



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday, February 24, 2015, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Renaming Lake Rd to Main St (*to be sent under separate cover*)
Applicant: City of Milwaukie
File: N/A
Staff: Jason Rice
 - 5.2 Summary: Medical Marijuana
Applicant: City of Milwaukie
File: ZA-14-04
Staff: Denny Egner
 - 5.3 Summary: Moving Forward Milwaukie Downtown Plan and Code Amendments #4
continued from 2/10/15
Applicant: City of Milwaukie
File: CPA-14-02, ZA-14-02
Staff: Li Alligood and Denny Egner
 - 5.4 Summary: Motion to Approve the Findings and Conditions for Riverway Ln Variance
Applicant: Carter Case
File: VR-14-03
Staff: Denny Egner for Vera Kalias
- 6.0 Worksession Items**
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - March 10, 2015
 - 1. Public Hearing: CPA-14-02 MFM Downtown Plan and Code Amendments #5
 - 2. Worksession: MFM Central Milwaukie Plan and Code Amendments
 - March 24, 2015
 - 1. Public Hearing: VR-2015-001 Cambridge Ln ADU Variance
 - 2. Public Hearing: DR-2015-001 Kellogg Bike/Ped Bridge Connections
 - 3. Worksession: MFM Central Milwaukie Plan and Code Amendments

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Sine Bone, Chair
Wilda Parks, Vice Chair
Shannah Anderson
Scott Barbur
Greg Hemer
Shaun Lowcock
Gabe Storm

Planning Department Staff:

Denny Egner, Planning Director
Li Alligood, Senior Planner
Brett Kelter, Associate Planner
Vera Kolia, Associate Planner
Alicia Martin, Administrative Specialist II



To: Planning Commission

Through: Dennis Egner, Planning Director

From: Jason Rice, Engineering Director/Interim Community Development Director

Date: February 20, 2015, for February 24, 2015, Public Hearing

Subject: Renaming of a portion of Lake Road to Main Street

ACTION REQUESTED

Staff requests the Planning Commission make a recommendation to the City Council for the renaming of Lake Road west of 21st Avenue to Main Street.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

This item was briefly discussed during a January Planning Commission Meeting.

BACKGROUND INFORMATION

During the design of the Portland-Milwaukie Light Rail project, the City chose to locate its light rail station at the "Triangle" site. At the time, it was recognized that the site had frontage on 21st Avenue and Lake Road and that this meant the station's official wayfinding would need to reference either of those two streets.

At the same time, adjustments were being made to the intersection of 21st and Lake Road to create a safer crossing for pedestrians and better vision for vehicular traffic by running the west leg into 21st at a 90-degree angle. With this new "T", rather than the previous "Y" alignment, the western section of road is better identified with Main Street rather than Lake Road.

Because of this alignment, and the City's opinion that "Main Street" was a better identifier than "21st Avenue" or "Lake Road" for the Light Rail Station, it is staff's opinion that the name of this section of road should be changed.

In order to make this change, State Law (ORS 227.120) states:

"Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council

the renaming of any existing street, highway or road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area.”

CONCURRENCE

Planning, Engineering and Building Departments agree that this section should be renamed in order to preserve the station identification as “Milwaukie – Main Street” as planned.

FISCAL IMPACTS

If the Commission chooses to make this recommendation to Council, there will be no fiscal impact to the City. However, if the Commission chooses not to make the recommendation and the Council concurs, the City would need to fabricate new signs for the Milwaukie Light Rail Station in order to properly identify it with its frontage on either Lake Road or 21st Avenue.

Privately, this road name change will impact one residential property’s address. The residents of that address would need to update their identifying documents such as driver’s licenses and notify billing agencies of the change.

WORK LOAD IMPACTS

To complete the process, staff will need to notice and attend a public hearing with Council. This process will take approximately 4-5 hours of Engineering Department time.

ALTERNATIVES

The Commission could elect to not make a recommendation to City Council for the remaining of Lake Road west of 21st Avenue to Main Street. By not making the recommendation, the signage at Milwaukie’s Light Rail Station would need to either read “Milwaukie – Lake Road” or “Milwaukie – 21st Avenue”.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	E- Packet
1. Map Showing Area to be renamed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

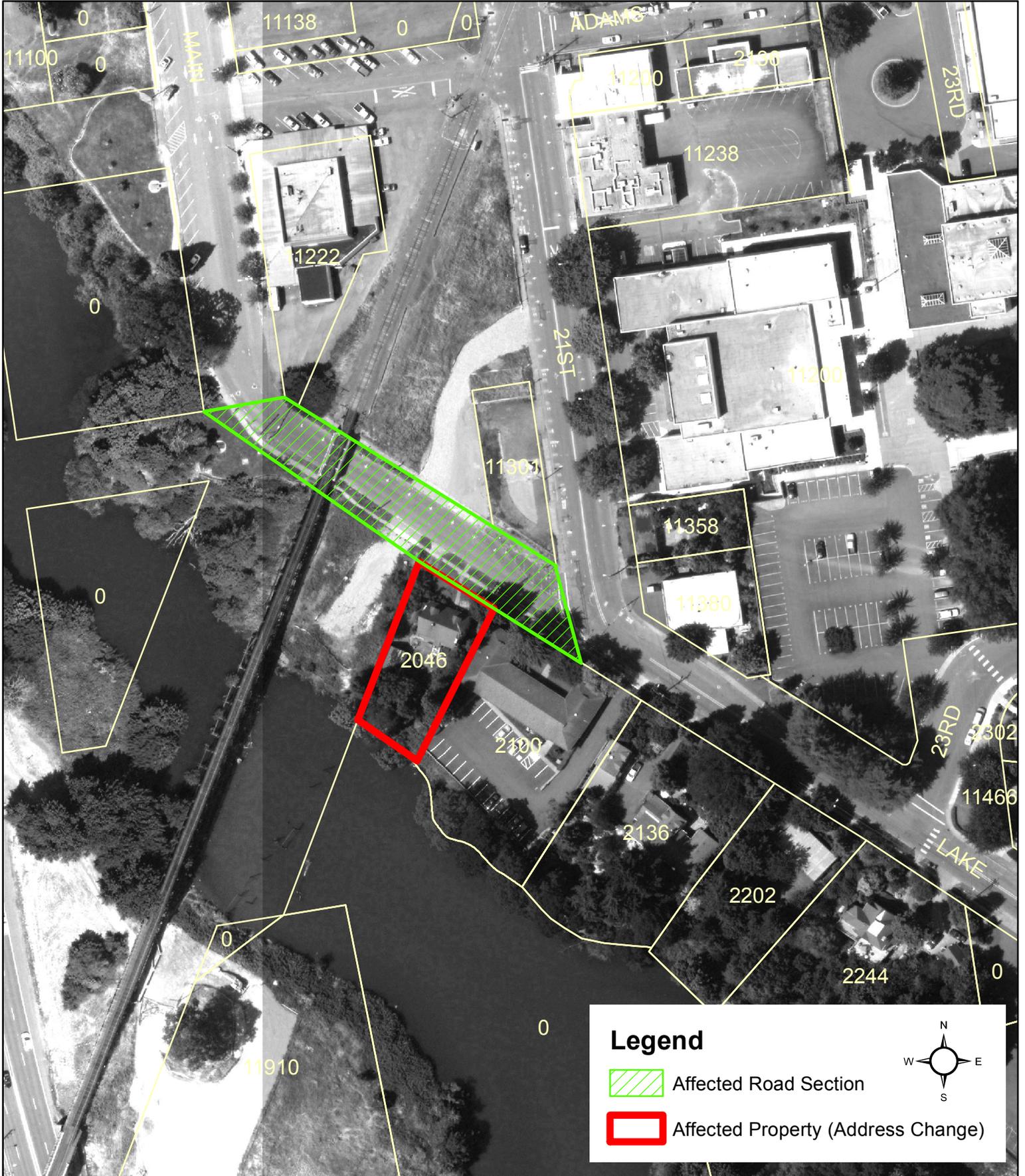
Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/meetings>.

Attachment 1

Lake Road to Main Street Name Change

Affected Area





MILWAUKIE

Dogwood City of the West

To: Planning Commission

From: Dennis Egner, Planning Director

Date: January 22, 2015, for February 24, 2015, Public Hearing

Subject: **File:** ZA-14-04
Applicant: City of Milwaukie
Owners/Addresses/Taxlots: Citywide - multiple owners
NDA: Citywide – multiple NDAs

ACTION REQUESTED

Recommend approval of application ZA-14-04 and recommended Findings of Approval found in Attachment 1 Exhibit A. This action would recommend City Council approval of zoning ordinance text amendments to allow medical marijuana facilities to be listed as a permitted use in commercial and industrial zones where pharmacies/drug stores are currently allowed.

BACKGROUND INFORMATION

A. State Law

State law sets forth the procedures and general regulations for the siting of medical marijuana facilities in Oregon. ORS Section 475.314 requires that the facilities be located in commercial and industrial areas at least 1000 feet from schools and 1,000 ft from any other medical marijuana facility. The 2014 legislature provided clarification regarding the degree to which local governments can regulate the facilities and amended ORS Section 475.314 to allow locally-adopted "reasonable regulations" that address the location and hours of operation of facilities. The local regulations may also address the manner in which a facility may dispense medical marijuana.

Note: *Current Oregon law only addresses medical marijuana facilities. The legislature and the Oregon Liquor Control Commission are currently working on new regulations related to the sale and production of marijuana for recreational use. The new regulations are not expected to be completed until late 2015.*

SB 1531, signed into law by Governor Kitzhaber on March 19, 2014, is the bill that allows cities and counties to enact local regulations on medical marijuana facilities. SB 1531 also allowed cities and counties to enact a moratorium on the operation of medical marijuana facilities until May 1, 2015. On April 15, 2014, City Council enacted a temporary ban on medical marijuana facilities to allow additional time to consider proper zoning and other regulations for the facilities. The ordinance established a city moratorium until April 30, 2015.

B. Planning Commission Worksessions

The Planning Commission has held three worksessions to help craft a proposal for the February 24, 2015 public hearing. Worksessions were held on July 22 and August 26, 2014 and on January 13, 2015. At these worksessions, the Commission discussed both locational and operational issues for medical marijuana facilities and proposed that the facilities be allowed in locations where pharmacies/drug stores are currently allowed. The Commission supported imposing a local 1,000 ft buffer around schools consistent with state law and limitations on hours, product display, and colocation with other businesses.

