policy 3.3.5** – Require mitigation that restores ecological functions and addresses impacts to habitat connectivity as part of the development review process.

**Policy 3.4.3** – Provide flexibility in the division of land, the siting and design of buildings, and design standards in an effort to preserve the ecological function of designated natural resources and environmentally sensitive areas and retain native vegetation and trees.

**Policy 3.5.4** – Identify additional opportunities for partner agencies and environmental organizations to provide early feedback and recommendations on reducing environmental impacts associated with development.

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Reviewed:** Ann Ober, City Manager, and  
Joseph Briglio, Community Development Director

**From:** Laura Weigel, Planning Manager

**Subject:** **Planning Department Work Program**

**Date Written:** Sept. 7, 2023

**ACTION REQUESTED**

Council is asked to review the draft planning department five-year work program.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Each year Council holds a joint meeting with the Planning Commission to review the planning department work plan. The most recent joint discussion with the Commission focused on the next few years. This Council discussion will focus on the five-year work program.

On [December 17, 2019](#), Council held a joint session with the Commission to discuss the planning work program for 2020 and beyond.

On [April 20, 2021](#), Council held a joint session with the Commission to discuss the planning work program for 2021-2026.

On [April 19, 2022](#), Council held a joint session with the Commission to discuss the planning work program for 2022-2026.

On [August 1, 2023](#), Council held a joint session with the Commission to discuss the upcoming work program.

On [September 5, 2023](#) Council started the work program discussion and elected to continue the discussion on September 19, 2023.

**DISCUSSION**

Staff has been making progress on the projects outlined in the existing work program (Attachment 1) since 2019. Staff has shared the work program with Council and the Planning Commission every year (except 2020 which was a time of transition) since the Comprehensive Plan was developed to ensure that projects are in alignment with Council expectations and goals. With new members of Council onboard, the consideration of Council goals, new projects added to the work program due to state initiatives, and with staff looking to the future, now is a good time to review the current work program with Council.

The original order of the projects was based on priorities coming out of the Comprehensive Plan and Council goals. Staff believes the order of projects is still correct with a few minor adjustments to consider.

Originally, it was anticipated that reviewing/updating the city's flood protection regulations would be done at the same time as the Natural Resource Assessment. However, based on the fact that the city adopted updated flood hazards regulations (Milwaukie Municipal Code (MMC) Title 18) in 2021 to be in compliance with the Oregon Department of Land Conservation and Development (DLCD) and since there are likely changes coming from the state and the Federal Emergency Management Agency (FEMA) in 2026/2027 that would require the city to update its standards, it does not seem prudent to undertake that work at this time. The MMC complies with state requirements and any additional work should begin after new regulations are in place. As a result, staff proposes not starting this project now, but waiting until the regulations are in place.

Phase two of the neighborhood hubs projects is currently underway. A series of community meetings are scheduled for the last two weeks of October and staff will be ready to discuss potential code concepts and economic development strategies with Council in December. In addition to the work identified as part of phase two and given the high degree of interest from the community, staff may propose a third phase of Hubs work to further accomplish the project goals. If staff does propose a third phase of work, we would also propose undertaking that work on the heels of phase three to keep the momentum going.

There are three strategies, in the form of potential code packages, that the city is committed to exploring based on the city's recently adopted Housing Production Strategy (HPS). Those three strategies have been added to the planning department work program.

The Business Industrial (BI) and Manufacturing (M) zones in the city have not been updated in over a decade and need to be brought up to date. This code package has been added to the work program after all other tasks have been completed.

Column one on Attachment 2 shows the original order of work tasks that Council has seen since 2019. Column two shows the proposed task order for discussion. Attachment 3, the potential revised 2023-2027 work program, shows updated estimated timelines for existing and new tasks.

Staff would like to know if Council agrees with the proposed order of task/projects? And are there any projects missing?

### **BUDGET IMPACT**

The planning department has sufficient funding to carry out the objectives for the current biennium.

### **WORKLOAD IMPACT**

The work for the current biennium has been assigned to specific staff and workloads are being adjusted to accommodate projects in addition to providing a high level of customer service at the development review counter.

### **CLIMATE IMPACT**

Planning staff will be working on a variety of projects that may impact the climate goals for the community.

### **COORDINATION, CONCURRENCE, OR DISSENT**

The work program has been reviewed with community development staff.



**STAFF RECOMMENDATION**

Staff recommends that the Council review and discuss the work program.

**ALTERNATIVES**

None.

**ATTACHMENTS**

1. 2023-2026 Planning Work Program (As of 2022)
2. Original and Proposed Work Tasks
3. Potential Revised 2023-2027 Work Program

Planning Work Forecast 2023-2026																					
Task	Plan/Zone Map	Code Change	Engagement Level	Team	Consultant Needed	2023				2024				2025				2026			
						Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>CURRENT PLANNING</b>																					
<b>A. Comp Plan Implementation- Phase 1 + HB 2001</b>																					
1. Housing, Tree and Parking Code	Yes	Yes	High		Yes																
<b>B. Comp Plan Implementation - Phase 2</b>																					
1. Transportation Systems Plan	Yes	Yes	High	Lead: Planning Support: Engineering + Outreach: CMO	Yes																
2. Neighborhood Hubs (Phase 2)	Yes	Yes	High	Lead: Planning Support: CD	Yes																
3. Housing Needs Analysis Update/Housing Production Strategy (Required)	Yes	Yes	Moderate	Lead: Planning Support: None	Yes																
4. Downtown Design Review Update	Yes	Yes	Moderate	Lead: Planning Support: None	Yes																
5. Residential High Density Zones Review	Yes	Yes	Low	Lead: Planning Support: None	No																
<b>C. Comp Plan Implementation - Phase 3</b>																					
1. Natural Resources Assessment and Code Update	Yes	Yes	Moderate	Lead: Planning Support: Public Works	Yes																
2. Flood Protection – Consider creating a zoning overlay for added protection. New changes from Fed/State in 2026	Yes	Yes	Moderate	Lead: Planning Support: Engineering	Maybe																
3. Potential Parks and Institutions Zone/CSU Analysis	Yes	Yes	Moderate	Lead: Planning Support: None	Maybe																
4. Willamette Greenway *Establish 2 tiers of review clear and objective standards for housing *Adjust boundary	Yes	Yes	Moderate	Lead: Planning Support: None	Maybe																
5. New Town Center Plan - Replace current 1997 Plan and potentially consolidate the Downtown/Riverfront Plan as components of the TC Plan	Yes	Yes	Moderate/High	Lead: Planning Support: None	Yes																
6. Historic Resources Inventory and potential code update	Yes	Yes	Moderate	Lead: Planning Support: CMO + Outreach: CMO	Potentially																
7. Urban Growth Management Agreement – prepare and adopt a new agreement with the County	Yes	No	Low	Lead: Planning & City Attorney Support: Public Works, CMO, & Engineering	Not likely																
8. Potential Neighborhood Hubs (Phase 3) *NMU Boundary Adjustments along 32nd/Olsen *Area plans (Trolley Trail and Chapel Theater) *Home Occupations/Accessory Commercial Units	Yes	No	Moderate/High	Lead: Planning, CD Support: None	Potentially																
<b>D. Other Planning Code Amendments</b>																					
1. EV Charging Code Update* (HB 2180 & Gov Climate Order)	No	Yes	Low																		
2. Climate Friendly Equitable Communities (Gov. Brown Executive Order 20-04)*	Yes	Yes	Low																		
3. Psilocybin Code Update*																					
4. Sign Code Update - Eliminate provisions for electronic signs or reduce light intensity.	No	Yes	Low	Lead: Planning Support: City Attorney	Not likely																
5. Bi-annual Housekeeping Code Amendments	No	Yes	Low	Lead: Planning Support: None	No																
6. Title 17 Update (Land Division)	No	Yes	Low	Lead: Planning Support: City Attorney	No																
7. Bicycle Parking Standards*	No	Yes	Low	Lead: Planning Support: None	No																
8. HPS Implementation- Increase Capacity in HDR Zone*	Yes	Yes	Low	Lead: Planning Support: None	No																
9. HPS Implementation- Evaluate Incentives for Affordable Housing*	Yes	Yes	Low	Lead: Planning Support: CD	No																
9. HPS Implementation- Develop pre-approved Plan Sets for ADUs and Middle Housing Typologies*	No	No	Low	Lead: Planning Support: CD	Maybe																
10. Business Industrial and Manufacturing Zone Updates	Maybe	Yes	Low	Lead: Planning Support: CD	Maybe																
*State initiated																					
Yellow = Underway																					
Blue = New																					
Grey = Complete!																					

