



## AGENDA

### MILWAUKIE PLANNING COMMISSION Tuesday, April 8, 2014, 6:30 PM

MILWAUKIE CITY HALL  
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
  - 2.1 June 25, 2013
  - 2.2 February 25, 2014
- 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: Mural Code Amendments  
Applicant: City of Milwaukie  
File: ZA-14-01  
Staff: Vera Kolas
- 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:**
  - April 22, 2014 1. TBD
  - May 13, 2014 1. TBD

### 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](mailto: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](http://www.cityofmilwaukie.org)
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at [www.cityofmilwaukie.org](http://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  
Scott Barbur  
Shaun Lowcock  
Gabe Storm

#### **Planning Department Staff:**

Denny Egner, Planning Director  
Li Alligood, Associate Planner  
Brett Kelver, Associate Planner  
Vera Kolias, Associate Planner  
Alicia Martin, Administrative Specialist II

**CITY OF MILWAUKIE**  
**PLANNING COMMISSION**  
**MINUTES**  
**Milwaukie City Hall**  
**10722 SE Main Street**  
**TUESDAY, June 25, 2013**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Scott Barbur  
 Sine Bone  
 Shaun Lowcock  
 Wilda Parks  
 Gabe Storm

**STAFF PRESENT**

Stephen C. Butler, Planning Director  
 Li Alligood, Associate Planner  
 Brad Albert, Civil Engineer  
 Peter Wells, City Attorney

**COMMISSIONERS ABSENT**

Vice Chair Clare Fuchs

**1.0 Call to Order – Procedural Matters\***

**Chair Batey** called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

*Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

**2.0 Planning Commission Minutes**

2.1 February 26, 2013

**It was moved by Commissioner Parks and seconded by Commissioner Lowcock to approve the February 26, 2013, Planning Commission minutes as presented. The motion passed unanimously.**

**3.0 Information Items**

There were no information items.

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Public Hearings**

5.1 Summary: Setback Variance

Applicant/Owner: Ron Woodruff/Perry Nordby

Address: 9925 SE 37th Ave

44 File: VR-12-05

45 Staff: Li Alligood

46

47 **Chair Batey** called the hearing to order and read the conduct of quasi-judicial hearing format  
48 into the record.

49

50 **Li Alligood, Associate Planner**, presented the staff report via PowerPoint. She explained that  
51 there were multiple setback variances requested under this application and why they were  
52 needed for the proposed additions. Staff was seeking direction from the Planning Commission  
53 on whether to separate the variance requests or review them together. Although staff's  
54 recommendation was for denial, staff was amendable to reconsideration if the applicant  
55 provided additional information and waived the 120-day clock to allow for review of the  
56 additional information.

57

58 **Chair Batey** asked if the proposed expansions would impede on future construction of a  
59 sidewalk.

60

61 **Brad Albert, Civil Engineer**, noted the current right-of-way was not wide enough for full  
62 sidewalk construction and the proposed garage footprint would have an impact on the right-of-  
63 way. Once the proposed approach was constructed, it would be a completed curb-tight  
64 approach. However, there would be an impact if there were full street improvements done;  
65 Harvey St was identified as a priority in the Walk Safely Milwaukie program.

66

67 **Ms. Alligood** noted that all residential properties were required to have an off-street parking  
68 space and currently the property's parking was within the garage.

69

70 **Chair Batey** called for response by the applicant.

71

72 **Perry Nordby, 9925 SE 37<sup>th</sup> Ave**, applicant/owner, noted he was remodeling the home and  
73 adding Craftsman-style features, thus the overhang expansion. He added there were other  
74 updates that were needed to the garage and was planning on constructing the driveway  
75 approach to ADA standards, which changed the degree of the driveway.

76

77 **Ms. Alligood** referred to items in Attachment 2d and 2e to clarify the garage extension and

78 gable overhang measurements.

79

80 **The Commission** questioned that the measurements of the submitted plans were not what the  
81 applicant and his representatives were describing.

82

83 **David Bedan, Applicant's Contractor**, clarified the plans and measurements with regard to  
84 symmetry of the eaves.

85

86 **Chair Batey** called for staff comments.

87

88 **Ms. Alligood** noted that if the applicant was willing to remove the Type II Variance requests,  
89 staff would be able to better group the remaining requests into a Type III request. She clarified  
90 the original request was an either/or expansion proposal which was not what the applicant and  
91 the applicant's representatives described in their testimony.

92

93 **Chair Batey** asked how the Commission was to create findings if the proposals and the  
94 drawings were not consistent. The amount of variance was different than what was noted in the  
95 staff report materials. Was the Commission on good standing if the applicant orally amended  
96 materials?

97

98 **Peter Watts, City Attorney**, stated there needed to be adequate notice to the public. If a  
99 proposal stated one set of parameters but the parameters were changed in the hearing, it was  
100 possible that a member of the public would find that questionable. In this case, the proposal  
101 presented in the meeting was less than what was proposed in the application materials. The  
102 focus was on adequate notice to staff, the public, and the Commission, to know what the  
103 proposal was upon review. It was not recommended to approve an orally-amended proposal but  
104 the Commission had a wide variety of latitude.

105

106 **The Commission** reviewed staff's recommended options which included to deny the proposal  
107 (staff's recommendation); grant an extension if applicant waived 120-day clock; or to direct staff  
108 to craft findings and conditions within the meeting.

109

110 **Ms. Alligood** noted the third option would be quite difficult with the materials available and  
111 would need substantial direction from the Commission.

112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145

**Chair Batey** called for additional comments.

**Mr. Nordby** was willing to waive the 120-day clock in order to submit a more accurate proposal. He noted he did not realize how misleading the materials were.

**It was moved by Commissioner Bone and seconded by Commissioner Parks to continue the hearing for application VR-12-05 for 9925 SE 37th Ave, to a date certain of July 23, 2013. The motion passed unanimously.**

- 5.2 Summary: Stormwater Master Plan
- Applicant: City of Milwaukie
- File: CPA-13-02
- Staff: Li Alligood/Brad Albert

**Chair Batey** called the hearing to order and read the conduct of legislative hearing format into the record.

**Ms. Alligood** presented the staff report via PowerPoint and introduced consultant **Angela Wieland with Brown and Caldwell**.

**Ms. Alligood** reviewed the background and noted this hearing was for a recommendation to City Council of adoption of the Stormwater Master Plan (SWMP) as an ancillary document to the Comprehensive Plan.

**Angela Wieland, Brown and Caldwell**, stated that the project had been presented to the City Council and Citizens Utility Advisory Board (CUAB), and noted much of the information for tonight's presentation had been presented to the Commission at previous worksessions. She outlined the goals and objectives, and scope of the project. She reviewed the evaluation and findings, and recommendations, and the updated SWMP. She described how the 17 Capital Improvement Projects (CIPs) were determined and ranked.