C. Proposal

The proposal is to amend the text of the following commercial and industrial zones to allow medical marijuana as a permitted use subject to special development and operational standards:

- Section 19.303 Residential-Office-Commercial Zone R-O-C
- Section 19.304 Downtown Zones:
 - Downtown Storefront - DS
 - Downtown Commercial - DC
 - Downtown Office - DO
 - Downtown Residential - DR
- Section 19.306 Limited Commercial Zone C-L
- Section 19.307 General Commercial Zone C-G
- Section 19.308 Community Shopping Commercial Zone C-CS
- Section 19.309 Manufacturing Zone M
- Section 19.312 Tacoma Station Area Manufacturing Zone M-TSA

Note: *At the January 13 worksession, staff suggested that medical marijuana facilities not be allowed in the M-Manufacturing Zone. Upon further research, staff discovered that the M-zone allows a wide range of commercial uses provided that at least 25% of the development project is a manufacturing or industrially-related use. Given that a pharmacy/drug store could currently locate in the M-Zone under this provision, the proposal before the Commission has been written to allow medical marijuana facilities in this zone.*

The proposal includes the following special development and operational standards for medical marijuana facilities:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector-Campbell school sites.

2. A medical marijuana facility shall not be co-located inside another business or use the same building entrance as another business.
3. Display of marijuana products that are visible from outside of the facility is prohibited.
4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 AM and 10:00 PM.

Attachment 2 is a map which depicts the areas in the City that would be eligible for the location of medical marijuana facilities. The map includes a 1,000 ft buffer around each of the schools. It also provides an example of a 1,000 ft buffer to illustrate the required separation distance between medical marijuana facilities. Currently, a medical marijuana facility exists in the City of Portland, along the west side of McLoughlin Blvd, just north of the City limits. The location of this facility will prevent a new facility from being sited in the most northern portion of the MTSA zone (properties north of the Springwater Trail and property on the north side of Moores St to the east of McLoughlin Blvd).

D. Comprehensive Plan and Zoning Designations

All of the properties affected by this proposal are zoned for commercial or industrial use (see the list of zones in section C above). The zoning map is consistent with the land use designations set forth by the Land Use Map (Map 7) in the Comprehensive Plan. The plan map designations and zones correspond as follows:

Comprehensive Plan Map	Zoning Map
C-Commercial	C-L; C-G; C-CS
I-Industrial	M; M-TSA
TC-Town Center	DS; DC; DO; DR; R-O-C

KEY ISSUES

Summary

Staff has identified the following key issue for the Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1 – Exhibit A) and generally require less analysis and discretion by the Commission.

- A. Is the proposed amendment consistent with the relevant goals, objectives, and policies of the Comprehensive Plan?

Relevant goals, objectives, and policies include:

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

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

- 2) Policy 3 of Objective #4 – Industrial Land Use states:

Lands designated for industrial use as shown on Map 7, Land Use, should be reserved for industrial, manufacturing, distribution, and supporting land uses, except where otherwise indicated in the Tacoma Station Area Plan.

3) Objective #6 – Commercial Land Use states:

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

4) Objective #8 – Commercial Land Use – Community Center states:

To provide the weekly and comparison goods shopping needs of the City's and surrounding areas' residents.

5) Policy 4 under Objective #8 Commercial Land Use – Community Center reads:

The Center will increase comparative and one-stop shopping services, thereby reducing vehicle trips outside the City, and providing better shopping services to the area.

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

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

7) Policy 3 under Objective #10 Commercial Land Use – Convenience Centers reads:

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

8) Policy 1 under Objective #12 Town Center reads:

Downtown Milwaukie, and specifically those lands designated as Town Center on Map 7, will be considered a Town Center, serving area-wide needs as well as the needs of local residents.

Analysis

Is the proposed amendment consistent with the relevant goals, objectives, and policies of the Comprehensive Plan?

There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether the list of permitted uses for a given zone should be expanded to include a retail use that is not listed elsewhere in the code. Rather, the policies and objectives speak generally about commercial areas serving the needs of citizens, ease of access, short shopping trips, convenience, and controlling neighborhood impacts.

The proposed text amendment provides a community benefit by allowing medical marijuana facilities to locate in commercial and industrial zones within the City, thereby increasing convenience and accessibility for Milwaukie residents who require access to this type of retail product. For this reason, the following policies and objectives are satisfied by the proposal:

- Objective #6 – Commercial Land Use
- Objective #8 – Commercial Land Use – Community Center
- Policy 4 under Objective #8 Commercial Land Use – Community Center
- Objective #10 – Commercial Land Use – Convenience Centers
- Policy 1 under Objective #12 Town Center

Policy 3 under Objective #10 Commercial Land Use – Convenience Centers addresses neighborhood compatibility. The proposed amendments manage impacts on neighborhoods by limiting the hours of operation and by regulating the display of products.

Policy 3 of Objective #4 – Industrial Land Use appears to present a conflict with the proposal that medical marijuana facilities be allowed in the M-Zone given that the policy states “industrial lands should be reserved for industrial purposes.” The M-zone currently allows a wide range of retail uses provided that at least 25% of the development site is developed for manufacturing or industrial purposes. Because a portion of any development site is reserved for manufacturing or industrial use and because similar pharmacy/drug store uses are currently allowed in the zone, the proposed amendment does not conflict with Policy 2.

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

1. Recommend approval of the proposed Zoning Ordinance text amendments to allow medical marijuana facilities in the specific commercial and industrial zones.
2. Recommend adoption of the attached recommended Findings of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

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

This application is subject to Type V review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above and forward a recommendation to City Council.

The Commission has four decision-making options as follows:

- A. Recommend that City Council approve the proposed text amendment as presented in Attachment 1.
- B. Recommend that City Council approve the proposed text amendment with modifications to the materials in Attachment 1.
- C. Recommend that City Council not approve the proposed text amendments.
- D. Continue the hearing.

The application is a legislative action and is not subject to the 120-day clock.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: Milwaukie's Neighborhood District Associations, Metro, the Department of Land Conservation and Development, and the following City of Milwaukie departments: Engineering, Finance, and Police. Notice was also posted at City Hall, Ledding Library, the Public Safety Building, and the Johnson Creek Facility.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	E- Packet
1. Draft Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit A. Recommended Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit B. Proposed Zoning Text Amendments (Underline/Strikeout Version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit C. Proposed Zoning Text Amendments (Clean Version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Medical Marijuana Potentially Eligible Areas	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

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E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-113>.



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

An ordinance of the City Council of the City of Milwaukie, Oregon to amend Title 19 Zoning to allow and regulate medical marijuana facilities in the City. (File #ZA-14-04).

WHEREAS, ORS Section 475.314 allows local governments to adopt "reasonable regulations" for medical marijuana facilities that address the location, hours of operation, and manner in which facilities dispense marijuana;

WHEREAS, ORS Section 475.314 sets minimum state requirements for the licensing of medical marijuana facilities and requires that they only be located in commercial and industrial areas and be at least 1000 feet from schools and 1000 feet from any other medical marijuana facility;

WHEREAS, it is in the public interest to allow medical marijuana facilities in the City to help meet the needs of Milwaukie citizens who require the use of marijuana for medical purposes;

WHEREAS, the Planning Commission held worksessions on July 22, 2014; August 26, 2014, and January 13, 2015 to develop a draft proposal regulating medical marijuana facilities and concluded that such facilities should be located wherever drug stores or pharmacies are located;

WHEREAS, the Planning Commission held a duly advertised public hearing on the amendments on February 24, 2015, with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes, and recommended approval; and

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

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

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

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

Read the first time on _____, 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 _____.

Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

**Recommended Findings in Support of Approval
File ZA-14-04, Zone Text Amendment for Medical Marijuana Facilities**

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

1. The applicant, the Milwaukie Planning Director, has applied for a zoning ordinance text amendment (File ZA-14-04) to add medical marijuana facilities to the list of permitted uses in the following zones:
 - Residential-Office-Commercial Zone - R-O-C
 - Downtown Storefront - DS
 - Downtown Commercial - DC
 - Downtown Office - DO
 - Downtown Residential - DR
 - Limited Commercial Zone - C-L
 - General Commercial Zone - C-G
 - Community Shopping Commercial Zone - C-CS
 - Manufacturing Zone - M
 - Tacoma Station Area Manufacturing Zone - M-TSA
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 19.1000 Review Procedures
3. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing before the Planning Commission was held on February 24, 2015 as required by law.
4. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendment is proposed by the City of Milwaukie and was initiated by the City Planning Director on December 12, 2014.
 - b. MMC Section 19.1008 establishes requirements for Type V review.
 - (1) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment and review. Opportunity for public comment and review has been provided. Public notice in the form of email to the Neighborhood District Associations, posted notices, and information on the City website have publicized the Planning Commission's hearing on the proposed amendment to encourage comment by any interested party.
 - (2) MMC Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public. A notice of the Planning Commission's February 24, 2015, hearing was posted at City Hall, the Ledding Library, the Public Service Building, and the City's Johnson Creek Building Offices on January 21, 2015.

- (3) MMC Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The Planning Director has determined that the proposal affects a large geographic area. Notice to individual property owners was not provided.
- (4) MMC Subsection 19.1008.3.B and C require notice of a Type V application to be sent to Metro 45 days prior to the first evidentiary hearing and to the Department of Land Conservation and Development 35 days prior to the first evidentiary hearing. This notice was sent to Metro on December 12, 2014 and DLCDD on December 22, 2014.
- (5) MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the application would affect the permissible uses of land for those property owners. Given that the proposal will expand the range of uses permitted within each of the zones rather than place limits on existing permitted uses, no Measure 56 notices were sent.
- (6) MMC Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held a duly advertised public hearing on February 24, 2015, and passed a motion recommending that the City Council approve the zoning ordinance text amendment. The City Council held a duly advertised public hearing on April 7, 2015, and approved the text amendment.

5. MMC Section 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5.A establishes the review process for zoning text amendments.

The code states that changes to Title 19 shall be subject to Type V review per MMC 19.1008.

- b. MMC 19.902.5.B establishes five criteria (listed below) for approval of changes to the zoning ordinance text. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.

- (1) The proposed amendment is consistent with other provisions of the Milwaukee Municipal Code.

The proposed code amendment allows medical marijuana facilities in locations where drugstores/pharmacies are permitted. The retail nature of medical marijuana facilities is similar to that of drugstores/pharmacies and therefore does not conflict with any provision of the Milwaukee Municipal Code. All other code provisions can operate and be enforced with this change.