**Attachment 7. B. 2.**

Original Work Task Order	Proposed Task Order for Discussion
<ol style="list-style-type: none"> <li>1. Natural Resource Assessment/Code Update</li> <li>2. Expand floodplain protection (originally w/ Natural Resources)</li> <li>3. Sign Code Update</li> <li>4. Parks and Institutions Zone</li> <li>5. Revise the Willamette Greenway zone to:               <ol style="list-style-type: none"> <li>a. establish two tiers of review and</li> <li>b. create a clear and objective path for housing</li> </ol> </li> <li>6. New Town Center Plan/Consolidation</li> <li>7. Update Historic Resources Inventory</li> <li>8. Urban Growth Management Agreement</li> </ol>	<ol style="list-style-type: none"> <li>1. Natural Resource Assessment/Code Update</li> <li>2. Sign Code Update - Electronic Signs</li> <li>3. Neighborhood Hubs Phase 3 (potentially) -NMU Zoning Boundary adjustment along 32<sup>nd</sup> /Olsen -Area Plans -Home Occupations/Accessory Commercial Units</li> <li>4. HPS - Evaluate Incentives for Affordable Housing</li> <li>5. Parks and Institutions Zoning Code Update (CU/CSU code)</li> <li>6. Revise the Willamette Greenway zone to:               <ol style="list-style-type: none"> <li>a. establish two tiers of review and</li> <li>b. create a clear and objective path for housing</li> </ol> </li> <li>7. HPS - Increase Capacity in HDR zone</li> <li>8. Review/consolidate/update Downtown and Central Milwaukie plans to potentially create one plan</li> <li>9. HPS - Develop per-approved plan sets for ADU's and Middle Housing</li> <li>10. Update Historic Resources Inventory</li> <li>11. Urban Growth Management Agreement</li> <li>12. Business Industrial and Manufacturing Zone Updates</li> <li>13. Expand floodplain protection (originally w/ Natural Resources)</li> </ol>
	Blue = New
	Brown = New Timeframe

Planning Work Forecast 2023-2027																									
Task	Plan/Zone Map	Code Change	Engagement Level	Team	Consultant Needed	2023				2024				2025				2026				2027			
						Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>CURRENT PLANNING</b>																									
<b>A. Complete</b>																									
1. Housing, Tree and Parking Code	Yes	Yes	High		Yes																				
2. Housing Needs Analysis Update/Housing Production Strategy*	Yes	Yes	Moderate	Lead: Planning Support: None	Yes																				
3. Downtown Design Review Update	Yes	Yes	Moderate	Lead: Planning Support: None	Yes																				
4. Residential High Density Zones Review	Yes	Yes	Low	Lead: Planning Support: None	No																				
5. EV Charging Code Update* (HB 2180 & Gov Climate Order)	No	Yes	Low	Lead: Planning Support: PW	No																				
6. Psilocybin Code Update*	No	Yes	Low	Lead: Planning Support: None	No																				
<b>B. Underway</b>																									
1. Transportation Systems Plan	Yes	Yes	High	Lead: Planning Support: Engineering + Outreach: CMO	Yes																				
2. Climate Friendly Equitable Communities (Gov. Brown Executive Order 20-04)*	Yes	Yes	Low																						
3. Neighborhood Hubs (Phase 2)	Yes	Yes	High	Lead: Planning Support: CD	Yes																				
4. Bi-annual Housekeeping Code Amendments	No	Yes	Low	Lead: Planning Support: None	No																				
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7. Natural Resources Assessment and Code Update	Yes	Yes	Moderate	Lead: Planning Support: Public Works	Yes																				
<b>C. Future</b>																									
Flood Protection – Consider creating a zoning overlay for added protection. New changes from Fed/State in 2026	Yes	Yes	Moderate	Lead: Planning Support: Engineering	Maybe																				
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8. HPS Implementation- Develop pre-approved Plan Sets for ADUs and Middle Housing Typologies* (2026)	No	No	Low	Lead: Planning Support: CD	Maybe																				
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11. Business Industrial and Manufacturing Zone Updates	Maybe	Yes	Low	Lead: Planning Support: CD	Maybe																				



**RS Agenda Item**

**8**

**Public Hearings**

**COUNCIL STAFF REPORT**

**To:** City Council  
**Reviewed:** Joseph Briglio, Community Development Director  
**From:** Laura Weigel, Planning Manager, and  
Brett Kelter, Senior Planner  
**Subject:** **DLC Code Update**

**Date Written:** Sept. 7, 2023

**ACTION REQUESTED**

Council is asked to move to the second reading of the ordinance approving the proposed amendments to the municipal code that would officially retire the Design and Landmarks Committee (DLC) (land use file #ZA-2023-005).

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**August 16, 1976:** Ordinance 1344 established design review regulations and a Design Review Board.

**July 6, 1978:** Ordinance 1397 repealed the design review program due to budgetary issues.

**August 8, 1990:** Resolution 27-1990 established the Historic Review Committee (HRC) to oversee newly adopted regulations for historic resources (November/December 1989).

**May 18, 1993:** Resolution 10-1993 changed the HRC from a committee to a commission, with decision-making authority concerning historic resources.

**May 21, 1996:** Ordinance 1799 changed the HRC from Historic Review Commission to Historic Resources Commission.

**September 19, 2000:** Ordinance 1880 adopted the Downtown Framework Plan and renamed the HRC as the Design and Landmarks Commission, responsible for both historic resource review and downtown design review.

**October 5, 2004:** Ordinance 1936 downgraded the DLC's status from a commission to a committee, with authority only to make recommendations to the Planning Commission.