**Ms. Wieland** and **Mr. Albert** answered questions from the Commission:

- 146 • The primary purpose of the CUAB meeting was to present the funding analysis and how that  
147 translated to the CIPs in the SWMP. They made a recommendation based on the results  
148 which was also presented to the City Council.
- 149 • Decommissioning UICs was no longer the priority due to changes to the regulations of UIC  
150 permits.
- 151 • The cost of permit compliance was due to the multiple-year process of permits, the need for  
152 consultants to process the permits, maintenance requirements, and an increase in  
153 construction costs. The combination of these items dwindle the available funds for projects.
- 154 • Fees in lieu of construction do not currently apply to stormwater improvements. However,  
155 perhaps they could go toward a City project that would treat a larger area as individual  
156 properties might not have the needed elements to achieve the greenscape approach, etc.

157

158 **Ms. Alligood** noted staff recommendation for the Commission to recommend that City Council  
159 adopt the legislative amendments for the Stormwater Master Plan, and reviewed the decision-  
160 making options.

161

162 **Chair Batey** called for public testimony.

163

164 **Jean Baker, 2607 SE Monroe St**, spoke to comments she has heard from members of the  
165 Historic Milwaukie Neighborhood District Association (NDA). She requested that more  
166 description be given for what 'treatment' meant. She also noted a concern regarding the  
167 apparently closed process for plans such as the SWMP.

168

169 **Mr. Butler and staff** responded by reviewing the steps that had been taken, such as an open  
170 house in December that was advertised in multiple places, a notice posted 30 days prior to this  
171 hearing, a courtesy email sent to NDA leadership, and a project webpage on the City's website.

172

173 **Chair Batey** closed public testimony.

174

175 **The Commission** deliberated.

176

177 **Commissioner Storm** responded to Ms. Baker's testimony and agreed that a summary  
178 included with these technical documents would be helpful.

179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212

**Chair Batey** agreed that descriptions for technical items that the average person would not understand would be helpful.

**It was moved by Commissioner Parks and seconded by Commissioner Barbur to recommend approval to City Council for legislative application CPA-13-02 for the Stormwater Master Plan as presented. The motion passed unanimously.**

**6.0 Worksession Items – None**

**7.0 Planning Department Other Business/Updates**

**Mr. Butler** noted the training on June 27th for Neighborhood District Association and Land Use Committee members which was also open to the other committee members and the public.

**Chair Batey** noted that some Planning Commission training would be beneficial since the current commission was relatively new and added that some project updates would be helpful as well. She also noted that there would be pedi-cabs, sponsored by downtown business owners, available downtown during the Sunday farmer’s market.

**8.0 Planning Commission Discussion Items**

**9.0 Forecast for Future Meetings:**

- |               |  |
|---------------|--|
| July 9, 2013  | 1. <del>TBD Public Hearing: CPA-13-02 Stormwater Master Plan</del><br><i>continued tentative</i> |
| July 23, 2013 | 1. Worksession: Transportation System Plan (TSP) Update project briefing                         |

Meeting adjourned at approximately 8:50 p.m.

Respectfully submitted,

213

214

Alicia Martin, Administrative Specialist II

215

216

217

218

219 

---

Sine Bone, Chair

**CITY OF MILWAUKIE**  
**PLANNING COMMISSION**  
**MINUTES**  
**Milwaukie City Hall**  
**10722 SE Main Street**  
**TUESDAY, February 25, 2014**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Scott Barbur  
 Sine Bone  
 Shaun Lowcock  
 Wilda Parks  
 Gabe Storm

**STAFF PRESENT**

Denny Egner, Planning Director  
 Ryan Marquardt, Senior Planner  
 Peter Watts, City Attorney

**COMMISSIONERS ABSENT**

Clare Fuchs, Vice Chair

**1.0 Call to Order – Procedural Matters\***

**Chair Batey** called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

*Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

**2.0 Planning Commission Minutes**

2.1 January 14, 2014

**It was moved by Commissioner Storm and seconded by Commissioner Bone to approve the January 14, 2014, Planning Commission minutes as presented. The motion passed unanimously.**

**3.0 Information Items**

**Chair Batey** informed the Commission that Vice Chair Fuchs resigned from the Commission that day. She added that her own term was up at the end of March so there would be two open positions available to those interested in serving.

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

44 **5.0 Public Hearings**

45 5.1 Summary: Road Home Pilot Project

46 Applicant/Owner: Northwest Housing Alternatives/Milwaukie Christian Church

47 Address: 5197 SE King Rd

48 File: CSU-13-14

49 Staff: Ryan Marquardt

50

51 **Chair Batey** called the hearing to order and read the conduct of quasi-judicial hearing format  
52 into the record.

53

54 **Ryan Marquardt, Senior Planner**, presented the staff report via PowerPoint. He noted the  
55 proposal was for a 3-month pilot project at this time, and any continuation of the approval would  
56 require another Community Service Use (CSU) review. The project involved allowing a  
57 household (one person or family) to sleep in their car overnight on the site for no longer than 30  
58 days. He reviewed the screening process and the rules in place for the participants.

59

60 Staff's analysis was that the public benefit outweighed the potential impacts to surrounding  
61 neighborhoods, and recommended approval with conditions as presented. Staff believed the  
62 program's rules in place were sufficient in mitigating possible impacts, and the site location and  
63 its screening added to the compatibility of the program to the area. He clarified the pilot project  
64 condition was of a limit of no more than three families and no more than three months. If it was  
65 successful, future approval and duration of the program would be handled then.

66

67 **Chair Batey** called for the applicant's testimony.

68

69 **Russ Isom, Milwaukie Christian Church pastor**, gave some background of the program. In  
70 2009, community members discussed how they could help those in need. The area of  
71 homelessness has been a difficult issue to address and the face of homelessness was broad  
72 and included families.

73

74 **Mr. Isom** noted a Clackamas County homeless study done in January 2013 that found that  
75 more that 46% of those counted as homeless (2070) were children under the age of 18; 113  
76 were youth over 18; 283 were in Milwaukie and 37 of those were unsheltered. He understood  
77 that this program could not solve homelessness but the church wanted to work with Northwest

78 Housing Alternatives (NHA) to assist in finding housing for households in need. He added that  
79 the church wanted to make the families feel welcome and secure and to have a sense of  
80 stability. He reviewed the proposed rules and how safety issues would be addressed.

81  
82 **Angela Trimble, Northwest Housing Alternatives**, gave an overview of NHA and the services  
83 they provided. She explained Home Base, a program that addressed preventing homelessness  
84 and assisting households in getting out of homelessness. She noted that those residing in their  
85 vehicles were the hardest to assist due to communication challenges and instability of  
86 immediate need, yet were the most vulnerable. The Road Home program would reach one more  
87 family.

88  
89 **Commissioner Barbur** asked about other similar programs in Eugene and Multnomah County  
90 and how prevalent and successful they were.