- (2) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

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

Relevant goals, objectives, and policies include:

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

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

- Policy 3 of Objective #4 – Industrial Land Use states:
Lands designated for industrial use as shown on Map 7, Land Use, should be reserved for industrial, manufacturing, distribution, and supporting land uses, except where otherwise indicated in the Tacoma Station Area Plan.
- Objective #6 – Commercial Land Use states:
To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.
- Objective #8 – Commercial Land Use – Community Center states:
To provide the weekly and comparison goods shopping needs of the City's and surrounding areas' residents.
- Policy 4 under Objective #8 Commercial Land Use – Community Center reads:
The Center will increase comparative and one-stop shopping services, thereby reducing vehicle trips outside the City, and providing better shopping services to the area.
- Objective #10 – Commercial Land Use – Convenience Centers states:
To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.
- Policy 3 under Objective #10 Commercial Land Use – Convenience Centers reads:
Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.
- Policy 1 under Objective #12 Town Center reads:
Downtown Milwaukie, and specifically those lands designated as Town Center on Map 7, will be considered a Town Center, serving area-wide needs as well as the needs of local residents.

The relevant goals, objectives, and policies are satisfied for the following reasons:

There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether the list of permitted uses for a given zone should be expanded to include a retail use that is not listed elsewhere in the code. Rather, the policies and objectives speak generally about commercial areas serving the needs of citizens, ease of access, short shopping trips, convenience, and controlling neighborhood impacts.

The proposed text amendment provides a community benefit by allowing medical marijuana facilities to locate in commercial and industrial zones within the City, thereby increasing convenience and accessibility for Milwaukie residents who require access to this type of retail product. For this reason, the following policies and objectives are satisfied by the proposal:

- Objective #6 – Commercial Land Use

- Objective #8 – Commercial Land Use – Community Center
- Policy 4 under Objective #8 Commercial Land Use – Community Center
- Objective #10 – Commercial Land Use – Convenience Centers
- Policy 1 under Objective #12 Town Center

Policy 3 under Objective #10 Commercial Land Use – Convenience Centers addresses neighborhood compatibility. The proposed amendments manage impacts on neighborhoods by limiting the hours of operation and by regulating the display of products.

Policy 3 of Objective #4 – Industrial Land Use appears to present a conflict with the proposal that medical marijuana facilities be allowed in the M-Zone given that the policy states “industrial lands should be reserved for industrial purposes.” The M-zone currently allows a wide range of retail uses provided that at least 25% of the development site is developed for manufacturing or industrial purposes. Because a portion of any development site is reserved for manufacturing or industrial use and because similar pharmacy/drug store uses are currently allowed in the zone, the proposed amendment does not conflict with Policy 2.

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

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

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

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

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed by other similar uses i.e., drugstores and pharmacies.

- (5) The proposed amendment is consistent with relevant federal regulations.

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore the proposal is found to be consistent with federal regulations that are relevant to local government planning.

Underline/Strikeout Amendments

Zoning Ordinance

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

"Medical marijuana facility" means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana facility regulations.

CHAPTER 19.300 BASE ZONES

19.303 RESIDENTIAL-OFFICE-COMMERCIAL ZONE R-O-C

In an R-O-C Zone the following regulations shall apply:

19.303.1 Uses Permitted Outright

In an R-O-C Zone the following uses and their accessory uses are permitted outright:

S. Medical marijuana facilities subject to the standards of Subsection 19.303.3.N;

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

19.303.3 Standards

In an R-O-C Zone the following standards shall apply:

N. Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

Proposed Code Amendment

19.304.3 Uses

A. Permitted Uses

Uses allowed in the downtown zones are listed in Table 19.304.3 with a "P." These uses are allowed if they comply with the development and design standards, any applicable design guidelines, and other regulations of this title.

Table 19.304.3 Downtown Zones—Uses					
Use Categories	Downtown Storefront	Downtown Commercial	Downtown Office	Downtown Residential	Downtown Open Space
Commercial/Office					
Medical marijuana facilities	L[12]	L[12]	L[12]	L[12]	N

G. Use Limitations

The following provisions describe the use limitations and correspond with the footnote numbers for uses listed with an "L" in Table 19.304.3.

12. Medical marijuana facilities shall meet the following standards:

- a. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility.
- b. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
- c. Display of marijuana products that are visible from outside of the facility is prohibited.
- d. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.

19.306 LIMITED COMMERCIAL ZONE C-L

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

19.306.1 Uses Permitted Outright

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

F. Medical marijuana facilities subject to the standards of Subsection 19.306.3.L.

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

Proposed Code Amendment
19.306.3 Standards

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

L. Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

19.307 GENERAL COMMERCIAL ZONE C-G

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

19.307.1 Uses Permitted Outright

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

Y. Medical marijuana facilities subject to the standards of Subsection 19.307.3.M;

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

19.307.3 Standards

In a C-G Zone the following standards shall apply:

M. Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

Proposed Code Amendment

19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS

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

19.308.1 Uses

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:
1. Department store uses;
 2. Drug and/or variety store uses;
 3. Food supermarket;
 4. Retail specialty shops.
- B. Such center may include the following additional uses:
1. Eating and drinking establishment;
 2. Financial institution;
 3. Entertainment use (theater, etc.);
 4. Personal service businesses;
 5. Repair, service or maintenance of goods authorized in this district;
 6. Offices, clinics, or trade schools, provided no more than 15% of the total floor space of the center is devoted to such uses;
 7. Medical marijuana facilities subject to the standards of Subsection 19.308.5.K;
 - ~~7~~. Any other uses determined by the Planning Commission to be similar and compatible to the above-listed uses.
- C. Uses prohibited shall be: industrial, warehousing, vehicular sales or service, motels, adult entertainment business, machinery sales or repair, contractor's office, and similar uses as determined by the Planning Commission.

19.308.5 Development Standards

- K. Medical marijuana facilities shall meet the following standards:
1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

19.309 MANUFACTURING ZONE M

19.309.2 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.
- G. Medical marijuana facilities are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection 19.309.7.A.

GH. The following uses are allowed outright and do not need to be part of a project involving an industrial use as described under Subsection 19.309.2.B

1. Construction: Contractors and Related Businesses

This category comprises businesses whose primary activity is performing specific building or other construction-related work, on- or off-site. Examples include: residential and nonresidential building construction, utility/civil engineering construction, specialty trade contractors, and moving companies. Any associated on-site office use must be accessory to the primary construction business.

2. Repair and Service

This category comprises firms involved in repair and servicing of industrial, business, or consumer electronic equipment, machinery, and related equipment, products, or by-products. Examples include: welding shops; machine shops; tool, electric motor, and industrial instrument repair; sales, repair, or storage of heavy machinery, metal, and building materials; heavy truck servicing and repair; tire retreading or recapping; exterminators, including chemical mixing or storage and fleet storage and maintenance; janitorial and building maintenance services that include storage of materials and fleet storage and maintenance; fuel oil distributors; solid fuel yards; and large-scale laundry, dry-cleaning, and carpet cleaning plants. Few customers come to the site, particularly not general public daily customers. Auto service and repair shops for personal vehicles are not included in this category and are not allowed in the M Zone.

Proposed Code Amendment

3. Trade Schools

This category comprises establishments whose primary purpose is to provide training for industrial needs and job-specific certification. Examples include: electronic equipment repair training, truck-driving school, welding school, training for repair of industrial machinery, and other industrial skills training.

19.309.7 Special Development Standards

The following development standards apply to specified uses in the M Zone.

A. Medical Marijuana Facilities

Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

Proposed Code Amendment

19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA**19.312.2 Use Categories**

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a "P." A "C" in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An "L" indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director determination application per Subsection 19.903 to resolve the issue.

Table 19.312.2 M-TSA Zone Uses	
Use Category	Status
G. Limited Uses	
<p>This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.</p> <ol style="list-style-type: none"> 1. Administration and Support in Office Buildings This subcategory comprises uses in office-type buildings that are accessory to industrial uses. They administer, oversee, and manage companies; manage financial assets and securities; do research and design; do laboratory testing; and/or provide document preparation and other industrial support services. Examples include: corporate offices, company business offices, call centers, and other office-type uses that primarily serve other industries and do not generate a significant number of daily customer visits. 2. Retail Commercial and Professional Services This subcategory comprises the sale of goods, materials, and professional services. Examples of retail commercial uses include: restaurants, minimarts, factory outlet stores, and office supply stores. Examples of professional services that cater to employees and customers include: bank branches, day-care centers, dry cleaners, and health clubs. 3. <u>Medical Marijuana Facilities</u> <u>This subcategory allows retail sales of medical marijuana and does not include sales associated with grow or manufacturing facilities.</u> 	L

P = Permitted.

L = Limited.

C = Conditional use.

Proposed Code Amendment

19.312.6 Standards for Limited Uses

The following standards apply to those uses listed as limited (L) in Table 19.312.2.

A. Administration and Support in Office Buildings

Only administrative and support offices which are related to the operation of a manufacturing use on the property are permitted in the M-TSA Zone. No greater than 20% of the floor area of a building may be used for administrative office space.