**June 6, 2023:** Discussion with Council about amending the code to retire the DLC.

**July 25, 2023:** Planning Commission held a public hearing on the code amendments to retire the DLC.

**August 15, 2023:** Council voted 3-to-2 in favor of code amendments that would officially retire the DLC.

**September 5, 2023:** Council removed the second reading from the agenda and rescheduled the reading for September 19, 2023.

## **ANALYSIS**

### **The DLC today**

The DLC has played an important role over the past 20-plus years in setting the foundations of both downtown design review and historic resource protection. The DLC makes recommendations to the Planning Commission, which is the primary decision maker on downtown design and historic resource applications.

Currently the DLC is comprised of five members with a mix of backgrounds in architecture, design, and historic preservation. Until the COVID-19 pandemic hit in March 2020, the DLC met regularly (usually the first Monday of each month) and spent much of the last six-plus years working on amendments to the downtown design review (DDR) portion of the municipal code (adopted by Council in March 2023 ([OR2226](#))). During that period, the committee also reviewed a handful of land use applications related to downtown design and historic resources (HR), making recommendations to the Commission.

For the past year, however, the prioritization of other projects to implement various aspects of the city's Comprehensive Plan (updated in 2020), state required code revisions, and the lack of a new long-range project for the DLC have effectively put the committee on hiatus. It is currently convening only when needed for application review (meeting only twice since August 2022). The next big project that could involve the DLC will be updating the historic resources inventory; however, that work is not scheduled to begin until at least 2025 based on other project schedules and staff capacity.

When the DLC was meeting every month pre-pandemic, a high level of staff time was required to manage the monthly meetings and the work associated with the committee. The staff liaison is responsible for creating the meeting agenda and preparing minutes, as well as completing the work coming out of the committee. Monthly management of this committee is very staff intensive.

### **Downtown design review**

The recent updates to the DDR code were intended to provide more clarity and guidance for new building design. The new code has replaced the earlier guidelines that were much more diffuse and not as pointed about desired effects. The newly reshaped guidelines make it less critical to have the DLC as an advisory body and easier for the planning commission to be the primary reviewer when downtown projects require discretionary review. The enhanced clarity and specificity of the design standards also do more to influence building designs to match the preferences expressed by the community. The proposed designs for the most recent several downtown buildings have not required significant adjustments in response to local review.

On a few occasions over the past decade, developers have approached the DLC for an informal design review prior to submitting their application, seeking input from the group about their proposed design. Such preapplication meetings are not required by the code and they have not resulted in radical changes to plans, as projects are still usually far along in the design process by the time they are ready to be shared for even a preliminary review.

The volume of DDR applications is low, with only five applications needing discretionary review since 2017. In fact, in the 23 years that the DLC has participated in the DDR process, the DLC has reviewed only approximately 12 DDR applications (out of 50 total). For these few applications, DLC has provided relevant and insightful recommendation points for applicants and the Commission to consider. In a few cases, the DLC recommendations have resulted in the applicant

making a small adjustment to the design or the Commission imposing a condition of approval. But the DLC's input, while clearly appreciated, has not been critically influential on many final decisions regarding design. Especially in light of the newly updated downtown design review code, the Commission is more than capable of handling those applications on its own.

### **Historic resources**

The city's protections for historic resources are established in Milwaukie Municipal Code (MMC) Section 19.403. Interestingly, since 2004 the code offers no formal role to the DLC for historic resource issues. Proposals to alter or demolish a listed historic property, as well as to add or remove properties from the city's historic resources list, do not require input from the DLC. However, staff has made it a practice to involve the DLC in the processing of historic resource applications that require discretionary review, having the committee provide recommendations to the Commission. In 33 years, the DLC has reviewed approximately 10 HR applications (out of 30 total). To be clear, the protections currently provided for historic resources do not depend on the DLC. The code is the driver in these decision-making processes. The Commission is already the sole party with an official role involving historic resources.

### **Milwaukie Historical Society comments (submitted to Planning Commission)**

In advance of the Commission's public hearing to consider the proposed amendments on July 25, 2023, the Milwaukie Historical Society submitted comments in opposition. The historical society emphasized the importance of maintaining the DLC for purposes of keeping the city eligible for certified local government (CLG) status, which allows the city to seek certain types of funding for projects related to historic preservation and economic development downtown. The historical society pointed to the various goals and policies in the Comprehensive Plan related to Milwaukie's heritage and economic development and stressed the importance of the DLC in actualizing them. There was also an invitation to have the DLC participate in the historic resources inventory that the historical society is currently undertaking, as a way to keep the committee active.

Staff has confirmed that the DLC serves as an acceptable body for purposes of CLG status if the city were to decide to participate in that program and take advantage of the resources it offers. As noted above, an update to the city's historic resources code and inventory is forecast for initiation in two to five years. It is not clear whether the CLG program is one that the city will want to pursue, and it is not necessary or prudent to maintain the DLC until that project gets underway. As previously discussed by Council at its June 6 work session on this topic, there is a larger conversation to be had about historic preservation and the shape and form the community wants it to take. The DLC or a similar qualifying body can be (re)established at that point if necessary, with a clear mandate and dedicated resources at that time.

In the meantime, the Comprehensive Plan goals cited by the historical society are being addressed in one form or another by the existing code and programs in place. Without clear direction from Council to shift priorities to focus more on historic resources, there are no resources available to engage at the level the historical society advocates for. DLC members who wish to join the historical society's inventory effort are welcome to do that, but that project alone is not a reason to maintain the committee.

### **PC discussion and considerations**

The Commission held a public hearing on the proposed amendments on [July 25, 2023](#), and voted 4-1 to recommend denial of the proposed amendments. A majority of the Commissioners expressed a sense of value for the DLC's role in downtown design review and thought the



committee has an important role in actualizing the Comprehensive Plan goals and policies related to Milwaukie's heritage. Acknowledging that Council has given staff direction regarding priorities for implementing the updated Comprehensive Plan, the Commissioners seemed inclined to support a proposal to maintain the DLC on an ad hoc basis until the historic resource topic could be more actively addressed.

As noted above, pre-submittal design consultations are not common and not required in the current code. Staff believes that the updated code makes it easier for the planning commission to handle downtown design review without the credentialed expertise that the more narrowly focused DLC has provided over the years. And when it is time to engage the community in the larger discussion of historic resources, people in the community with interest and expertise can be recruited to participate.

### **STAFF RECOMMENDATION**

In consideration of the analysis and discussion presented above, staff recommends that Council approve the proposed amendments to retire the DLC and adopt the ordinance and findings in support of approval.

### **ALTERNATIVES**

If Council chooses to not move forward with the proposed amendments to dissolve the DLC, staff has identified the following alternatives:

#### **1. Retain the DLC and meet as needed**

With a small adjustment to the committee's bylaws, the DLC could convene only when needed for a land use application (downtown design or historic resource). This arrangement would involve acceptance of the following:

- Meetings would be infrequent, making it harder to create a sense of group culture and cohesion.
- The DLC's active workplan would be limited to application review.
- Members would have to be versed in the code and prepared to review a downtown design or historic resource application when the occasion presents.
- Future recruitment efforts would need to set clear expectations about the group's limited operation and scope.