91  
92 **Ms. Timble** noted that the program in Eugene was very successful and extensive; she was  
93 unsure of the outcome of the program in Multnomah County. She described the limited  
94 resources available in Clackamas County and the issues that households have in seeking  
95 assistance in Multnomah County. NHA's Annie Ross House accepted whole families, and she  
96 noted their partnerships with area churches that gave the ability to connect with and provide  
97 services to families or households in need.

98  
99 **Chair Batey** called for public testimony.

100  
101 **Mark Wade, 4953 SE Winworth Ct**, inquired what the end-game for this pilot project would be,  
102 and was concerned that if Mullen St were to be vacated for development, the church's parking  
103 lot would then street frontage and visible.

104  
105 **Ann Wilson, 5230 SE Logus Rd**, was concerned about the uncertainty and impact on the  
106 neighborhood, but was in support of assisting the homeless.

107  
108 **Chair Batey** verified that property owners would get notified if there was an effort to make the  
109 program a permanent program.

110  
111 **Mr. Marquardt** responded that if the program was to be made permanent, a condition could be

112 added to a future land use approval to address Mr. Wade's concern.

113

114 **Ms. Timble and Mr. Isom** agreed that although people sleeping in their cars was not a viable  
115 shelter option, it existed and so the goal was to at least make it as safe and connected to  
116 resources as possible. They reiterated that only applicants that passed screening and were in  
117 line with the goals of the program would be utilizing the resource.

118

119 **Chair Batey** closed public testimony.

120

121 **The Commission** deliberated. They agreed that CSU approval was primarily about the public  
122 benefit, which this program provided a great public benefit and therefore should be approved.  
123 The applicants have adequately addressed the concerns and possible issues. The option to  
124 include a condition regarding tracking complaints and solutions was discussed, but it was  
125 determined that the program's monitoring measures were sufficient and made note that this was  
126 a pilot project.

127

128 **It was moved by Commissioner Parks and seconded by Commissioner Lowcock to**  
129 **approve File CSU-13-14 for the Road Home Pilot Project at 5197 SE King Rd with the**  
130 **recommended findings and conditions of approval, including the amendments presented**  
131 **by staff this date. The motion passed unanimously.**

132

### 133 **6.0 Worksession Items**

134 6.1 Summary: Planning Commission Work Plan

135 Staff: Denny Egner

136

137 **Denny Egner, Planning Director**, said the Commission was scheduled for a joint session with  
138 the City Council to review the Commission's work plan on March 18. He reviewed the previous  
139 year's accomplishments and what was coming in the next year for the Commission and their  
140 role in some of Council's goals. He noted:

141

- 142 • The mural code amendments would be returning to the Commission as the proposal has  
143 been revised since it was before the Commission in 2012.
- 144 • Revisions to the Urban Growth Management Agreement would need to involve Commission  
145 review as it was considered part of the Comprehensive Plan.

- 146 • The Moving Forward Milwaukie (MFM) project would include implementing new downtown  
 147 code requirements.
- 148 • The Monroe Street Greenway project may involve the Commission if changes to the  
 149 Transportation System Plan were necessary.
- 150 • The Council wanted to review the ‘no new evidence’ rule.
- 151     ○ **Chair Batey** explained the ‘no new evidence’ issue and history to the newer  
 152 Commissioners. She summarized that it was a result of a specific situation, and  
 153 therefore was trying to fix a problem the City did not have.
- 154 • **Mr. Egner** was working with staff on the economic development strategy and how to take a  
 155 better programmatic approach to economic development.
- 156 • The area west of McLoughlin Blvd, as a result of the Tacoma Station Area Plan project,  
 157 could be relooked at in terms of zoning changes to allow different uses and development.

158

159 **Chair Batey** felt that a number of the items would involve the Planning Department rather than  
 160 the Commission. She was still in support of continuing work on the sign ordinance to prevent  
 161 cluttered signage throughout the city with potential new development.

162

163 **The Commission** agreed that an economic development strategy was important.

164

165 **Mr. Egner** believed public involvement was key to this goal but had yet to be defined. However,  
 166 it could be addressed on different levels – as an element of the Comprehensive Plan update, or  
 167 by developing a short term policy, such as promoting business, encouraging job growth, etc.

168

169 **Commissioner Barbur** noted that an update to the historic preservation elements of the  
 170 Comprehensive Plan and code were important. The code was significantly out of date.

171

172 **Mr. Egner** reviewed his questions for the Commission. He noted he would send out a revised  
 173 work plan to the Commission based on the discussion prior to the joint session with Council in  
 174 March.

175

176 **7.0 Planning Department Other Business/Updates**

177

178 **8.0 Planning Commission Discussion Items**

179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210

**Commissioner Storm** asked about the stop-work notice on the property at 37<sup>th</sup> Ave and Harvey St that had come before the Commission for a variance request. He noted the construction involved an addition of a second story that was not part of their approval.

**Mr. Egner** would look into the matter and get back to the Commission with an update.

With the departure of Vice Chair Fuchs and the end of Chair Batey's term at the end of March, the Commission agreed to hold officer elections at the March 25 meeting.

**9.0 Forecast for Future Meetings:**

- |                |   |
|----------------|---|
| March 11, 2014 | 1. Public Hearing: ZA-13-02 NW Housing Alternatives 2316 SE Willard St                            |
|                | 2. Public Hearing: ZA-14-01 Murals Code Amendment   |
| March 25, 2014 | 1. Public Hearing: ZA-13-02 NW Housing Alternatives 2316 SE Willard St <i>continued tentative</i> |
|                | 2. Public Hearing: CSU-13-15 Milwaukie High School indoor practice facility                       |

Meeting adjourned at approximately 9:18 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

---

Sine Bone, Chair



**To:** Planning Commission

**Through:** Denny Egnor Planning Director

**From:** Vera Kalias, Associate Planner  
Beth Ragel, Program Coordinator

**Date:** March 31, 2014, for April 8, 2014, Public Hearing

**Subject:** File: ZA-14-01, Public Mural Sign Code Amendments  
Applicant: City of Milwaukie

---

## **ACTION REQUESTED**

Recommend that the Planning Commission approve application ZA-14-01, with the proposed findings and amendments found in Attachment 1. Approval of this application would result in a Zoning Ordinance amendment to exempt Art Murals from the provisions of Title 14 – Signs.

## **SUMMARY**

The amendments to establish the mural program amend a portion of Title 14, Sign Ordinance, and create a new title in the Municipal Code – Title 20, Public Art. Art Murals are proposed to be permitted through an objective review and permitting process (Original Art Mural) or through a committee review process that includes dedication of the mural to the public through a public art easement (Public Art Mural). The proposed ordinance exempts Original Art Murals, as regulated by Title 20, from the provisions of Title 14.