B. Medical Marijuana Facilities

Medical marijuana facilities shall meet the following standards:

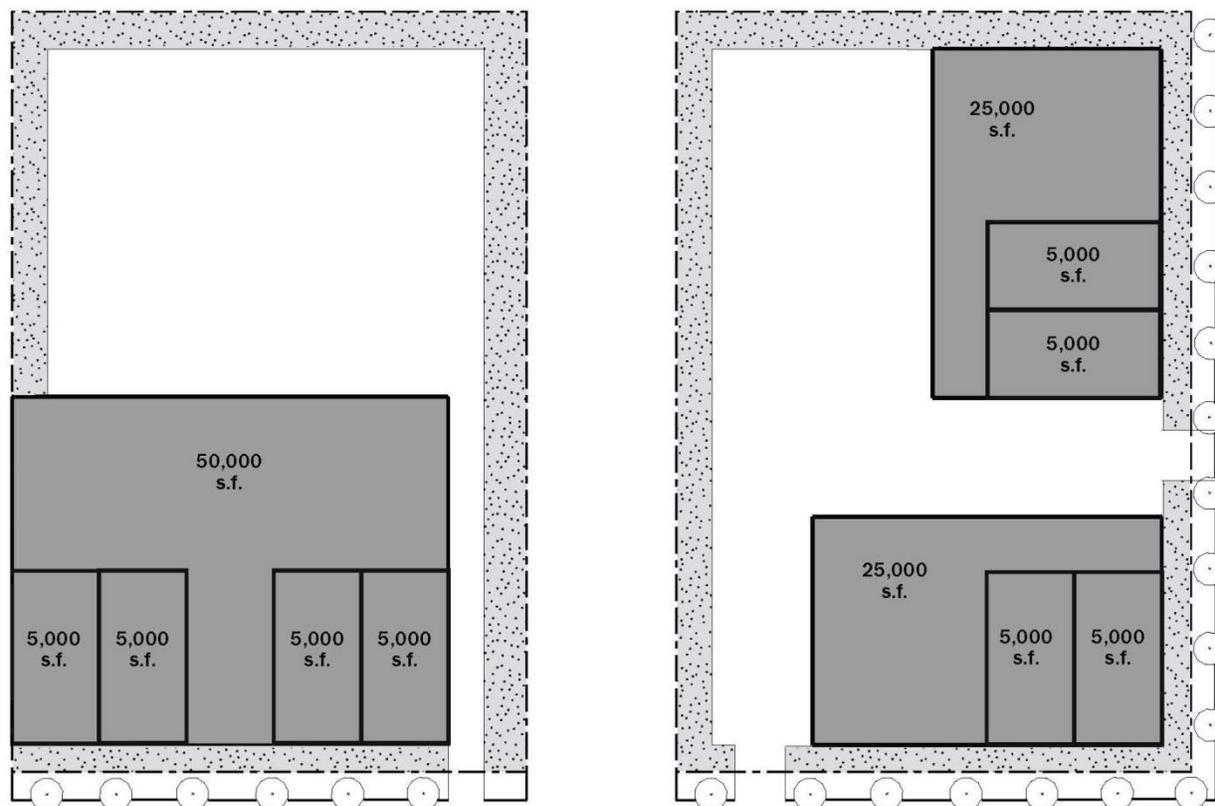
1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
3. Display of marijuana products that are visible from outside of the facility is prohibited.
4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.

BC. Retail Commercial and Professional Services

In order to ensure that these uses are limited in size and scale and do not dominate land intended for manufacturing uses, the following standards apply. See Figure 19.312.6.BC for an illustration of the size limitations.

1. The total gross leasable square footage of an individual retail or professional service use shall not exceed 5,000 sq ft or 40% of the floor area of an individual building, whichever is less.
2. Multiple retail or professional service uses shall not exceed 20,000 cumulative gross leasable sq ft within the same development project. For the purposes of this section, a development project is defined as:
 - a. A single building with 50,000 sq ft or more of gross floor area.
 - b. Multiple buildings, each with less than 50,000 sq ft of gross floor area, that share common development features (such as access, parking, or utilities), whether or not the buildings are located on the same or a different parcel or lot.
3. Retail and professional service uses shall not be permitted in a stand-alone building. They must be included within a building whose primary purpose is for an allowed manufacturing use. The retail commercial or professional service use is not required to be related to the primary manufacturing use. Food carts are permitted as a stand-alone use.

Figure 19.312.6.BC
Size Limitations for Retail and Professional Service Uses



Update for Section Reference Only

19.406.8.C

C. Permitted Uses

Permitted uses in Subarea 4 are the same as those permitted in the base M-TSA Zone, with the following exceptions: Retail commercial and professional service uses may be permitted in a stand-alone building (they do not need to be accessory to a manufacturing use). The size limitations of the base M-TSA Zone Subsections 19.312.6.B.1-2 19.312.6.C.1-2 still apply.

Clean Amendments

Zoning Ordinance

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

"Medical marijuana facility" means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana facility regulations.

CHAPTER 19.300 BASE ZONES

19.303 RESIDENTIAL-OFFICE-COMMERCIAL ZONE R-O-C

In an R-O-C Zone the following regulations shall apply:

19.303.1 Uses Permitted Outright

In an R-O-C Zone the following uses and their accessory uses are permitted outright:

- S. Medical marijuana facilities subject to the standards of Subsection 19.303.3.N;
 - T. Any other use similar to the above and not listed elsewhere.
-

19.303.3 Standards

In an R-O-C Zone the following standards shall apply:

N. Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

Proposed Code Amendment

19.304.3 Uses

A. Permitted Uses

Uses allowed in the downtown zones are listed in Table 19.304.3 with a "P." These uses are allowed if they comply with the development and design standards, any applicable design guidelines, and other regulations of this title.

Table 19.304.3 Downtown Zones—Uses					
Use Categories	Downtown Storefront	Downtown Commercial	Downtown Office	Downtown Residential	Downtown Open Space
Commercial/Office					
Medical marijuana facilities	L[12]	L[12]	L[12]	L[12]	N

G. Use Limitations

The following provisions describe the use limitations and correspond with the footnote numbers for uses listed with an "L" in Table 19.304.3.

12. Medical marijuana facilities shall meet the following standards:

- a. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility.
- b. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
- c. Display of marijuana products that are visible from outside of the facility is prohibited.
- d. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.

19.306 LIMITED COMMERCIAL ZONE C-L

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

19.306.1 Uses Permitted Outright

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

- F. Medical marijuana facilities subject to the standards of Subsection 19.306.3.L.
 - G. Any other use similar to the above and not listed elsewhere.
-

19.306.3 Standards

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

- L. Medical marijuana facilities shall meet the following standards:
 - 1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 - 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 - 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 - 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

19.307 GENERAL COMMERCIAL ZONE C-G

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

19.307.1 Uses Permitted Outright

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

- Y. Medical marijuana facilities subject to the standards of Subsection 19.307.3.M;
 - Z. Any other use similar to the above and not listed elsewhere.
-

19.307.3 Standards

In a C-G Zone the following standards shall apply:

- M. Medical marijuana facilities shall meet the following standards:
 - 1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 - 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 - 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 - 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

Proposed Code Amendment

19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS

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

19.308.1 Uses

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:
1. Department store uses;
 2. Drug and/or variety store uses;
 3. Food supermarket;
 4. Retail specialty shops.
- B. Such center may include the following additional uses:
1. Eating and drinking establishment;
 2. Financial institution;
 3. Entertainment use (theater, etc.);
 4. Personal service businesses;
 5. Repair, service or maintenance of goods authorized in this district;
 6. Offices, clinics, or trade schools, provided no more than 15% of the total floor space of the center is devoted to such uses;
 7. Medical marijuana facilities subject to the standards of Subsection 19.308.5.K;
 8. Any other uses determined by the Planning Commission to be similar and compatible to the above-listed uses.
- C. Uses prohibited shall be: industrial, warehousing, vehicular sales or service, motels, adult entertainment business, machinery sales or repair, contractor's office, and similar uses as determined by the Planning Commission.

19.308.5 Development Standards

- K. Medical marijuana facilities shall meet the following standards:
1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

19.309 MANUFACTURING ZONE M**19.309.2 Permitted Uses**

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.
- G. Medical marijuana facilities are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection 19.309.7.A.
- H. The following uses are allowed outright and do not need to be part of a project involving an industrial use as described under Subsection 19.309.2.B

- 1. Construction: Contractors and Related Businesses

This category comprises businesses whose primary activity is performing specific building or other construction-related work, on- or off-site. Examples include: residential and nonresidential building construction, utility/civil engineering construction, specialty trade contractors, and moving companies. Any associated on-site office use must be accessory to the primary construction business.

- 2. Repair and Service

This category comprises firms involved in repair and servicing of industrial, business, or consumer electronic equipment, machinery, and related equipment, products, or by-products. Examples include: welding shops; machine shops; tool, electric motor, and industrial instrument repair; sales, repair, or storage of heavy machinery, metal, and building materials; heavy truck servicing and repair; tire retreading or recapping; exterminators, including chemical mixing or storage and fleet storage and maintenance; janitorial and building maintenance services that include storage of materials and fleet storage and maintenance; fuel oil distributors; solid fuel yards; and large-scale laundry, dry-cleaning, and carpet cleaning plants. Few customers come to the site, particularly not general public daily customers. Auto service and repair shops for personal vehicles are not included in this category and are not allowed in the M Zone.

Proposed Code Amendment

3. Trade Schools

This category comprises establishments whose primary purpose is to provide training for industrial needs and job-specific certification. Examples include: electronic equipment repair training, truck-driving school, welding school, training for repair of industrial machinery, and other industrial skills training.

19.309.7 Special Development Standards

The following development standards apply to specified uses in the M Zone.

A. Medical Marijuana Facilities

Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
 2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
 3. Display of marijuana products that are visible from outside of the facility is prohibited.
 4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
-

Proposed Code Amendment

19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA**19.312.2 Use Categories**

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a "P." A "C" in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An "L" indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director determination application per Subsection 19.903 to resolve the issue.

Table 19.312.2 M-TSA Zone Uses	
Use Category	Status
G. Limited Uses	
<p>This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.</p> <ol style="list-style-type: none"> 1. Administration and Support in Office Buildings <p>This subcategory comprises uses in office-type buildings that are accessory to industrial uses. They administer, oversee, and manage companies; manage financial assets and securities; do research and design; do laboratory testing; and/or provide document preparation and other industrial support services. Examples include: corporate offices, company business offices, call centers, and other office-type uses that primarily serve other industries and do not generate a significant number of daily customer visits.</p> 2. Retail Commercial and Professional Services <p>This subcategory comprises the sale of goods, materials, and professional services. Examples of retail commercial uses include: restaurants, minimarts, factory outlet stores, and office supply stores. Examples of professional services that cater to employees and customers include: bank branches, day-care centers, dry cleaners, and health clubs.</p> 3. Medical Marijuana Facilities <p>This subcategory allows retail sales of medical marijuana and does not include sales associated with grow or manufacturing facilities.</p> 	L

P = Permitted.

L = Limited.

C = Conditional use.

Proposed Code Amendment

19.312.6 Standards for Limited Uses

The following standards apply to those uses listed as limited (L) in Table 19.312.2.

A. Administration and Support in Office Buildings

Only administrative and support offices which are related to the operation of a manufacturing use on the property are permitted in the M-TSA Zone. No greater than 20% of the floor area of a building may be used for administrative office space.

B. Medical Marijuana Facilities

Medical marijuana facilities shall meet the following standards:

1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.
2. A medical marijuana facility shall not be colocated inside another business or use the same building entrance as another business.
3. Display of marijuana products that are visible from outside of the facility is prohibited.
4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.

C. Retail Commercial and Professional Services

In order to ensure that these uses are limited in size and scale and do not dominate land intended for manufacturing uses, the following standards apply. See Figure 19.312.6.C for an illustration of the size limitations.