#### **2. Retain the DLC and return to monthly meetings**

The DLC could resume its regular schedule, with staff supporting monthly meetings and identifying a new long-range project for the group to tackle between downtown design and historic review applications. The most effective implementation of this alternative would involve Council shifting its goals to prioritize the DLC work over other planning projects.

### **BUDGET IMPACTS**

Retiring the DLC will have no budgetary impacts.

### **WORKLOAD IMPACTS**

The planning department has a long list of planning projects. Providing support for regular meetings of the DLC requires staff time and resources. Retiring the DLC will allow staff to concentrate their efforts on other projects—Comprehensive Plan implementation and others.

### **CLIMATE IMPACTS**

The proposed amendments will have no direct impact on climate.

## **COORDINATION, CONCURRENCE, OR DISSENT**

Staff discussed the proposal to retire the DLC with the committee members themselves. They accepted the rationale and acknowledged the challenges of supporting the group in the face of other priorities. However, they also lamented the loss of the opportunity to volunteer and play an advisory role for the Commission.

As discussed above, the Commission discussed the proposal in a public hearing and voted to recommend denial of the proposed amendments, citing the importance of the DLC as an advisor on design and a body dedicated to the Comprehensive Plan policies related to Milwaukee's history and heritage.

## **ATTACHMENTS**

1. Ordinance (revised, strikeout and clean versions)
  - Exhibit A. Findings in support of approval
  - Exhibit B. Code amendments (strikeout/underline format)
  - Exhibit C. Code amendments (clean format)

**COUNCIL ORDINANCE No.****AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING VARIOUS PARTS OF THE MUNICIPAL CODE (MMC) AS NECESSARY TO FORMALLY RETIRE THE DESIGN AND LANDMARKS COMMITTEE (DLC) (FILE #ZA-2023-005).**

WHEREAS the DLC was established to advise the Planning Commission on matters related to downtown design and historic preservation; and

WHEREAS the DLC has provided recommendations to the Planning Commission on applications for downtown design review and historic resource review and has been involved in a variety of special efforts related to downtown design and historic preservation; and

WHEREAS the DLC worked for several years on amendments to the downtown design review portion of the zoning code to facilitate the review process and ensure the code is delivering the quality of design the city desires, with the amendments adopted by City Council in March 2023; and

WHEREAS the volume of downtown design and historic resource applications needing DLC review has been low and infrequent over the past several decades, the Planning Commission has the capacity to evaluate those applications on its own, and there are no other long-range projects for the DLC on the near horizon; and

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

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

Section 1. Findings. Findings of fact in support of the proposed amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The MMC is amended as described in Exhibit B (strikeout/underline format) and Exhibit C (clean format).

Section 3. Effective Date. The amendments will become effective 30 days from the date of adoption.

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

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Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

**EXHIBIT A**  
**Recommended Findings in Support of Approval**  
**File #ZA-2023-005**  
**Code Amendments to Retire the Design and Landmarks Committee**

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

1. The applicant, the City of Milwaukie, proposes to amend the Milwaukie Municipal Code (MMC) to formally retire the Design and Landmarks Committee (DLC). Amendments are proposed to various sections of MMC Title 2 Administration and Personnel, MMC Title 14 Signs, and MMC Title 19 Zoning. The land use application file number is ZA-2023-005.
2. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.902 Amendments to Maps and Ordinances
  - MMC Section 19.1008 Type V Review

The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on July 25, 2023, and August 15, 2023, as required by law.

3. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the municipal code. MMC Subsection 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows:

- a. MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the municipal code be evaluated through a Type V review per MMC Section 19.1008.

*The Planning Commission held a duly advertised public hearing on July 25, 2023, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 15, 2023, and approved the amendments. Public notice was provided in accordance with MMC Subsection 19.1008.3.*

- b. MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.

- (1) MMC Subsection 19.905.B.1 requires that the proposed amendments be consistent with other provisions of the Milwaukie Municipal Code.

*The proposed amendments are consistent with other provisions of the Milwaukie Municipal Code, including Title 2 Administration and Personnel, Title 14 Signs, and Title 19 Zoning.*

*This standard is met.*

- (2) MMC Subsection 19.902.5.B.2 requires that the proposed amendments be consistent with the goals and policies of the Comprehensive Plan.

*The following goals and policies of the Comprehensive Plan support the proposed amendments:*

#### Section 2 – History, Arts, & Culture

Encourage and implement projects and programs that weave history, art, and culture into the fabric of the city, and that celebrate Milwaukie’s diversity and unique historic, archaeological, and cultural heritage.

##### Goal 2.1 – Milwaukie’s Heritage

Research, celebrate, document, and protect Milwaukie’s unique and diverse historic, archaeological, and cultural heritage.

Policy 2.1.1 – Work with local residents, businesses, and organizations to document and preserve Milwaukie’s diverse history.

Policy 2.1.4 – Provide educational materials and information regarding preservation to property owners and other interested persons and assist property owners in applying for designation as a locally significant historic resource.

Policy 2.1.7 – Maintain an official inventory of Milwaukie’s historic and cultural resources and regularly update the inventory as additional properties become eligible and are nominated for designation.

Policy 2.1.8 – Ensure that City processes for inventorying, altering, removing, or demolishing historic and cultural resources remain consistent with state and federal criteria as well as community priorities.

Policy 2.1.9 – Coordinate historic preservation activities with the Milwaukie Historical Society and the Oregon State Historic Preservation Office and follow all state and federal regulations for identifying and protecting archaeological resources.

#### Section 8 – Urban Design & Land Use

Promote the design of private development and public spaces and facilities to enhance community livability, environmental sustainability, social interaction, and multimodal connectivity and support the unique function of Milwaukie neighborhoods as the centers of daily life.

##### Goal 8.1 – Design

Use a design framework that considers location and development typology to guide urban design standards and procedures that are customized by zoning district.

Policy 8.1.1 – Downtown Milwaukie Policies

- f) Ensure that design standards and guidelines reflect a well-defined community vision for the downtown.

Goal 8.3 – Process

Provide a clear and straightforward design review process for development in Milwaukie along with incentives to achieve desired outcomes.

Policy 8.3.1 – Use a two-track development review process to ensure that new non-residential development and redevelopment projects are well designed. Provide a clear and objective set of standards as well as an optional, discretionary track that allows for greater design flexibility provided design objectives are satisfied.

Policy 8.3.2

Ensure that a clear and objective process is available for all housing types that meet design standards, provide adequate open space, and fit into the community, while offering an alternative discretionary path for projects that cannot meet these standards.