The Planning Commission's role in the municipal code amendment process is to make a recommendation to the City Council for amendments that affect a land use regulation. The amendments to Title 14 are the only land use regulations being amended with this proposal, and are the only portion of the mural program for which the Planning Commission will make an official recommendation.

## **BACKGROUND INFORMATION**

### **A. History of Prior Actions and Discussions**

- **October 22, 2013:** Ryan Marquardt, Senior Planner and Beth Ragel, Program Coordinator, met with the Planning Commission during a work session. They gave an overview of the proposed mural project and noted current public opinion of the project. The proposed mural code included two permitting options: one was an

objective review with a permit fee, and the other was a discretionary review that could include matching grant funds. Ms. Ragel noted the project timeline to return to the Commission with code language by the end of the year.

- **January 29, 2013:** Beth Ragel, Program Coordinator, met with the City Council during a work session seeking guidance on establishing a mural program in Milwaukie and talked about potential legal challenges and possible associated costs. She discussed program options.
- **November 6, 2012:** Beth Ragel, Program Coordinator, and the City attorney, provided a briefing to Council during a work session regarding the broad free speech protections afforded by Article 1 Section 8 of the Oregon Constitution and the possible implications for reviewing and permitting murals. The City attorney advised Council that providing grant funding for a mural program could reduce the risk of free-speech related claims.
- **September 25, 2012:** The Milwaukie Planning Commission held a public hearing and recommended approval of Zoning Text Amendments to the Sign Ordinance (File #ZA-12-01). The amended regulations, if adopted by City Council, would exclude public art murals from the definition of ‘sign’ in Subsection 14.04.030, Definitions in Title 14, Sign Ordinance. Given input from the City attorney following this hearing, staff determined it should be presented at a work session to City Council.
- **May 22, 2012:** Beth Ragel, Program Coordinator, briefed the Planning Commission on the proposed Mural Program at a worksession.
- **April 3, 2012:** Staff briefed City Council on community outreach and reported the results from the mural survey. Council directed staff to continue work on the project, including developing the code language to take to the Planning Commission for review.
- **September, 2011:** City Council gave staff the approval to start public outreach and to begin drafting the program and code language.
- **2006:** When the Planning Commission updated the Sign Code in 2006, the difficulty of permitting murals as signs was acknowledged as a problem yet to solve. At that time, no model was in place that adequately addressed Oregon’s free speech laws. As such, public murals fell under sign regulations by default. Since then, Portland has finalized two review and permit processes—one in 2005 and one in 2008. These have not been challenged and have paved the path for other jurisdictions to adopt a similar approach.

## **B. Why code changes are needed – Establishing a Mural Program**

Murals are a unique form of art that can add character to an area and contribute to a community identity and sense of place. For these reasons, the City would like to allow and encourage murals within the community. Prior to 2006, Milwaukie’s sign ordinance allowed “painted wall decorations or embellishments...not accompanied by a written message” as a display that was exempt from a sign permit.

In 2006, the sign ordinance was revised to be consistent with court rulings regarding sign regulations and free speech protection. The key concept in the court rulings that necessitated the amendments is that the government cannot regulate signs based on their content. Instead, the regulations must be limited to physical aspects of the signs such as the time they are displayed, the places where they are displayed, and the manner in which

they are displayed. The resulting amendments removed language that exempted, prohibited, or required different levels of review based on the message of the display or sign.

The permit exemption for murals was removed because it would require the evaluation of content for the presence of a written message and to determine if the display was a decoration or embellishment as opposed to being a standard sign. The amendments to remove content-based regulations in the sign code had to be accomplished expediently to avoid legal challenges, and staff did not have the time during the Sign Code update to explore alternatives to permitting murals.

Under the current sign code, the City standards applying to murals are the same as those applying to signs. Murals are permitted under the same standards as other wall signs, and are subject to the same size regulations, which limit sign face area to 20% of the total wall area in most zones. This presents a difficulty for murals since most murals use all or a significant percentage of the total wall area.

Multiple community members have expressed interest in installing murals. Milwaukie High School, Dark Horse Comics, and members of the Milwaukie Arts Committee (artMOB) would like to put up new murals in the future. Others have discussed reinstalling a mural that was removed from the side of building at 10801 SE Main Street that faces Jackson Street (at the Chopstick's Express side of the building) in downtown.

In response to this interest, staff began working on a mural program in 2010. The proposed mural program has been developed with the following input:

- Milwaukie Arts Committee (artMOB): Program Coordinator Beth Ragel is the liaison to the Milwaukie Arts Committee (known as “artMOB”) and has discussed a mural program with them at several meetings from 2009 to the present. A key meeting on February 1, 2012 was a meeting with regional mural experts. At this meeting, regional art coordinators from Beaverton/Hillsboro, Clackamas County and Portland shared their jurisdictions’ experiences with murals. This meeting was promoted through the City website, Facebook and Twitter pages; the artMOB website and Facebook page; and sent via email to the NDAs. A press release was sent regarding this meeting and a feature was posted on OregonLive.com and ClackamasReview.com. This meeting provided an opportunity for residents to ask any question or share any concerns they had regarding murals in Milwaukie. All current artMOB members and three residents attended the meetings and discussions with Cheryl Snow of the Clackamas Art Council and representatives from Portland, Hillsboro, RACC and Beaverton discussing mural programs.
- In February 2012, artMOB members and staff liaison Beth Ragel attended each of the seven NDAs to give them an update on the project and solicit feedback. Representatives from artMOB took information about the proposed project (project brochure, a zoning map, and project timeline) plus a paper survey for residents to complete at the meetings.
- An on-line survey was posted for citizens to provide feedback on establishing a mural program. The survey was online from February 1, 2012 to March 19, 2012. A total of 78 responses were received with 11 submitted on paper and 67 online. The survey depicted 10 photos of murals and respondents were asked to rate which types of murals they would like to see in Milwaukie. The survey also included a series of ranking questions and open-ended questions. Survey results indicated a high level of agreement that murals can highlight the uniqueness of a community (95%); can offer a positive opportunity to feature niche businesses (88%); and that murals can

enhance public spaces (94%). The majority of respondents agreed that Milwaukie should carefully balance the rights of property owners with the aesthetics of the community (85%) and that the City should exempt murals from the sign code which limits their size (77%). The majority of respondents said that even if a mural is not their taste, they support the freedom of expression (83%).

The survey showed support for an ad hoc mural review committee, with 72% in agreement. Respondents believed the most important members to include on the review committee are neighborhood or business representatives (85%) while Milwaukie Arts Committee members, experienced mural artists and public arts professionals also received high marks as important to include (all 70%+). The majority of respondents thought murals should be allowed on commercial buildings (97%) and industrial buildings (95%). There was support for murals on school buildings even if in residential zones (68%) and less support for murals on religious buildings (46%) and private homes or small businesses in residential zones (35%).