1. The total gross leasable square footage of an individual retail or professional service use shall not exceed 5,000 sq ft or 40% of the floor area of an individual building, whichever is less.
2. Multiple retail or professional service uses shall not exceed 20,000 cumulative gross leasable sq ft within the same development project. For the purposes of this section, a development project is defined as:
 - a. A single building with 50,000 sq ft or more of gross floor area.
 - b. Multiple buildings, each with less than 50,000 sq ft of gross floor area, that share common development features (such as access, parking, or utilities), whether or not the buildings are located on the same or a different parcel or lot.
3. Retail and professional service uses shall not be permitted in a stand-alone building. They must be included within a building whose primary purpose is for an allowed manufacturing use. The retail commercial or professional service use is not required to be related to the primary manufacturing use. Food carts are permitted as a stand-alone use.

Proposed Code Amendment

Figure 19.312.6.C
Size Limitations for Retail and Professional Service Uses

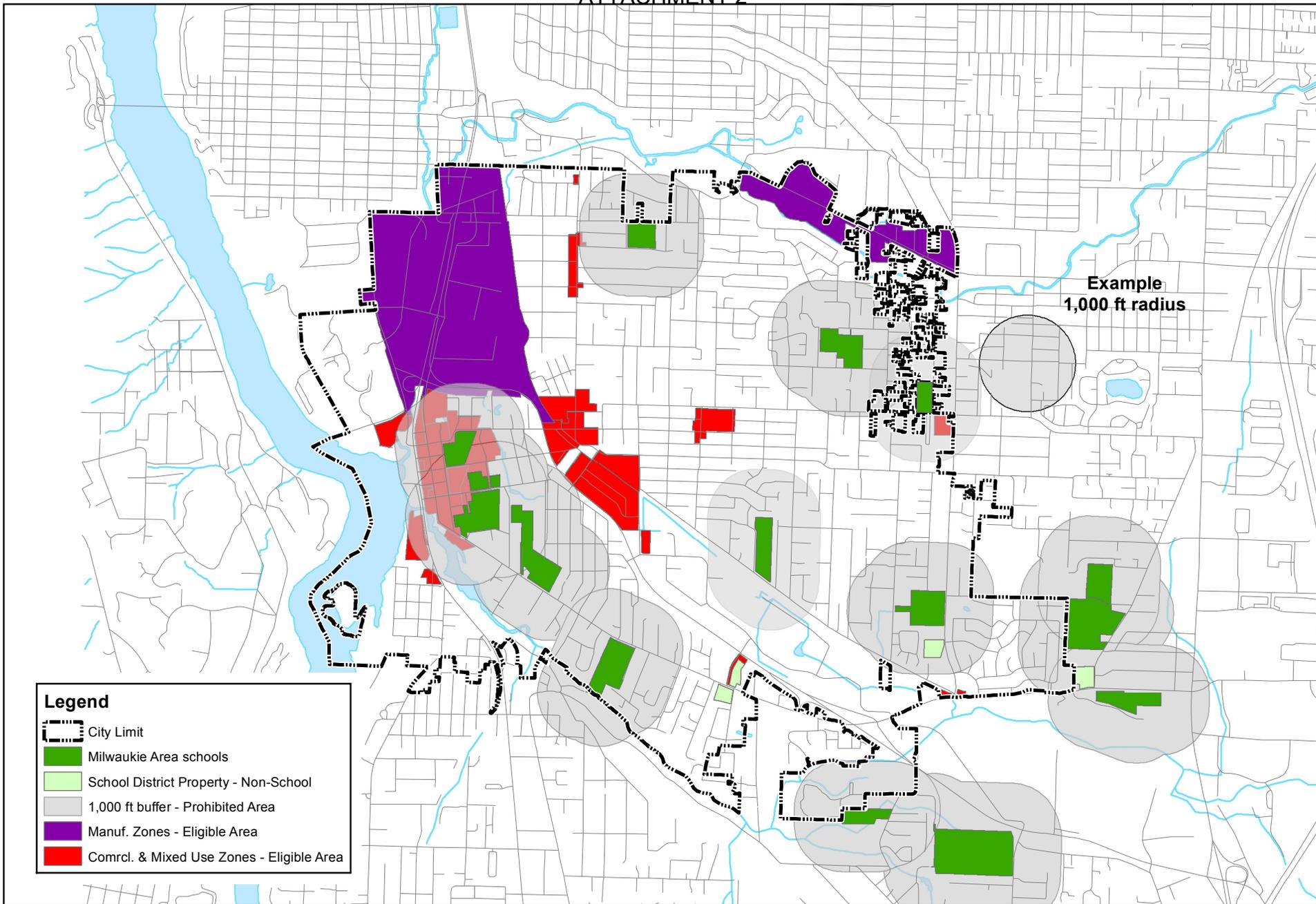


Update for Section Reference Only

19.406.8.C

C. Permitted Uses

Permitted uses in Subarea 4 are the same as those permitted in the base M-TSA Zone, with the following exceptions: Retail commercial and professional service uses may be permitted in a stand-alone building (they do not need to be accessory to a manufacturing use). The size limitations of the base M-TSA Zone Subsections 19.312.6.C.1-2 still apply.



Legend

-  City Limit
-  Milwaukie Area schools
-  School District Property - Non-School
-  1,000 ft buffer - Prohibited Area
-  Manuf. Zones - Eligible Area
-  Comrcl. & Mixed Use Zones - Eligible Area

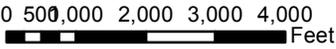
Example
1,000 ft radius



Medical Marijuana Potentially Eligible Areas

Milwaukie Planning Dept.
Data: City of Milwaukie GIS;
Metro RLIS
Date: 1/16/2015

1 inch = 2,743 feet

The information depicted on this map is for general reference only. The City of Milwaukie does not accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.



To: Planning Commission
Through: Denny Egner, Planning Director
From: Li Alligood, Senior Planner
Date: February 17, 2015, for February 24, 2015, Public Hearing
Subject: **File:** CPA-14-02, ZA-14-02
 Downtown Plan and Code Amendments
 Hearing 4 of 4
File Types: Comprehensive Plan Text Amendment, Zoning Ordinance Text
 Amendment, Zoning Ordinance Map Amendment
Applicant: Dennis Egner, Planning Director, City of Milwaukie

ACTION REQUESTED

Open the public hearing for application CPA-14-02, ZA-14-02. Discuss the proposed amendments to the downtown Milwaukie design standards and design review procedures. Take public testimony and provide direction to staff regarding desired revisions to the proposed amendments.

This is the fourth of 4 scheduled hearings on the downtown plan and code amendment package. The revised draft amendments and draft ordinance and Findings of Approval will be provided at the March 10, 2015, hearing.

HEARING SCHEDULE

Due to the complexity of the amendment package, the hearings on the downtown plan and code amendment package have been packaged into 4 dates, each with an anticipated focus on a specific section of the draft amendments. See the [January 13, 2015, staff report](#) for the referenced attachments. A fifth hearing has been added on March 10 to allow the Commission a final opportunity to resolve any outstanding issues and recommend approval of the entire package of amendments.

The remaining hearings schedule and anticipated topic of focus are as follows:

- February 24, 2015: Design standards and design review procedures. This hearing will focus on Sections 19.508 and 19.907, contained in Attachment 3 of the January 13, 2015, staff report.
- March 10, 2015: Staff will return with revised draft amendments, ordinance, and Findings of Approval for Planning Commission recommendation to Council.

BACKGROUND INFORMATION

See the [January 13, 2015](#), staff report for a discussion of project background and the public process and outreach. See the [January 27, 2015](#), staff report for a discussion of proposed revisions to definitions and permitted uses in downtown. See the [February 10, 2015](#), staff report for a discussion of proposed revisions to the downtown development standards.

A. History of Prior Actions and Discussions

- February 10, 2015:** The Commission reviewed the proposed amendments to MMC 19.304.4 Development Standards, and directed staff to: retain the proposed base maximum building heights in downtown; require a 6 ft stepback for each floor beyond the base maximum building height; and add additional ANSI-certified green building programs to 19.304.6 Development Incentives as appropriate.
- January 27, 2015:** The Commission reviewed the proposed amendments to MMC 19.201 Definitions and 19.304.2 Uses, and directed staff to: apply a 20,000 square foot outright permitted size limitation to all nonresidential uses in downtown and require Type III Conditional Use review for uses that exceed that size; and prohibit "production-related office" uses only on the ground floor of Main St.
- January 13, 2015:** The Commission reviewed the proposed amendments to Chapter 4 of the Comprehensive Plan and the *Downtown and Riverfront Land Use Framework Plan*, and directed staff to include the following revisions in the February 24 version: revise the SDCP graphic to change the "station" label to "development site"; retain the McLoughlin Bridge crossing and add text clarifying that access over, under, and through McLoughlin Blvd should be prioritized; and add a project to install wayfinding and historical plaques throughout downtown.

B. Background

The vision document for downtown Milwaukie, the *Downtown and Riverfront Land use Framework Plan*, is implemented through the use, development, and design standards of the zoning ordinance. Use, development, and design standards work together to ensure that new buildings contribute to the streetscape with active ground floor uses; pedestrian-friendly ground-floor design; and visually interesting facades.

"Use standards" refer to the regulations that guide the types of businesses or residences that occupy a building. Generally, in downtown Milwaukie, distinctions are made between ground floor and upper floor uses, as well as ground floor uses on Main St and other streets. The January 27, 2015, public hearing focused on the appropriate type and scale of uses in downtown.

"Development standards" refer to the regulations that guide the height, size, density, and location of development on a site through height minimums and limits, maximum setbacks, and minimum and maximum floor area ratios (FARs). Development standards in downtown Milwaukie also address interior spaces of buildings to ensure that they are flexible and able to accommodate desired retail and restaurant uses. The February 10, 2015, public hearing focused on these standards.

"Design standards" are the regulations that shape the massing, appearance, and function of buildings or developments. Together, development and design standards determine the physical appearance and pedestrian-level experience of a building. The February 24, 2015, public hearing will focus on these standards. In addition, the February 24 hearing will include a discussion of proposed changes to the Downtown Design Review land use review process.

C. Existing Code History

Downtown Design Standards

The February 24 discussion will focus on the downtown design standards contained in a new Section 19.508 Downtown Site and Building Design Standards (commentary beginning on page 43 of Attachment 3) and the revised Downtown Design Review procedures of Section 19.907 (commentary beginning on page 64 of Attachment 3).