*The proposed amendments do not diminish the Planning Commission’s charge to implement the goals and policies of the comprehensive plan related to historic preservation and urban design. Even without the assistance of the DLC, staff and the Planning Commission will continue to be responsible for maintaining an inventory of Milwaukie’s historic and cultural resources and coordinating activities with the Milwaukie Historical Society and other similar entities to ensure the City is following state and federal regulations for historic properties. These activities help educate the public about historic preservation. Staff and the Planning Commission will utilize the newly updated downtown design review process to ensure that new development and redevelopment projects provide the desired high quality of design.*

*This standard is met.*

- (3) MMC Subsection 19.902.5.B.3 requires that the proposed amendments be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

*The proposed amendments are consistent with the Metro Urban Growth Management Functional Plan. A detailed analysis of the Functional Plan will be provided if requested.*

*This standard is met.*

- (4) MMC Subsection 19.902.5.B.4 requires that the proposed amendments be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

*The proposed amendments are consistent with the following relevant statewide planning goals:*

Goal 1 – Citizen Involvement

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

*The City has an adopted and acknowledged amendment process and has followed that process in making the proposed amendments. Public hearings on the proposed amendments have been held and public notice was published prior to each hearing. In addition, the Planning Commission members are appointed by an elected City Council, following an open and public selection process.*

#### Goal 2 Land Use Planning

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

*The City's zoning code has an established process for reviewing land use applications related to downtown design and historic resources. The proposed amendments remove the DLC and its advisory role from those types of review but retain the Planning Commission as the primary decision maker and do not change the approval criteria for either review.*

#### Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces

To protect natural resources and conserve scenic and historic areas and open spaces.

*The City's zoning code includes protections for designated historic resources. The proposed amendments remove the DLC and its advisory role for that review but retain the Planning Commission as the primary decision maker and do not change the approval criteria.*

*This standard is met.*

- (5) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

*The proposed amendments are not inconsistent with any relevant federal regulations.*

*This standard is met.*

*The City Council finds that the proposed amendments to MMC Title 2 (Administration and Personnel), Title 14 (Signs), and Title 19 (Zoning) are consistent with the applicable approval criteria for zoning text amendments as established in MMC 19.902.5.B.*

*The City Council finds that the proposed zoning text amendments are approvable in accordance with the applicable procedures and standards of MMC 19.902.*

#### 4. MMC Section 19.1008 Type V Review

MMC 19.1008 establishes the procedures and requirements for Type V review, which is the process for legislative actions. The City Council, Planning Commission, Planning Manager, or any individual may initiate a Type V application.



*The amendments were initiated by the Planning Manager on June 20, 2023.*

- a. MMC Subsection 19.1008.3 establishes the public notice requirements for Type V review.

- (1) MMC Subsection 19.1008.3.A General Public Notice

MMC 19.1008.3.A establishes the requirements for public notice.

- (a) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment.

*The City Council had a work session about the proposed code amendments on June 6, 2023. Proposed code amendments were first posted on the application webpage on June 20, 2023, and have been updated since as needed. On July 12, 2023, staff emailed Neighborhood District Association (NDA) leaders with information about the proposed amendments and a link to the July 25 Planning Commission meeting page.*

- (b) 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 at least 30 days prior to the hearing.

*A notice of the Planning Commission's July 25, 2023, hearing was posted as required on June 23, 2023. A notice of the City Council's August 15, 2023, hearing was posted as required on July 14, 2023.*

- (c) MMC Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.

*The proposed amendments apply to the existence of the DLC and its role in reviewing specific types of land use applications, so there is no direct impact to any specific property.*

- (2) MMC Subsection 19.1008.3.B DLCD Notice

MMC Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.

*Notice of the proposed amendments was provided to DLCD on June 20, 2023.*

- (3) MMC Subsection 19.1008.3.C Metro Notice

MMC Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

*Notice of the proposed amendments was sent to Metro on June 20, 2023.*

- (4) MMC Subsection 19.1008.3.D Property Owner Notice (Measure 56)

MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

*The proposed amendments will not affect the permissible uses of land, they will effectively retire the DLC and remove its role from the downtown design and historic resource review processes. A Measure 56 notice is not relevant.*

b. MMC Subsection 19.1008.4 Type V Decision Authority

MMC 19.1008.4 establishes that the City Council is the review authority for Type V applications and may approve, approve with conditions, amend, deny, or take no action on a Type V application after a public hearing.

*The City Council held a public hearing to consider this application on August 15, 2023, and approved the proposed amendments as presented.*

c. MMC Subsection 19.1008.5 Type V Recommendation and Decision

MMC 19.1008.5 establishes the procedures for review and a decision on Type V applications. The process includes an initial evidentiary hearing by the Planning Commission and a recommendation to the City Council, followed by a public hearing and decision by the City Council.

*The Planning Commission held an initial evidentiary hearing on July 25, 2023, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 15, 2023, and approved the proposed amendments as presented.*

*The City Council finds that the applicable requirements of MMC 19.1000 have been met.*

## **Exhibit B**

### **PROPOSED CODE AMENDMENTS RELATED TO RETIREMENT OF THE DESIGN AND LANDMARKS COMMITTEE (DLC) (~~strikeout~~/underline version)**

#### **TITLE 2 ADMINISTRATION AND PERSONNEL**

#### **CHAPTER 2.10 BOARDS, COMMITTEES, AND COMMISSIONS GENERALLY**

##### **SECTION 2.10.010 APPLICABILITY**

This chapter applies to all City boards, commissions, and committees unless mandated otherwise by State statute or City ordinance, including but not limited to the following boards, commissions, and committees:

- A. Budget Committee (ORS 294.336 and MMC 2.14, exclusive from monthly meetings);
- B. Center/Community Advisory Board (MMC 2.20 and IGA);
- C. Citizens Utility Advisory Board (MMC 2.11);
- ~~D. Design and Landmarks Committee (MMC 2.18);~~
- E.D. Library Board (ORS 357.400 to 357.621 and MMC 2.28);
- F.E. Park and Recreation Board (MMC 2.12);
- ~~G.F.~~ Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- H.G. Public Safety Advisory Committee (MMC 2.24); and
- I.H. Milwaukie Arts Committee (MMC 2.17).

#### **CHAPTER 2.16 PLANNING COMMISSION**

##### **SECTION 2.16.010 ESTABLISHED—PURPOSE**

- ~~B. Coordination with the Design and Landmarks Committee~~

~~The Planning Commission shall meet at least twice annually with the Design and Landmarks Committee for reviewing prospective work program tasks related to urban design, architecture and design guidelines, historic preservation, and other areas of responsibility assigned to the Committee in Section 2.18.010.A.~~

#### **CHAPTER 2.17 MILWAUKIE ARTS COMMITTEE**

##### **SECTION 2.17.010 ESTABLISHMENT**

There is created a Milwaukie Arts Committee whose duties and responsibilities ~~shall be~~ are as follows:

- A. Support and promote the arts, artists, and art education within the Milwaukie area;
- B. Work cooperatively with other community groups and sources including, but not restricted to, Milwaukie's neighborhood district associations, ~~Design and Landmarks Committee~~, North Clackamas School District, North Clackamas Parks and Recreation District, Clackamas Arts Action Alliance, New Century Players, Portland Waldorf and other schools in and around

Milwaukie, Ledding Library, local businesses, area arts guilds and other groups already existing, or hereafter established, to promote the arts in the community.