### **C. Structure of proposed 2012 public mural permit process**

The 2012 version of the mural code proposed one discretionary review process and permitting path for murals. An ad hoc mural review committee was proposed to review the mural on set criteria and make a recommendation to the Milwaukie Arts Committee, who would make the final decision. The process would allow approved murals to be placed in commercial and industrial zones and on community service use properties. Broadly, the review criteria suggested at that time included artistic merit, feasibility and context and demonstrated community support.

Since staff was aware that reviewing content is generally problematic—and specifically, that reviewing the content of signs was deemed a violation of Article I, Section 8 of the Oregon constitution—staff also proposed that the City require a public art easement signed by the property owner. This approach is used by the City of Portland and was suggested by the City of Portland attorney and the Public Art Manager at the Regional Arts and Culture Council (RACC). This easement was determined to be a key feature of the proposed program, as the public art easement would mean the review of the mural would be for the purpose of selecting public art rather than regulating sign content on private property.

### **D. Structure of the proposed Art Mural permit processes**

In 2013, the City attorney recommended that modifications to the public mural permitting process were necessary in order to address issues of free speech; specifically, that there should also be a permitting process based on clear and objective standards. Accordingly, staff is proposing that the mural code be separate from the sign code and include two mural review and permitting options: Public Art Murals and Original Art Murals. The Public Art Mural review process is similar to the 2012 program and includes some public grant funding for the public art mural as well as a discretionary review process through an Ad-Hoc Mural Committee. The other review process is for Original Art Murals that are reviewed by the Planning Department against clear and objective standards. Both types of Art Murals will be regulated through a new code provision: Title 20 – Public Art. The primary changes proposed to Title 14 are to clarify that Art Murals are not subject to the provisions of Title 14 and to ensure that wall signs and murals together do not exceed the standards for wall coverage in square feet.

<b>Art Murals</b>	
<b>Public Art Mural</b>	<b>Original Art Mural</b>
<ul style="list-style-type: none"> <li>• Discretionary review by Ad-Hoc Committee; content of public art mural is reviewed; standards and review criteria are described.</li> <li>• Public Art Mural can cover up to 100% of the building wall</li> <li>• Grant funding provided and City acts as patron not just regulator.</li> <li>• Public art easement form must be signed by building/property owner.</li> <li>• Compensation to building/property owner is prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• Clear and object review by Planning Department; content of original art mural is not reviewed.</li> <li>• Original Art Mural can cover up to 40% of the building wall</li> <li>• Grant funding is not provided and a permit fee is assessed.</li> <li>• No public art easement form is required.</li> <li>• Compensation to building/property owner is prohibited.</li> </ul>

**E. Objective Review process for an Original Art Mural**

The basic elements of the proposed objective review process are as follows:

1. Creates an objective review process to review original art murals. Key attributes of Original Art Murals are:
  - Paint must be applied directly to building wall surface; no vinyl, wood, or other material between the building wall and paint is allowed. By definition, an Original Art Mural is a hand-painted image on the exterior wall of a building.
  - There cannot be compensation given or received for placement of the sign. An affidavit by the building owner is required.
2. Eligible properties – properties in commercial, industrial, downtown zones or mixed use commercial zones, and properties with uses containing a community service use. Properties designated as a significant or contributing historic resource are ineligible.
3. Size/placement regulations – An original art mural can comprise up to 40% of the surface area of a building wall. Non-painted wall signs (cabinet signs, banner signs, signs on wood panel, etc.) are a separate type of sign that have their own distinct size regulations. Existing existing wall signs may remain, but the combined total area of an Original Art Mural and wall signs cannot exceed 40% of the building wall.

**F. Amendments to Title 14**

The changes proposed to Title 14 are minimal. The intent of the changes is to clarify that Art Murals (Public Art Murals and Original Art Murals) are not subject to the provisions of Title 14 and to ensure that size limitation apply when both murals and wall signs are installed on the same wall.

## **G. Analysis**

As stated above, murals are a unique form of art that can add character to an area and contribute to a community identity and sense of place. For these reasons, the City intends to allow and encourage murals within the community.

By regulating murals within a new Title 20 – Public Art, the City is encouraging the installation of murals as an art form within the City and distinguishing them from signs. Staff acknowledges the possibility of a proposal that combines a wall sign and a mural on the same building wall. Within the Original Art Mural provisions, which have clear and objective review standards, the proposed language allows for this combination, provided that the total area covered does not exceed 40%. Staff believes that this achieves the goal of both allowing a mural while also accommodating the economic need for a wall sign that identifies a business, all while maintaining a limit on the size.

## **H. Scope of Planning Commission Review**

The amendments to establish the mural program amend a portion of Title 14, Sign Ordinance, and create a new title in the Municipal Code – Title 20, Public Art. The Planning Commission’s role in municipal code amendments is to make a recommendation to the City Council for amendments that affect a land use regulation. The amendments to Title 14 are the only land use regulations being amended with this proposal, and are the only portion of the mural program for which the Planning Commission will make an official recommendation.

Planning Commissioners, either as individuals or as a group, are welcome to submit comments about the proposed new code title for public art (Title 20) to City Council for their consideration.

## **CONCLUSIONS**

Staff recommends that the Planning Commission forward a recommendation to City Council to approve application ZA-14-01, with the proposed findings and amendments found in Attachment 1. Staff has concluded that the proposal meets the requirements of the applicable sections of the MMC; specifically MMC Chapter 19.902 and MMC Chapter 19.1000. If approved, the amendments to Title 14 and the new Title 20 for Public Art would allow properties to install Art Murals.

## **CODE AUTHORITY AND DECISION-MAKING PROCESS**

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).

- Section 19.902, Amendments to Maps and Ordinances
- Section 19.1000 Review Procedures

This application is subject to a Type V review process. The Commission has 4 decision-making options as follows:

- A. Recommend that City Council approve the proposed amendments to Title 14 as presented in Attachment 1.
- B. Recommend that City Council approve the proposed amendments to Title 14 with modifications to the materials in Attachment 1.

- C. Recommend that City Council not approve the proposed amendments to Title 14.
- 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 posted on the City’s website and posted in City facilities. The City has not received any comments based on the notices of the proposed amendments. Staff has involved City Council, the Milwaukie Arts Committee, mural professionals, and the public in the early stages of drafting the proposed code amendments.

**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. Draft Ordinance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Findings for Amendments to Title 14	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Proposed Amendments to Title 14 – underline/strikeout	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Proposed Title 20, Public Art – draft	<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 link to specific PC meeting date.