Milwaukie's current code contains minimal standards to regulate the design of new development in downtown. All new development is subject to Type III Downtown Design Review, a discretionary process that reviews a proposed development against the Downtown Design Guidelines. However, absent clear standards outlining the expectations for design in downtown, it can be difficult to apply the guidelines.

Live/work units are a new type of residential use in the downtown zones, and new use, development, and design standards are proposed. A new Subsection 19.505.6 Design Standards for Live/Work Units is proposed. See Attachment 1.

Downtown Design Review

Currently, all new development in downtown Milwaukie is subject to Type III Downtown Design Review and evaluation for substantial consistency with the Downtown Design Guidelines. Type III DDR requires review and recommendation by the Design and Landmarks Committee, and approval by the Planning Commission. The process is very discretionary and the outcome is unknown; typically, the proposal must be quite advanced to provide the level of detail need to review the proposal against the guidelines. This process introduces both time (cost) and uncertainty (risk) to the process.

D. Proposed Amendments

The City is proposing amendments to its existing downtown design standards to clarify the community's expectations for new development; encourage building design and construction with durable, high-quality materials; support the development of a cohesive, attractive, and safe downtown area; and encourage private investment.

The City is also proposing amendments to its existing downtown design review process. The proposed amendments would streamline the review process for new development and additions that comply with all of the Downtown Site and Design Standards of the new Section 19.508. A developer desiring more flexibility would have the option to choose a Type III process and review against the Downtown Design Guidelines.

The amendments are intended to implement the vision of the Downtown and Riverfront Land Use Framework Plan (as amended with components of the South Downtown Concept Plan). See Attachment 1 of the [January 27, 2015](#), staff report for an evaluation of how the proposed amendments implement that vision.

The commentary on the amendments (see Attachment 3 of the January 13, 2015, staff report) describes in detail how the proposed amendments would change the regulations in the downtown zones. The following is a summary of the key aspects of the proposed amendments for discussion on February 24. The current design standards can be found [online](#). Page numbers below reference the document numbers rather than the packet numbers.

Key Proposals

Design Standards

- Building façade details: Existing regulations require ground floor transparency (windows and doors), but do not address the design of the building itself. New standards require façade detailing to break down the visual mass and contribute to the rhythm of the pedestrian level. See *Figure 1 and Attachment 3 page 51*.

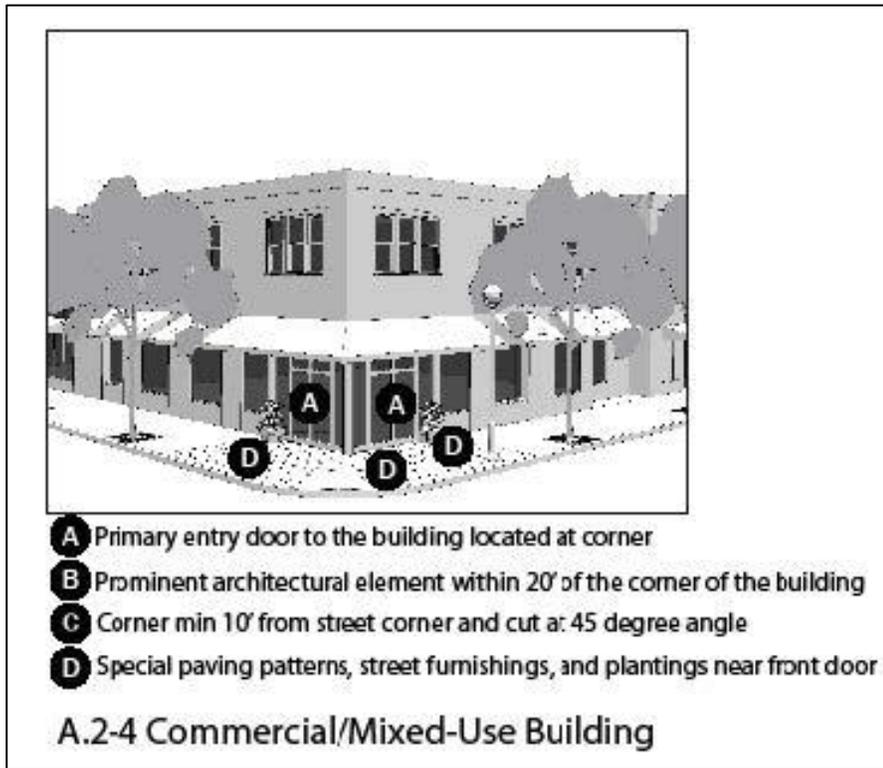
Figure 1. Overview of proposed building façade design requirements.



Source: SERA Architects

- Corners: Corners provide an opportunity to provide a strong architectural statement. New buildings at the corner of two public streets or a street and another public area would be required to address the corner through entrance location, architectural elements, or landscaping and paving treatments. See *Figure 2 and Attachment 3 page 52*.

Figure 2. Overview of proposed corner requirements.



Source: City of Tigard

- Weather protection: New buildings are required to provide permanent canopies or awnings along 50% of the building façade and over all building entrances. See Figure 3 and Attachment 3 page 53.

Figure 3. Overview of proposed weather protection requirements. Canopy (left) and awning (right).



Source: SERA Architects

- Exterior building materials: The current list of prohibited materials is revised and reorganized to list primary, secondary, and accent materials that are permitted. The primary materials are intended to be permanent and high-quality. The proposal provides a palette of materials for use in a development and provides more design flexibility. See *Figure 4 and Attachment 3 page 54*.

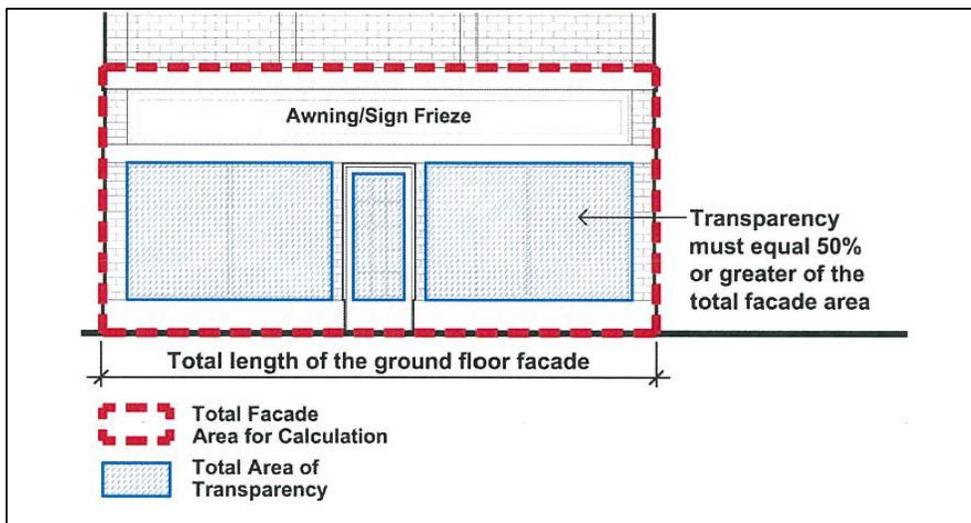
Figure 4. Brick, glass, and wood are primary materials; concrete is a secondary material.



Source: City of Gresham

- Windows and doors: Existing 50% ground floor transparency standard for Main Street is retained; new ground floor transparency standards are applied to the remainder of downtown – 40% of all other streets except McLoughlin Blvd, where the proposed requirement is 30%. Upper level transparency standards are applied to all new buildings. See *Figure 5 and Attachment 3 page 54 – 55*.

Figure 5. Overview of existing Main St ground floor transparency requirements.



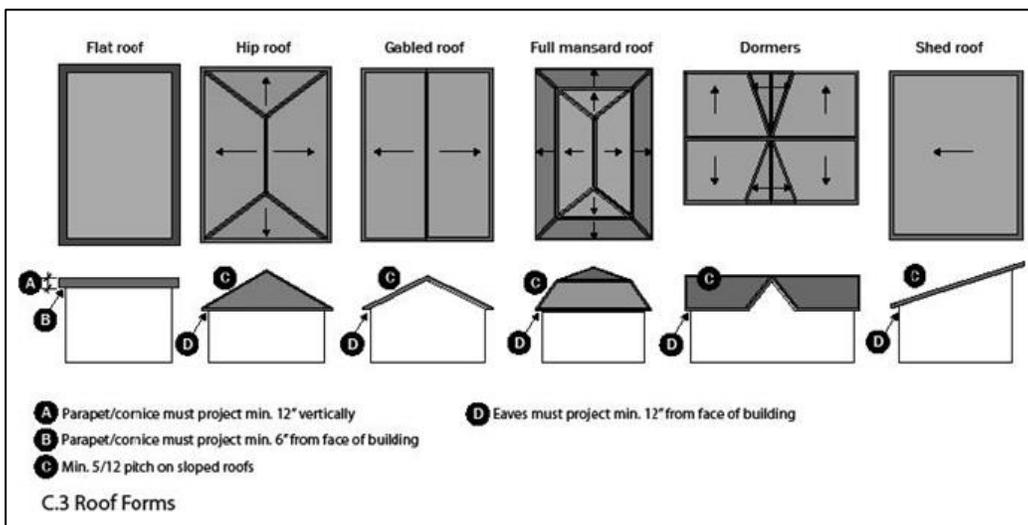
Source: City of Yonkers, NY

The Planning Commission had discussed increasing the ground floor window requirements on Main Street to 60%. However, when staff conducted research and

"test drove" existing buildings, such as North Main Village, against the 50% ground floor transparency requirement, it was discovered that none of the buildings met the 60% threshold and would require Type III Variance Review to be constructed under the proposed standard. As a result, staff has retained the existing 50% standard in the draft amendments.