**CHAPTER 2.18 ~~DESIGN AND LANDMARKS COMMITTEE~~** *[reserve chapter number for future use]*

**~~SECTION 2.18.010 ESTABLISHED PURPOSE, APPOINTMENT AND COMPOSITION, COORDINATION WITH PLANNING COMMISSION~~**

~~A. The Design and Landmarks Committee is established to advise the Planning Commission on all matters specified in Sections 2.16.010.A.9 through 2.16.010.A.12.~~

~~B. Appointment and Composition~~

~~The Design and Landmarks Committee shall have five (5) members appointed by the City Council for two (2) year terms. The Council shall have discretion to reappoint or remove Committee members. One (1) Committee member shall have demonstrated special interest, experience, training, or knowledge in the field of historic preservation or history. One (1) Committee member shall have demonstrated special interest, experience, training, or knowledge in the field of architecture, planning, landscape design, or similar field.~~

~~C. Annual Meetings~~

~~The Design and Landmarks Committee shall meet with the Planning Commission in accordance with Section 2.16.010.B.~~

~~D. Review and recommend appropriate design guidelines and design review processes and procedures to the City Council.~~

~~E. Any other duties assigned by the City Council.~~

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**TITLE 14 SIGNS**

**CHAPTER 14.04 GENERAL PROVISIONS**

**SECTION 14.04.030 DEFINITIONS**

Sign, Nonconforming. "Nonconforming sign" means a sign that complied with applicable standards when created or modified but which does not comply with existing standards. Signs that did not require Planning Commission or ~~Design and Landmarks Committee~~ approval when created ~~shall~~ will not be considered nonconforming if approval from ~~these bodies~~ that body is currently required.

**CHAPTER 14.16 SIGN DISTRICTS**

**SECTION 14.16.060 DOWNTOWN ZONES**

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.

2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs ~~shall~~ must not be internally illuminated. Features on an awning sign may be externally illuminated subject to review ~~by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings,~~ and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination ~~shall~~ must be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review ~~by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings,~~ and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
  - a. The sign should be a unique design that responds to the ~~Milwaukee Downtown Design Guidelines~~ downtown design guidelines in Subsection 19.508.4.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.

## **CHAPTER 14.32 ADJUSTMENTS**

### **SECTION 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS**

- A. The Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard ~~shall~~ will not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.
- ~~B. The Design and Landmarks Committee shall hold a public meeting and prepare a report for adjustment applications that require Planning Commission review per Section 19.1011 Design Review Meetings. The Planning Commission shall consider the findings and recommendations contained in the report during the public hearing on the proposal.~~
- ~~C.~~B. Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the ~~Downtown Design Guidelines~~ downtown design guidelines in Subsection 19.508.4, and the adjustment meets either of the following criteria:

1. Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard ~~shall~~ does not constitute a hardship; or
2. The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

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## **TITLE 19 ZONING**

### **CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS**

#### **SECTION 19.401 WILLAMETTE GREENWAY ZONE WG**

##### **Subsection 19.401.6 Criteria**

The following ~~shall~~ will be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. ~~Maintain~~ Maintenance of or increase in views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- ~~I. Advice and recommendations of the Design and Landmark Committee, as appropriate;~~
- ~~J.~~ J. Conformance to applicable Comprehensive Plan policies;
- ~~K.~~ J. The request is consistent with applicable plans and programs of the Division of State Lands;
- ~~L.~~ K. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

### **CHAPTER 19.900 LAND USE APPLICATIONS**

#### **SECTION 19.907 DOWNTOWN DESIGN REVIEW**

##### **Subsection 19.907.3 Review Process**

- B. Review Types

To achieve the purpose of the downtown design standards and guidelines, there are three downtown design review processes through which to apply for approval:

1. Type I

The ministerial review track provides for a Type I review process pursuant to Section 19.1004 using the design standards in Section 19.508.

2. Type II

The administrative review track provides for a Type II process pursuant to Section 19.1005 that requires staff review utilizing the design standards and applicable guidelines in Section 19.508.

3. Type III

The discretionary review track provides for a Type III review process pursuant to Section 19.1006, through which the ~~Design and Landmarks Committee~~ and Planning Commission determines compliance with the downtown design guidelines in Section 19.508.

**~~Subsection 19.907.6 Report and Recommendation by Design and Landmarks Committee~~**

~~The Design and Landmarks Committee will hold a public meeting and prepare a downtown design review report for Type III applications pursuant to Section 19.1011. The Planning Commission shall consider the findings and recommendations contained in the downtown design review report during a public hearing on the proposal.~~

**Subsection 19.907.76 Variances**

- A. Variances cannot be granted for the downtown design standards of Section 19.508. Applications unable to meet one or more standards must meet the applicable downtown design guideline(s) in Subsection 19.508.4 instead and use the Type III discretionary downtown design review process.
- B. Variances can be granted for the downtown development standards of Section 19.304 unless otherwise specified, through the variance review process in Section 19.911.

**SECTION 19.911 VARIANCES**

**Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone**

C. Review Process

The building height variance ~~shall~~ will be subject to Type III review and approval by the ~~Design and Landmarks Committee~~ and the Planning Commission, in accordance with Chapter 19.907 and ~~Section 19.1011~~. The building height variance ~~shall~~ will be consolidated with downtown design review.

- 1. Because the building height variance provides substantial flexibility and discretion, additional time ~~will~~ may be required for public input and technical evaluation of the proposal. To use this option, the applicant ~~shall~~ will sign a waiver of the 120-day decision requirement.
- 2. ~~The applicant may request design advice from the Design and Landmarks Committee prior to submitting an application. Design advice requests provide the opportunity to~~

~~assess approval potential prior to committing excessive time or money to detailed design plans.~~

- ~~3. Design advice requests may not be made for a specific project or site with an active land use review application.~~
- 4.2. A special application fee may be required to use this Type III option to allow the City to contract with a registered architect to assist in the review of the height variance application.

## **CHAPTER 19.1000 REVIEW PROCEDURES**

### **SECTION 19.1005 TYPE II REVIEW**

#### **Subsection 19.1005.3 Type II Public Notice**

##### **A. Referral**

Within 7 days after the application has been deemed complete, the City ~~shall~~ will provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.
- ~~2. The Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.~~
- 3.2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

### **SECTION 19.1006 TYPE III REVIEW**

Type III applications are quasi-judicial in nature and are subject to approval criteria that require the exercise of discretion and judgment and about which there may be broad public interest. Impacts may be significant and development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with applicable approval criteria and development standards. The review process requires notice to nearby property owners and at least one public hearing before the Planning Commission.

~~When the Design and Landmarks Committee is required to conduct a design review meeting for applications in the downtown zones per Section 19.907, the design review meeting shall be in addition to the public hearing before the Planning Commission. The procedures for a design review meeting are contained in Section 19.1011.~~

#### **Subsection 19.1006.3 Type III Public Notice**

##### **C. Referral**

Within 7 days after the application has been deemed complete, the City ~~shall~~ will provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of the referral, the City will presume that no comments will be submitted.