CITY OF MILWAUKIE  
*"Dogwood City of the West"*

**Ordinance No.**

**An ordinance of the City Council of the City of Milwaukie, Oregon, to establish Milwaukie Municipal Code Title 20, Public Art, with Chapter XXX, Public Art Murals, and Chapter XXX, Original Art Murals, containing rules and procedures for allowing original art murals and public art murals within the City, and amending Title 14, Signs, to exempt art murals from the provisions of Title 14 (File #ZA-14-01).**

**WHEREAS**, the City of Milwaukie finds that murals are a unique form of public art that add visual interest to buildings and spaces, build community identity, and celebrate the history, culture, and values of the city; and

**WHEREAS**, the City of Milwaukie desires to allow murals as a form of public art in order to realize the beneficial aspects of murals; and

**WHEREAS**, the City does not regulate signage on the basis of sign content, and currently regulates murals in the same manner as other signage; and

**WHEREAS**, the City of Milwaukie has worked with mural artists, art professionals, and community stakeholders in devising a program for public art murals; and

**WHEREAS**, the Planning Commission held a duly advertised public hearing on the amendments to Title 14, with notice provided per the requirements of the Milwaukie Municipal Code and Oregon Revised Statutes; and

**WHEREAS**, the City Council held a duly advertised public hearing on the establishment of Title 20 and amendments to Title 14, with notice provided per the requirements of the Milwaukie Municipal Code and Oregon Revised Statutes;

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

Section 1. Findings. Findings of fact in support of the proposed amendment(s) to Title 14 are attached as Exhibit A.

Section 2. TITLE 14, Signs, Text Amendment. TITLE 14, Signs, is amended as described in Exhibit B.

Section 3. TITLE 20, PUBLIC ART. The City of Milwaukie enacts TITLE 20, PUBLIC ART as described in Exhibit C.

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 \_\_\_\_\_.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

DRAFT

### Recommended Findings in Support of Approval

1. The City of Milwaukie ("applicant") proposes to amend regulations that are contained in Title 14, Signs. The land use application for this amendment is ZA-14-01.
2. The purpose of the proposed code amendments is to clarify that Art Murals (Public Murals and Original Art Murals) are not subject to the regulations of Title 14. Public Murals and Original Art Murals would be allowed subject to the provisions of a new title in the Milwaukie Municipal Code (MMC) that is being considered by Milwaukie City Council concurrently with the amendments to Title 14.
3. The proposed amendments are subject to the following provisions of the MMC:
  - MMC Section 19.902 Amendments to Maps and Ordinances
  - MMC Chapter 19.1000 Review Procedures
4. Sections of the MMC or Milwaukie Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.
5. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.

- A. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendments are proposed by the City of Milwaukie and were initiated by the Planning Director on January 25, 2014.

- B. MMC Section 19.1008 establishes requirements for Type V review.
  - i) Subsection 19.1008.3.A.1 requires opportunity for public comment. Opportunity for public comment and review has been provided. Staff held public meetings with the Milwaukie Arts Committee to discuss mural permitting in 2011 and 2012. City staff solicited feedback on mural permitting and preferences through a public survey in February 2012. A study session and worksession were held with Milwaukie City Council in 2012 on establishing a mural program.
  - ii) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing. A notice of the Planning Commission's March 11, 2014, hearing was posted as required on February 9, 2014, at City Hall, Ledding Library, Public Safety Building, and Johnson Creek Facility. A notice of the City Council's \_\_\_\_\_, 2014, hearing was posted as required on \_\_\_\_\_, 2014, at the same locations.
  - iii) Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The proposed amendments apply throughout the city generally in the sign ordinance, and specific property owner notice is not required.
  - iv) Subsection 19.1008.3.B and C require notice of a Type V application be sent to Metro and the Department of Land Conservation and Development (DLCD) 45 days prior to the first evidentiary hearing. The first evidentiary hearing was held on April 8, 2014. Per Oregon Administrative Rule 660-018-0022(1), no goals, commission rules, or land use statutes apply to a particular proposed change, and DLCD notice was not

required. Metro responded on March 20, 2014 that they had no comments on the proposed code amendments.

- v) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners. In the opinion of the Planning Director, the proposed amendments would not affect the permissible uses of any property in the city, and that notice to property owners was not required.
  - vi) 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 April 8, 2014, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on XXXX, 2014, and approved the amendments.
6. MMC Chapter 19.902 establishes requirements for amendments to the text of the Milwaukie Comprehensive Plan and the Milwaukie Municipal Code. The City Council finds that these requirements have been met as follows.
- A. MMC Subsection 19.902.5.A requires that changes to the text of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.
 

The Planning Commission held a duly advertised public hearing on April 8, 2014 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on XXXX, 2014 and approved the amendments. Public notice was provided in accordance with MMC Subsection 19.1008.3.
  - B. MMC Subsection 19.902.5.B contains approval criteria for text amendments to the Milwaukie Municipal Code.
    - i) MMC Subsection 19.902.5.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.
 

*The amendments to Title 14 are proposed to be consistent with the Milwaukie Municipal Code. They are intended to coordinate and clarify that Art Murals (Public Murals and Original Art Murals) allowed by the proposed Title 20 are reviewed separately from other signage.*
    - ii) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan. Goals and policies that do not apply to this code amendment are not listed here.
 

Allowing public art murals is consistent with the Comprehensive as follows:

*Chapter 4, Residential Land Use and Housing Element, Goal Statement: To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.*

Murals are a unique form of art that can add character to an area and contribute to a community identity and sense of place. The City Council finds that murals build and enhance local neighborhood identity, which is consistent with this goal statement.

*Chapter 4, Residential Land Use and Housing Element, Objective #4 – Neighborhood Conservation: To maximize the opportunities to preserve, enhance and reinforce the identity and pride of existing well-defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock.*

Many residential neighborhoods abut or are close to commercial areas. Murals add visual interest to buildings and spaces and can help to enhance the identity and pride in both the commercial and the surrounding area. Allowing murals is consistent with this objective.

*Economic Development Element, Objective #12 – Town Center, Planning Concepts:*

*To emphasize downtown Milwaukee and the expanded city center as a Town Center with the major concentration of mixed use and high density housing, office, and service uses in the city.*

*The future role for the downtown as a Town Center will revitalize the area as a focus of community identity and pride.*

Multiple community members have expressed interest in installing murals, particularly downtown. Results from an on-line survey that was posted for citizens to provide feedback on establishing a mural program indicated a high level of agreement that murals can highlight the uniqueness of a community, can offer a positive opportunity to feature niche businesses, and the murals can enhance public spaces. The role that murals play in a Town Center environment can be positive and can enhance its viability. Allowing murals is consistent with this objective.

- iii) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be 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 object to the proposed amendments. No Urban Growth Management Functional Plan policies are relevant to the proposal.*

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

*There are no statutes or administrative rules that were found to be applicable to the proposed amendments.*

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

*There are no federal regulations that were found to be applicable to the proposed amendments.*

## TITLE 14 SIGNS

### CHAPTER 14.04 GENERAL PROVISIONS

#### CHAPTER 14.04 GENERAL PROVISIONS

##### 14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Sign” means the physical components of materials placed or constructed primarily to convey a message or other display and which can be viewed from a right-of-way or lot under other ownership. Displays permitted through Title 20 are not signs for purposes of Title 14.