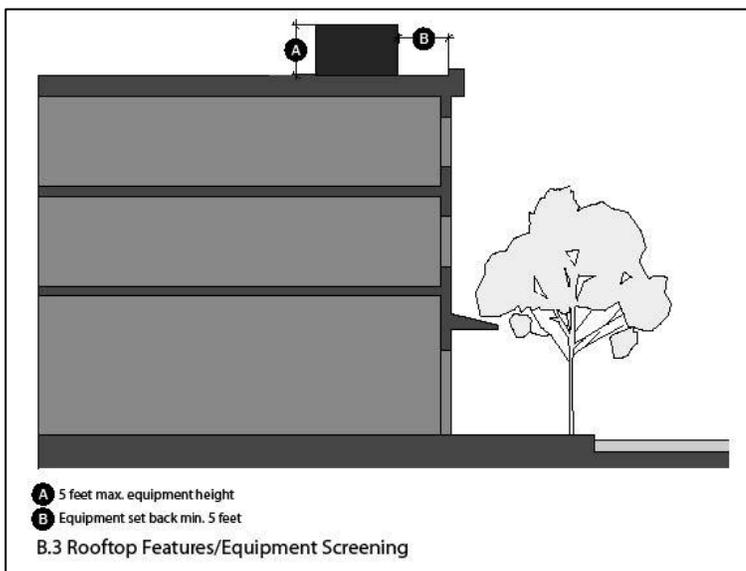
- Roofs and rooftop equipment: The range of allowable roof types is expanded and additional direction regarding how each roof type should be treated or "finished" is provided. New standards require screening of rooftop equipment and include provisions for rooftop structures. See *Figures 6 and 7 and Attachment 3 page 56*.

Figure 6. Overview of proposed roof types and treatments.



Source: City of Tigard

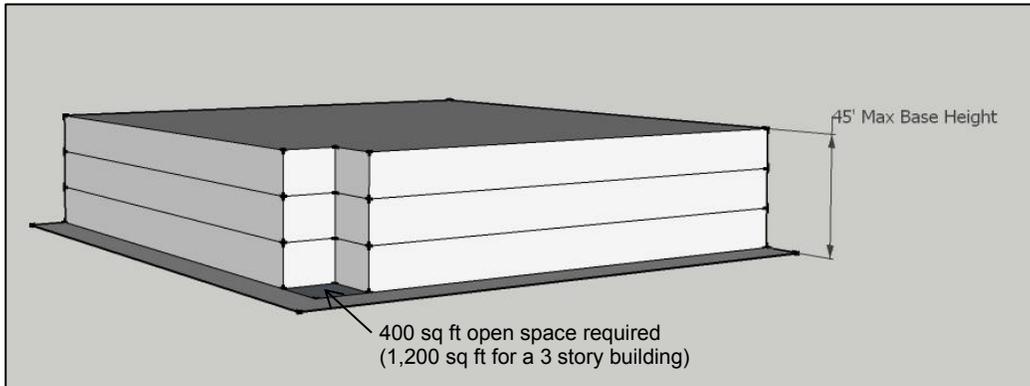
Figure 7. Example of proposed rooftop equipment screening requirements.



Source: City of Tigard

- Open space requirements: New open space requirements would apply to development sites of greater than 20,000 sq ft and any development that includes 4 or more residential units. This would remove approximately 1,200 sq ft from the developable area of the site (assuming a 3 story building). As a result of evaluation by the project team, the proposed language has been revised to remove the 2% requirement. This proposal has been identified as a key issue for further discussion. See *Figure 8 and Attachment 3 page 57*.

Figure 8. Proposed 400 sq ft open space requirement for development sites of 20,000 sf or larger.



Source: City of Milwaukee

- Live/work design standards (NEW): New proposed design standards for live/work units to ensure that they contribute to the downtown streetscape while providing for small-scale commercial and residential uses. See *Figure 9 and Attachment 1*.

Figure 9. Live/work units would be required to have commercial uses on the storefront and residential uses behind or above.



Source: The Seattle Times

Downtown Design Review

- The primary proposed change is to allow administrative (Type II) approval of new development that meets all of the relevant design standards. Type II land use review includes notice to properties within 300 ft and the neighborhood district association (NDA) and an opportunity for public comment. Projects that do not meet all of the design standards would go through a discretionary Type III land use review, which requires review and approval by the Planning Commission at a public hearing.
- Applicability: Currently, it is difficult to determine the appropriate level of review for various activities, and there is no Type II review option. This can lead to a lower or higher level of review (Type I or III) than appropriate or needed. *See Attachment 3 pages 66 - 68*
 - Exemptions: Clarifies the types of activities that are exempt from Downtown Design Review (DDR). Generally, these are activities that do not require a building permit; are small-scale additions that are not visible from the public realm; or interior remodeling.
 - Type I: Clarify and expand the types of activities that are approvable through Type I administrative review. Generally, these are activities that result in minor physical changes to a building or site.
 - Type II: Clarify and expand the types of activities that are approvable through Type II administrative review, including new development that meets all applicable design standards.
 - Type III: Reduce the types of activities that require Type III review. This review is now optional for projects desiring additional design flexibility.
- Variances: Clarifies that variances cannot be granted for the downtown design standards; rather, developments would be subject to Type III DDR and review for compliance with the relevant Downtown Design Guidelines. The Type III review would focus only on those standards not being met. *See Attachment 3 page 70.*

KEY ISSUES

Summary

The following key issues have been identified for the Planning Commission's deliberation. During worksession discussions leading up to the hearings on this proposal, the Planning Commission reviewed the draft amendments and provided direction to staff regarding potential revisions. Staff has highlighted policy choices as key issues on which Commission direction is being requested.

- A. Should open space be required for new development, or incentivized with height/FAR bonuses?
- B. Are there any other considerations for live/work units?

Analysis

A. Should open space be required for new development, or incentivized with height/FAR bonuses?

During the opportunity site evaluation stage of the Moving Forward Milwaukie, many community members indicated a desire to allow for the provision of publicly-accessible and

usable open space as part of new development. Communities typically take one of two approaches to increasing open space in downtown:

- Requiring the provision of open space
- Incentivizing the provision of open space.

The October 2014 discussion draft of the amendment package included a proposal to require 400 sq ft of publicly-accessible open space for any development larger than 20,000 sq ft, or half of a downtown block. The January 6, 2015, draft includes a requirement that either 400 sq ft or 2% of the site area, whichever was greater, be provided.

Subsequent analysis showed that many potential development sites in downtown Milwaukie exceed 20,000 sq ft, and 2% of the site area almost always exceeded 400 sq ft – in some cases, exceeding 6,000 sq ft. In addition, the maximum setback on Main St is proposed to be 20 ft, which would require much of the open space to be accommodated along the width of the frontage. In many cases, the open space requirement prevented the sites from meeting the proposed frontage occupancy requirement standards.

There are several considerations when determining whether and how much open space should be required as part of development. On the one hand, open space requirements can provide a refuge for pedestrians and an outdoor seating area for adjacent businesses. On the other hand, any site requirement that reduces the developable area of the site and introduces additional entrances and glazing increases development cost and reduces flexibility.

Other considerations include maintenance (who is responsible?), programming (what kinds of activities occur there), and access (is it only available to paying customers, or to anyone?).

In addition to the new open space requirement, a proposed design standard would require that buildings with a façade longer than 150 sq ft be required to step back or "break" the façade for a distance of at least 15 ft. This would require an open space component for larger developments. See Subsection 19.508.4.A.2.b(2), located in Attachment 3 page 52.

Staff is seeking Planning Commission direction about whether the requirement for publicly-accessible open space for development of sites greater than 20,000 sq ft remain, or whether provision of open space should be incentivized through height or FAR bonuses rather than required as part of development. Height bonuses may be more likely to incentivize open space allowances. Currently, the maximum FAR in the downtown zones is 4:1, which would allow a 4 story building that covers 100% of the site. A nonresidential building in much of downtown will be limited to 3 stories, or 3:1 FAR. A building with a residential component could potentially achieve a 4:1 FAR, but would be required to provide parking for the residential units, which would likely reduce the achievable FAR (unless a shared parking agreement was put in place). Generally, FAR bonuses will be less attractive than height bonuses because the maximum FAR can only be achieved in very limited situations.

If the Commission chooses the former, staff proposes that a numerical standard of 400 sq ft be retained, and that "or 2%, whichever is greater," be deleted, and that a definition of "publicly-accessible open space" be incorporated into the draft amendments. See Attachment 2.

B. Are there any other considerations for live/work units?

Live/work units have gained popularity in recent years. It is a return to a historic commercial and residential pattern where the business owner, or proprietor, lives above the business. They typically function as small business incubators and as a way to

encourage the arts. "Live/work" has been added as a permitted residential use in the downtown zones.

Because live/work units are expected to function differently than other types of dwellings, such as rowhouses, a new set of standards for live/work units is proposed. Generally, live/work units would be required to meet the same design standards as other commercial buildings in downtown. Additional proposed provisions establish a minimum floor area for the nonresidential portion of the building, a requirement that the nonresidential portion of the building be located on the ground floor, and limitations on the number of non-occupant employees. In addition, the live/work unit would need to be occupied by the owner/proprietor of the business located in the unit.

Staff is seeking Planning Commission feedback regarding the following:

- Are separate standards required for live/work units, or should they be treated as a type of mixed use development?
- Do live/work units need to be owner-occupied?
- Are there concerns about the ground floor of a live/work unit being used for residential purposes, if the ground floor is designed to accommodate a commercial use?

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

Reach consensus on the recommended draft amendments and agreement on recommended actions in advance of the anticipated March 10, 2015, vote on the full amendment package.

COMMENTS

See the January 13, 2015, staff report for a summary of comments received as of January 6, 2015. No comments were received in advance of the January 13 public hearing. One additional written comment was received at the January 27, 2015, public hearing, and was provided to the Planning Commission at that hearing. No comments were received between January 27 and February 17.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	E-Packet
1. New MMC Subsection 19.505.6 Standards for Live/Work Units	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Revised MMC Subsection 19.508.5 Site Design Standards	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at www.milwaukieoregon.gov/planning/planning-commission-121.

19.505.6 Standards for Live/Work Units

A. Purpose

This Section establishes regulations and standards for creating and operating live/work units as a primary use. The purposes of these provisions are to:

1. Allow for the creation of cost-efficient alternative work space that will provide an incentive for entrepreneurs, business owners, artists, artisans, and other individuals to work in Milwaukie and contribute to the City's economy;
2. Foster and encourage the development of small businesses;
3. Enliven the vitality of commercial corridors by encouraging on-site residential uses
4. Ensure the use and design of live/work units are compatible with the use and design of surrounding structures and development.

B. Applicability

These standards apply to live/work units, as defined in Section 19.201, wherever this use is allowed by the base zones in Chapter 19.300 or the overlay zones in Chapter 19.400.

1. Live/work units may be established through the conversion of existing buildings or through new construction.
2. The construction or creation of live/work units in the Downtown Mixed Use Zone is subject to the design standards and applicability of Subsection 19.508.
3. Development standards for live/work units are those of the base zone and 19.505.6.D.