1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.
- ~~2. The Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.~~
- 3.2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

## **SECTION 19.1007 TYPE IV REVIEW**

### **Subsection 19.1007.3 Type IV Public Notice**

#### **C. Referral**

Within 7 days after the application has been deemed complete, the City ~~shall~~ will provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of the referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 400 ft of the subject property.
- ~~2. The Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.~~
- 3.2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

## **SECTION 19.1010 APPEALS**

### **Subsection 19.1010.6 Specific Provisions for Appeal of a Type III Decision**

- A. A Type III decision may be appealed by the applicant, applicant's representative, or any other person or organization who participated in the original decision by providing either testimony or evidence on the record leading to the decision by the review authority.
- B. At least 20 days prior to the appeal hearing, the City ~~shall~~ will mail written notice of the appeal hearing to all parties who were entitled to Type III public notice per Subsection 19.1006.3.D.1, interested persons, the appellant(s), and Planning Commission, ~~and Design and Landmarks Committee if they made a recommendation on the initial land use application.~~

### ~~**SECTION 19.1011 DESIGN REVIEW MEETINGS**~~

~~The Design and Landmarks Committee shall conduct a design review meeting when required by Section 19.907 for applications in the downtown zones. The meeting shall occur prior to the initial Planning Commission hearing on the application. Design review meetings provide an opportunity for the Design and Landmarks Committee to hear public comment, evaluate the proposal against relevant approval criteria, and vote on a recommendation to forward to the Planning Commission.~~

#### ~~**Subsection 19.1011.1 Responsibility of City for Design Review Meetings**~~

~~The City shall:~~

- A. ~~Schedule land use applications for design review before the Design and Landmarks Committee at the earliest available scheduled meeting. If the Design and Landmarks Committee is unable to schedule a design review meeting with sufficient time for the Planning Commission to hold a public hearing in compliance with the 120-day decision requirement (or within 100 days for a project meeting all provisions of ORS 197.311), one of the following shall occur:~~
1. ~~The applicant may extend the 120-day decision requirement (or the 100-day decision requirement for a project meeting all provisions of ORS 197.311) per Subsection 19.1001.7.C in order to accommodate Design and Landmarks Committee review of the application.~~
  2. ~~If the applicant does not extend the 120-day decision requirement (or the 100-day decision requirement for a project meeting all provisions of ORS 197.311), the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.6.~~
- B. ~~Provide public notice of the design review meeting per Subsections 19.1011.2.A-C below.~~
- C. ~~Prepare minutes for the design review meeting that include the Design and Landmarks Committee recommendation and the reasons for the recommendation.~~

#### **~~Subsection 19.1011.2 Design Review Meeting Notice Requirements~~**

- A. ~~When a design review meeting is required by Section 19.907, the City shall mail written notice of the design review meeting at least 10 days prior to the meeting. The written notice shall be mailed to:~~
1. ~~The applicant and/or applicant's authorized representative.~~
  2. ~~The owner(s) of record of the subject property.~~
  3. ~~Owners of record of properties located within 300 ft of the perimeter of the subject property.~~
  4. ~~Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.~~
- B. ~~The mailed public notice shall meet the requirements of Subsection 19.1006.3.D.2.~~
- C. ~~At least 5 days prior to the design review meeting, notice of the application shall be posted on the subject property by the applicant and shall remain posted continuously until the meeting. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b.~~

#### **~~Subsection 19.1011.3 Rules of Procedure~~**

- A. ~~Design review meetings shall be conducted in accordance with the bylaws and rules of procedure adopted for the Design and Landmarks Committee by City Council. Additionally, the provisions in Subsections 19.1011.4-11 below apply to all design review meetings.~~
- B. ~~At the commencement of a design review meeting, a statement shall be made to those in attendance that:~~
1. ~~Lists the applicable approval criteria.~~

- ~~2. States that public comment must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person commenting believes is applicable to the proposal.~~
- ~~C. The design review meeting is not a public hearing, but shall be organized in the following manner:
  - ~~1. The applicant shall have an opportunity to make a presentation on the application.~~
  - ~~2. The public shall be allowed to comment on the application.~~
  - ~~3. The Design and Landmarks Committee shall deliberate on the application and presentation and shall make findings and a recommendation on the application per Subsection 19.1011.10.~~~~
- ~~D. An abstaining or disqualified member of the committee shall be counted for purposes of forming a quorum. If all members of the committee abstain or are disqualified, the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.6.~~

#### **~~Subsection 19.1011.4 Challenges to Impartiality~~**

- ~~A. A meeting participant may challenge the qualifications of a member of the committee to participate in the recommendation. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, or other facts from which the challenger has concluded that the member of the committee cannot participate in an impartial manner.~~
- ~~B. The challenged person shall have an opportunity to respond to the challenge. The challenge and any response to the challenge shall be incorporated into the record of the meeting.~~

#### **~~Subsection 19.1011.5 Financial Interests and Conflicts of Interest~~**

~~An employee or elected or appointed official of the City who has a direct or substantial financial interest in a proposal may not give an official opinion to the hearing body on the proposal. An elected or appointed official of the City who has a conflict of interest shall refrain from participating as a public official in any discussion or debate on the proposal out of which the actual conflict arises or from voting on the proposal per ORS 244.~~

#### **~~Subsection 19.1011.6 Ex Parte Contacts~~**

~~Committee members shall reveal any relevant premeeting or ex parte contacts at the commencement of the design review meeting. If such contacts have impaired the member's impartiality or ability to vote on the proposal, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication at the commencement of the meeting on the proposal.~~

#### **~~Subsection 19.1011.7 Disqualification~~**

~~Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of the committee who are present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.~~

#### **~~Subsection 19.1011.8 Burden and Nature of Proof~~**

~~The applicant shall bear the burden of proof and persuasion that the proposal complies with all applicable approval criteria and development standards. The applicant and any opponents may~~

~~submit a set of written findings or statements of factual information which are intended to demonstrate that the proposal complies, or fails to comply, with any or all applicable criteria and standards.~~

**~~Subsection 19.1011.9 Continuance of Meeting~~**

- A. ~~— A design review meeting may be continued if the Planning Director determines that there is sufficient time to hold a continued meeting before the Design and Landmarks Committee and a public hearing before the Planning Commission within the required 120 days or if the applicant waives the 120-day decision requirement (or the 100-day decision requirement for a project meeting all provisions of ORS 197.311) per Subsection 19.1001.7.C.~~
- B. ~~— Design review meeting continuance proceedings shall be per Subsection 19.1009.11.~~

**~~Subsection 19.1011.10 Design Review Recommendation~~**

~~Following the close of the public portion of the design review meeting, the Design and Landmarks Committee shall prepare a written report to the Planning Commission that recommends either approval, approval with conditions, or denial of the application.~~

- A. ~~— The written recommendation shall contain the following:~~
- ~~1. — The applicable approval criteria against which the application was evaluated.~~
  - ~~2. — A statement of the facts that the committee relied upon to determine whether the application satisfied or failed to satisfy each applicable approval criterion and development standard.~~
  - ~~3. — The decision to recommend approval or denial of the application, and, if the recommendation is for approval, any recommended conditions of approval. Recommended conditions of approval shall ensure conformance with the applicable approval criteria and development standards and mitigate the anticipated impacts, if any, of the proposal.~~
- B. ~~— The recommendation of the Design and Landmarks Committee shall be forwarded to the Planning Commission, which shall consider the recommendation and integrate it into the review process applicable to the proposal.~~
- C. ~~— Design and Landmarks Committee recommendations are not appealable.~~