---

#### CHAPTER 14.08 CONDITIONAL AND COMMUNITY SERVICE SIGNS

D. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

---

#### CHAPTER 14.16.020 RESIDENTIAL-OFFICE-COMMERCIAL ZONE

Table 14.16.020

Wall signs on commercial property: Max. 10% of building face related to commercial use.<sup>6</sup>

<sup>6</sup> In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

---

#### CHAPTER 14.16.030 NEIGHBORHOOD COMMERCIAL ZONE

Table 14.16.030

Wall signs: Max. 20% of building face related to commercial use.<sup>6</sup>

<sup>6</sup> In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

---

**CHAPTER 14.16.040 COMMERCIAL ZONE**

Table 14.16.040

Wall signs: <sup>5</sup>

<sup>5</sup> If a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed 20% of the face of the building. In addition to these sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

**CHAPTER 14.16.050 MANUFACTURING ZONE**

Table 14.16.050

Wall signs: Max. 10% of building face<sup>4</sup>

<sup>4</sup> Includes signs painted directly on the building surface. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

**CHAPTER 14.16.060 DOWNTOWN ZONES**

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

**B. Wall Sign****1. Area**

The maximum permitted area of a wall sign shall be 20% of the building face.

b. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

**CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED****14.12.010 EXEMPTED SIGNS**

The following signs shall not require a sign permit but shall conform to all other applicable provisions of this chapter and shall be allowed outright in all zones, except as otherwise noted:

**Proposed Code Amendment**

---

M. Art Murals, and any identified sub-categories, as permitted by Title 20. Such displays are not considered signs and are exempt from all provisions of Title 14.

---

**Proposed Code Amendment with Commentary**

---

*Starter COMMENTARY page*

---

The proposed ordinance updates Chapter 14 of the Milwaukie Municipal Code (Signs) and creates Title 20 (Public Art) which includes a chapter defining Art Murals. Art Murals may be permitted through an objective review and permitting process (Original Art Mural) or through a committee review that involves dedicating the mural to the public through a public art easement (Public Art Mural.)

Public Art Murals

Staff proposes that Public Art Murals be allowed, with some restrictions, in commercial and industrial zones and on community service use properties, and that such murals be reviewed by an ad hoc committee comprised of Milwaukie Arts Committee members, arts administrators, mural artists and neighborhood/and or business owners located near the proposed mural. This ad hoc committee shall make a recommendation to the Milwaukie Arts Committee which is appointed by and advisory to City Council as established by Ordinance 1982.

Administrative rules and procedures shall be created that set forth clear and consistent criteria and procedures for applying for a permit to create a Public Art Mural.

The proposed ordinance requires that a Public Art Mural shall:

- Remain intact for five or more years
- Not be altered beyond basic maintenance
- Not extend more than six inches from the building façade
- Not be displayed for compensation
- Not include electrical components
- Not obstruct the function of windows or doors
- Only be permitted on residential buildings of five units or more
- Include a process for public notification

Original Art Murals

Staff proposes that Original Art Murals be allowed, with some restrictions, in commercial and industrial zones and on community service use properties, and that such murals be reviewed by an objective review process.

Administrative rules and procedures shall be created that set forth clear and consistent criteria and procedures for applying for a permit for an Original Art Murals.

The proposed ordinance requires exempts Original Art Murals, as regulated by Title 20, from the provisions of Title 14.

Title 20 requires that an Original Art Mural:

- Shall comprise no more than 40% of the surface area of a building wall
- Shall not be displayed for compensation

- Shall not be permitted on any property designated as a significant or contributing historic resource per Section 19.403

DRAFT

## TITLE 14 SIGNS

### CHAPTER 14.04 GENERAL PROVISIONS

#### CHAPTER 14.04 GENERAL PROVISIONS

##### 14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Sign” means the physical components of materials placed or constructed primarily to convey a message or other display and which can be viewed from a right-of-way or lot under other ownership. Displays permitted through Title 20 are not signs for purposes of Title 14.

---

#### CHAPTER 14.08 CONDITIONAL AND COMMUNITY SERVICE SIGNS

D. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

---

#### CHAPTER 14.16.020 RESIDENTIAL-OFFICE-COMMERCIAL ZONE

Table 14.16.020

Wall signs on commercial property: Max. 10% of building face related to commercial use.<sup>6</sup>

<sup>6</sup> In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

---

#### CHAPTER 14.16.030 NEIGHBORHOOD COMMERCIAL ZONE

Table 14.16.030

Wall signs: Max. 20% of building face related to commercial use.<sup>6</sup>

<sup>6</sup> In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

---

**CHAPTER 14.16.040 COMMERCIAL ZONE**

Table 14.16.040

Wall signs: <sup>5</sup>

<sup>5</sup> If a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed 20% of the face of the building. In addition to these sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

**CHAPTER 14.16.050 MANUFACTURING ZONE**

Table 14.16.050

Wall signs: Max. 10% of building face<sup>4</sup>

<sup>4</sup> Includes signs painted directly on the building surface. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

**CHAPTER 14.16.060 DOWNTOWN ZONES**

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

**B. Wall Sign****1. Area**

The maximum permitted area of a wall sign shall be 20% of the building face.

b. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed 40% of the building wall.

**CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED****14.12.010 EXEMPTED SIGNS**

The following signs shall not require a sign permit but shall conform to all other applicable provisions of this chapter and shall be allowed outright in all zones, except as otherwise noted:

---

**Proposed Code Amendment with Commentary**

---

M. Art Murals, and any identified sub-categories, as permitted by Title 20. Such displays are not considered signs and are exempt from all provisions of Title 14.

---

---

**TITLE 20 PUBLIC ART**

---

**CHAPTER 20.04****ART MURALS****20.04.010 GENERAL PROVISIONS****A. PURPOSE**

The purpose of this title and the policy of the City of Milwaukie is to permit and encourage Art Murals under certain terms and conditions Art Murals comprise a unique medium of expression which serve the public interest, and have purposes distinct from signs and confer different benefits. Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community building through the presence of and identification with original works of art; and a reduction in the incidence of graffiti and other crime. Art Murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians and are retained for periods of five years or more.

**B. DEFINITIONS**

Words used in this Title have their normal dictionary meaning unless they are listed in this chapter or unless this Title specifically refers to another Title. Words listed in this chapter have the specific meaning stated or referenced unless the context clearly indicates another meaning.

“Applicant” means the party that is primarily responsible for the design and installation of a Art Mural.

“Original Art Mural” means a hand-painted image on the exterior wall of a building that may comprise up to 40% of the surface area of a building wall.