C. Use Standards

1. Any nonresidential use allowed in the base zone within which a live/work unit is legally located may be conducted on the premises of that live/work unit.
2. At least one of the employees of the commercial portion of the live/work unit must reside in the unit. The residential portion shall not be rented or sold separately from the commercial space.
3. A live/work unit is allowed instead of, or in addition to, a home occupation as defined by Section 19.201.
4. A business license shall be required for any live/work unit.

D. Development Standards

In addition to the standards of the base zone, live/work units shall comply with all of the following standards.

1. The nonresidential portion of the unit shall occupy at least 25 percent of the gross floor area.
2. The nonresidential portion of the building shall be located on the ground floor and the residential unit on the upper floors or to the rear of the nonresidential portion.
4. Employees shall be limited to occupants of the residential portion of the building plus up to three persons not residing in the residential portion.

D. Design Standards

1. Live/work units are subject to the design standards of Subsection 19.508.

PROPOSED REVISIONS**February 24, 2015***Proposed revisions are shown in underline/~~strikeout~~ format.***19.508.5 Site Design Standards****A. Open Space/Plazas****1. Intent**

To assure adequate public and private open space in the downtown.

2. Nonresidential and mixed use developments

The following standards apply to nonresidential and mixed use developments greater than 20,000 square feet.

- a. Development projects with site areas greater than 20,000 square feet shall include at least one publicly accessible open space with a minimum size of [400] square feet ~~or 2% of the site area, whichever is larger.~~
- b. Publicly accessible open spaces shall be abutted on at least two sides by retail shops, restaurants, [offices], or services with windows and [primary] entrances fronting on the space.
- c. Publicly accessible open spaces must be accessible at grade adjacent to the sidewalk. Other portions of the public space may be above or below grade.

3. Mixed use and residential development

The following standards apply to mixed use buildings with more than 4 residential units and residential-only multifamily developments. These standards apply in addition to the standards of Subsection 19.508.5.2 above.

a. Open space required

50 square feet of private or common open space is required for each dwelling unit. The open space may be allocated exclusively for private or common use or may be a combination of the two uses.

b. Common Open Space

- (1) Common open space may be provided in the form of decks, shared patios, roof gardens, recreation rooms, lobbies or other gathering spaces created strictly for the tenants and not associated with storage or circulation. Landscape buffer areas may not be used as common open space unless active and passive uses are integrated into the space and its use will not adversely affect abutting properties.
- (2) With the exception of roof decks or gardens, common open space shall be abutted on at least two sides by residential units or by nonresidential uses with windows and entrances fronting on the space.

c. Private Open Space

- (1) Private open space may be provided in the forms of a porch, a deck, a balcony, a patio or other private outdoor area.
- (2) The private open space provided shall be contiguous with the unit.
- (3) Balconies used for entrances or exits shall not be considered as private open space except where such exits or entrances are for the sole use of the unit.
- (4) Balconies may project up to a maximum of 4 feet into the public right-of-way.

d. Credit for open space

An open space credit of 50% may be granted when a development abuts ~~is directly adjacent to~~ an improved public park.



To: Planning Commission
From: Vera Kolas, Associate Planner
Date: February 17, 2015 for February 24, 2015 Meeting
Subject: Item 5.4 Riverway Ln Variance Findings and Conditions

Please note that Item 5.4 of your packet is with regard to the public hearing on February 10, 2015 for VR-14-03 10545 SE Riverway Ln. The purpose of this item is for a Motion to Approve the Findings and Conditions for that application.

ATTACHMENTS

1. Recommended Findings in Support of Approval
2. Recommended Conditions of Approval

**Recommended Findings of Approval
File #VR-14-03, 10545 SE Riverway Ln Variance**

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, Carter Case on behalf of Linsey Forni, has applied for relief from the front yard setback to extend the existing single-family home with a one-story addition with daylight basement within the required front yard setback at 10545 SE Riverway Ln. This site is in the R-2 Zone and Willamette Greenway Overlay. The land use application file number is VR-14-03.
2. The proposal requires a variance to the required 15 ft front yard setback of the R-2 zone. The development would also require Conditional Use Approval for development in the Willamette Greenway. The proposal of a 1-story addition with a daylight basement would likely be a Type I Minor Modification review. (Note: the applicant is aware of this subsequent land use application requirement, and has elected to submit only a variance application at this time.)
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.302 High Density Residential Zones
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variance Review
 - MMC Section 19.1006 Type III Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on February 10, 2015, as required by law.
5. MMC 19.302 High Density Residential Zones
 - a. MMC 19.302 establishes the development standards that are applicable to this site. The required front yard setback of the R-2 zone is 15 ft. The applicant has proposed an addition that would be 15 ft from the paved portion of SE Riverway Lane, but would be 0' from the deeded public right-of-way.

The Planning Commission finds that the proposal does not comply with the applicable standards of the R-2 zone and requires a variance.
6. MMC Chapter 19.700 Public Facility Improvements
 - a. MMC 19.702 establishes the applicability of this section

The applicant proposes an expansion of the existing home by 640 sq ft. The Engineering Department finds that MMC Chapter 19.700 is triggered by this variance application because the addition of habitable living space is greater than 200 sq ft.

The City has conducted a review to determine if the proposed development has a sufficient nexus and impacts to warrant the imposition of right-of-way dedication under the standards established by the US Supreme Court through *Koontz v. St. Johns River Water Management District* (2013) and other case law.

Although there is a sufficient *nexus* to warrant the imposition of right-of-way dedication relating to the expansion, it has been determined that the *impacts* do not warrant the imposition of right-of-way dedication.

The Planning Commission finds that this section is applicable, and there is sufficient nexus but insufficient impacts to require right-of-way dedication and no right-of-way dedication will be required.

7. MMC Chapter 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to extend the existing home into the front yard setback by adding a 640 sq ft addition, resulting in a 0-ft front yard setback from the deed public right-of-way. This request exceeds 25% and is less than the minimum 15 ft, and must be processed through Type III review.

The Planning Commission finds that the application is subject to Type III review for the proposed addition.

- b. MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The applicant has chosen to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

- (1) *The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.*

The applicant has not identified any impacts from the proposal. The applicant has stated that if any impacts occur they would be minimal and would be mitigated.

The alternatives analysis does not discuss the possible development alternatives that could avoid the need for a variance. The subject property is regularly shaped and large enough that an addition could be accommodated in compliance with the required setbacks on other sides of the structure. The alternatives analysis also does not provide a proposal for a smaller addition that would provide some setback from the property line. The applicant has stated that in order to take advantage of the views of the river and not impact adjacent properties, the proposed location is optimal.

Although the applicant states that it is unlikely that SE Riverway Ln would ever change, nevertheless the City must preserve its ability to use the public right-of-way for utility placement and access in the future. This is particularly true given that the zoning in this area is R-2, a high density residential zone. Although the existing residences on Riverway Ln are single-family homes, provisions must be made to ensure that infrastructure is in place should the area redevelop. A structure located 0' from the public right-of-way could significantly impact the City's ability to construct additional roadway width, a sidewalk, etc. in the public right-of-way. The Engineering Director has submitted comments in opposition to the proposed variance. Without having grade information, it appears as though the proposed development would harm the City's ability to construct necessary roadway improvements. More precisely, constructing the addition up to the right-of-way could prevent the City's ability to construct the pedestrian facilities associated with roadway construction in the future. In this case, a retaining wall adjacent to the right-of-way is needed.

In order to mitigate these impacts, specific construction standards are required.

The Planning Commission finds that, as conditioned, this criterion is met.

- (2) *The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:*

- (a) *The proposed variance avoids or minimizes impacts to surrounding properties.*

The proposed variance will affect the eastern façade of the home, which is not adjacent to any other property. Property owners to the north and south of the subject property have expressed support for the variance.

The Planning Commission finds that this criterion is met.

- (b) *The proposed variance has desirable public benefits.*

“Public benefits” are typically understood to refer to benefits to be enjoyed by members of the general public as a result of a particular project, or preservation of a public resource. Aesthetic improvements of a specific and limited nature do not typically constitute a public benefit.

The Planning Commission finds that this criterion is not applicable.

- (c) *The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.*

This criterion encourages flexibility in site planning and development when the existing built or natural environment provide challenges to standard development or site planning. The site is slightly sloped and rectilinear and is developed with a conventional single-family dwelling. The slope may impact future improvement within the right-of-way. With conditions, the impacts can be mitigated.

The Planning Commission finds that, as conditioned, this criterion is met.

- (3) *Impacts from the proposed variance will be mitigated to the extent practicable.*

The applicant has not identified any impacts from the proposed project, but states that any impacts would be minimal and would be mitigated. However, staff has identified an impact to the City's ability to use the public right-of-way in the future (See 7.b (1) above).

The Planning Commission finds that there are impacts to be mitigated and, as conditioned, this criterion is met.

The Planning Commission finds that, as conditioned, these criteria are met.

8. The application was referred to the following departments and agencies on December 31, 2014: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Historic Milwaukie Neighborhood District Association Chairperson and Land Use Committee. Notice of the application was also sent to surrounding property owners within 300 ft of the site on January 21, 2015, and a sign was posted on the property on January 26, 2015. The following is a summary of the comments received by the City.

- **Jason Rice, Engineering Director:** Opposes the application.
- **Gary Klein, 10795 SE Riverway Ln, Milwaukie, OR:** Supports the application.
- **Jeanne Garst, 1400 SE Lave Drive, #33, Milwaukie, OR:** Opposes the application.

Recommended Conditions of Approval
File #VR-14-03, 10545 SE Riverway Ln Variance

1. This approval of a 0'-0" front yard setback is based on the specific characteristics of the proposal at this location and is applicable only to the existing single family home.
2. At the time of submission of any building permit application, the following shall be required:
 - a. Final plans submitted for building permit review shall include structural drawings for the structure stamped by a Professional Engineer registered in the State of Oregon. The structure (including walls, foundation, and footing) shall be designed and constructed such that it does not rely on the soil within the right-of-way for structural stability as it may not exist in the future as it does today. Furthermore, the City will require a signed statement by the property owner that in building the structure so close to the right-of-way, the City will not be held liable for damages to the private property within 15 ft of the property line if and when the City needs to perform construction within the public right-of-way.
 - b. No encroachment into the public right-of-way shall be permitted, including but not limited to: building walls, eaves, foundation footings, etc.
3. Prior to final inspection of any building permit, the following shall be resolved:
 - a. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.