**~~Subsection 19.1011.11 Record of Proceedings~~**

~~The City shall prepare and maintain minutes of all proceedings in accordance with the bylaws adopted by the City Council for the Design and Landmarks Committee.~~

## **Exhibit C**

### **PROPOSED CODE AMENDMENTS RELATED TO RETIREMENT OF THE DESIGN AND LANDMARKS COMMITTEE (DLC) (clean version)**

#### **TITLE 2 ADMINISTRATION AND PERSONNEL**

#### **CHAPTER 2.10 BOARDS, COMMITTEES, AND COMMISSIONS GENERALLY**

##### **SECTION 2.10.010 APPLICABILITY**

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- E. Park and Recreation Board (MMC 2.12);
- F. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- G. Public Safety Advisory Committee (MMC 2.24); and
- H. Milwaukie Arts Committee (MMC 2.17).

#### **CHAPTER 2.16 PLANNING COMMISSION**

##### **SECTION 2.16.010 ESTABLISHED—PURPOSE**

~~B.~~—*[subsection deleted]*

#### **CHAPTER 2.17 MILWAUKIE ARTS COMMITTEE**

##### **SECTION 2.17.010 ESTABLISHMENT**

There is created a Milwaukie Arts Committee whose duties and responsibilities are as follows:

- A. Support and promote the arts, artists, and art education within the Milwaukie area;
- B. Work cooperatively with other community groups and sources including, but not restricted to, Milwaukie's neighborhood district associations, North Clackamas School District, North Clackamas Parks and Recreation District, Clackamas Arts Action Alliance, New Century Players, Portland Waldorf and other schools in and around Milwaukie, Ledding Library, local businesses, area arts guilds and other groups already existing, or hereafter established, to promote the arts in the community.

**CHAPTER 2.18 ~~DESIGN AND LANDMARKS COMMITTEE~~** *[chapter content deleted—reserve chapter number for future use]*

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## **TITLE 14 SIGNS**

### **CHAPTER 14.04 GENERAL PROVISIONS**

#### **SECTION 14.04.030 DEFINITIONS**

Sign, Nonconforming. “Nonconforming sign” means a sign that complied with applicable standards when created or modified but which does not comply with existing standards. Signs that did not require Planning Commission approval when created will not be considered nonconforming if approval from that body is currently required.

### **CHAPTER 14.16 SIGN DISTRICTS**

#### **SECTION 14.16.060 DOWNTOWN ZONES**

##### **H. Illumination**

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs must not be internally illuminated. Features on an awning sign may be externally illuminated subject to review and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination must be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
  - a. The sign should be a unique design that responds to the downtown design guidelines in Subsection 19.508.4.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.

## **CHAPTER 14.32 ADJUSTMENTS**

### **SECTION 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS**

- A. The Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard will not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.
- B. Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the downtown design guidelines in Subsection 19.508.4, and the adjustment meets either of the following criteria:
1. Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard does not constitute a hardship; or
  2. The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

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## **TITLE 19 ZONING**

### **CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS**

#### **SECTION 19.401 WILLAMETTE GREENWAY ZONE WG**

##### **Subsection 19.401.6 Criteria**

The following will be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintenance of or increase in views between the Willamette River and downtown;

- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Conformance to applicable Comprehensive Plan policies;
- J. The request is consistent with applicable plans and programs of the Division of State Lands;
- K. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

## **CHAPTER 19.900 LAND USE APPLICATIONS**

### **SECTION 19.907 DOWNTOWN DESIGN REVIEW**

#### **Subsection 19.907.3 Review Process**

##### **B. Review Types**

To achieve the purpose of the downtown design standards and guidelines, there are three downtown design review processes through which to apply for approval:

##### **1. Type I**

The ministerial review track provides for a Type I review process pursuant to Section 19.1004 using the design standards in Section 19.508.

##### **2. Type II**

The administrative review track provides for a Type II process pursuant to Section 19.1005 that requires staff review utilizing the design standards and applicable guidelines in Section 19.508.

##### **3. Type III**

The discretionary review track provides for a Type III review process pursuant to Section 19.1006, through which the Planning Commission determines compliance with the downtown design guidelines in Section 19.508.

#### **Subsection 19.907.6 Variances**

- A. Variances cannot be granted for the downtown design standards of Section 19.508. Applications unable to meet one or more standards must meet the applicable downtown design guideline(s) in Subsection 19.508.4 instead and use the Type III discretionary downtown design review process.
- B. Variances can be granted for the downtown development standards of Section 19.304 unless otherwise specified, through the variance review process in Section 19.911.

### **SECTION 19.911 VARIANCES**

#### **Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone**

##### **C. Review Process**

The building height variance will be subject to Type III review and approval by the Planning Commission, in accordance with Chapter 19.907. The building height variance will be consolidated with downtown design review.



1. Because the building height variance provides substantial flexibility and discretion, additional time may be required for public input and technical evaluation of the proposal. To use this option, the applicant will sign a waiver of the 120-day decision requirement.
2. A special application fee may be required to use this Type III option to allow the City to contract with a registered architect to assist in the review of the height variance application.

## **CHAPTER 19.1000 REVIEW PROCEDURES**

### **SECTION 19.1005 TYPE II REVIEW**

#### **Subsection 19.1005.3 Type II Public Notice**

##### **A. Referral**

Within 7 days after the application has been deemed complete, the City will provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.
2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

### **SECTION 19.1006 TYPE III REVIEW**

Type III applications are quasi-judicial in nature and are subject to approval criteria that require the exercise of discretion and judgment and about which there may be broad public interest. Impacts may be significant and development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with applicable approval criteria and development standards. The review process requires notice to nearby property owners and at least one public hearing before the Planning Commission.

#### **Subsection 19.1006.3 Type III Public Notice**

##### **C. Referral**

Within 7 days after the application has been deemed complete, the City will provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of the referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.
2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

## **SECTION 19.1007 TYPE IV REVIEW**

### **Subsection 19.1007.3 Type IV Public Notice**

#### **C. Referral**

Within 7 days after the application has been deemed complete, the City will provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of the referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 400 ft of the subject property.
2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

## **SECTION 19.1010 APPEALS**

### **Subsection 19.1010.6 Specific Provisions for Appeal of a Type III Decision**

- A. A Type III decision may be appealed by the applicant, applicant's representative, or any other person or organization who participated in the original decision by providing either testimony or evidence on the record leading to the decision by the review authority.
- B. At least 20 days prior to the appeal hearing, the City will mail written notice of the appeal hearing to all parties who were entitled to Type III public notice per Subsection 19.1006.3.D.1, interested persons, the appellant(s), and Planning Commission.

### **~~SECTION 19.1011 DESIGN REVIEW MEETINGS~~ [entire section deleted]**