“Public Art Mural” means a hand-painted, hand-tiled or digitally printed image on the exterior wall of a building where the wall or surface is either on city-owned property or has a public art easement and is viewable from another property or right-of-way.

“Mural easement” means an easement granted to the City of Milwaukie by a property owner for purposes of installing and maintaining a Public Art Mural on the surface of a structure or building.

“Compensation” means the exchange of something of value. It includes, without limitation, money, securities, real property interest, barter of goods or services, promise of future payment, or forbearance of debt. “Compensation” does not include goodwill, or an exchange of value that a building owner (or leaseholder with a right to possession of the wall upon which the mural is to be placed) provides to an artist, muralist or other entity where the compensation is only for the creation and/or maintenance of the mural on behalf of the building owner or leaseholder, and the building owner or leaseholder fully controls the content of the Art Mural.

“Owner” means the entity(s) that own(s) the real property that contains the building or structure upon which a Public Art Mural is installed. In the case where a Public Art Mural is installed in the right-of-way, the owner means the entity with jurisdiction over that right-of-way.

“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned.

“Ad Hoc Mural Review Committee” means the committee assembled on an ad hoc basis to review and make a recommendation to the Milwaukie Arts Committee regarding a mural application based on criteria established in the Milwaukie Mural Arts Program administrative rules and procedures.

### **C. APPLICABILITY**

The provisions of this Title apply to proposals to install Art Murals.

### **D. PROHIBITION OF COMPENSATION**

No compensation will be given or received for the display of Art Murals or for the right to place the mural on another’s property. The applicant shall certify in the permit application that no compensation will be given or received for the display of the mural or the right to place the mural on the property. Compensation does not include goodwill, or an exchange of value that a building owner (or leaseholder with a right to possession of the wall upon which the mural is to be placed) provides to an artist, muralist or other entity where the compensation is only for the creation and/or maintenance of the mural on behalf of the building owner or leaseholder, and the building owner or leaseholder fully controls the content of the mural.

### **E. VIOLATIONS AND ENFORCEMENT**

It is unlawful to violate any provision of this Title, any Administrative Rules adopted by the City of Milwaukie pursuant to this Title, or any representations made or conditions or criteria agreed to in a Art Mural permit application. This applies to any applicant for an Art Mural permit, to the proprietor of a use or development on which a permitted Art Mural is located, or to the owner of the land on which the permitted Art Mural is located. For the ease of reference in this Title, all of these persons are referred to by the term "operator."

#### 1. Notice of Violations

---

**Proposed Code Amendment with Commentary**

---

The City Manager, or designee, must give written notice of any violation to the property owner. Failure of the property owner to receive the notice of the violation does not invalidate any enforcement actions taken by the City.

## 2. Responsibility for Enforcement

The regulations of this Title, and the conditions of Art Mural permit approvals, shall be enforced by the City Manager, or designee.

## **20.04.020 PUBLIC ART MURALS**

### **A. STANDARDS FOR PUBLIC ART MURALS**

#### 1. Allowed Locations

Public Art Murals are only allowed on buildings or structures as described below, unless a Public Art Mural is specifically prohibited by Subsection 20.16.010.B. Zoning designations refer to the base zones established in Title 19.

- a. Downtown zones. Public Art Murals are allowed in areas zoned Downtown Commercial, Downtown Office, Downtown Storefront, Downtown Residential, or Downtown Open Space.
- b. Commercial zones. Public Art Murals are allowed in areas zoned Commercial General or Community Shopping Commercial.
- c. Industrial zones. Public Art Murals are allowed in area zoned Manufacturing or Business Industrial.
- d. Community Service Uses. Public Art Murals are allowed on uses that have received approval as a Community Service Use, per Section 19.904.

#### 2. Specifically Prohibited Locations

Public Art Murals are specifically prohibited on buildings or structures that are designated as a Contributing or Significant Historic resource per Section 19.403.

### **B. PUBLIC OWNERSHIP, DURATION AND ALTERATION**

#### 1. Public Ownership.

The mural must be on the surface of a building or structure that is either on property owned by the City of Milwaukie or for which a mural easement to the City has been granted.

#### 2. Duration and Alteration.

The Public Art Mural shall remain in place, without alteration, for a minimum period of five years. "Alterations" includes any change to a permitted mural, including but not limited to any change to the image(s), materials, colors, or size of the permitted mural. "Alteration" does not include naturally occurring changes to the mural caused by exposure to the elements or the passage of time. Minor changes to the permitted mural that result from the maintenance or repair of the mural shall not constitute "alteration." Such minor changes

may include slight and unintended deviations from the original image, colors, or materials that occur when the permitted mural is repaired due to the passage of time or as a result of vandalism.

Public Art Murals may be removed within the first five years of the date of registration per the terms of the public art easement and under the following circumstances:

- a) the property on which the mural is located is sold; or
- b) the structure or property is substantially remodeled or altered in a way that precludes continuance of the mural; or
- c) the property undergoes a change of use authorized by the Planning Department.

### **C. PHYSICAL STANDARDS**

#### 1. Dimension

No portion of a mural shall be more than 30 feet vertically above grade, and shall not extend more than 6 inches from the surface of the building or structure to which it is affixed.

#### 2. Materials

Mural materials may include the following: paint; painted wood or plastic surfaces affixed to a building or structure; mosaics of ceramic tile and/or glass; vinyl or pellon, or similar materials. The Ad Hoc Mural Committee and Milwaukie Arts Committee may consider materials other than those listed in their review of a proposed Public Art Mural.

#### 3. Placement

No new Public Art Mural shall obstruct the functioning of any building opening, including, but not limited to, windows, doors, and vents.

### **D. STRUCTURAL PERMIT**

Public Art Murals that are affixed to a building shall require structural permit approval as deemed necessary by the Milwaukie Building Official.

### **E. LIGHTING**

No new or existing Public Art Mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).

Lighting may be required for safety or crime deterrent purposes with consideration to impacts to surrounding on properties, as determined by the City Building Official.

### **F. APPLICATION**

An applicant shall initiate a proposal to place a Public Art Mural by filing an application with the City. The application shall be made on forms provided by the City, include the application fee for review of a Public Art Mural, and include any accompanying materials, such as proposed designs, site photos, and building or structure elevation drawings, deemed necessary by the

---

**Proposed Code Amendment with Commentary**

---

City for review of the Public Art Mural proposal.

Any fees shall be in accordance with the City's Fee schedule.

**G. ADMINISTRATIVE REVIEW**

1. Upon submission of a complete application for a Public Art Mural, the City Manager, or designee, shall review the proposal for conformance with the standards in 20.04.040 and 20.04.070.
2. Upon finding that the proposed Public Art Mural conforms with the standards in 20.04.040 and 20.04.070, the City Manager, or designee, shall inform the applicant in writing that the proposed Public Art Mural meets the standards in 20.04.040 and 20.04.070. The City Manager, or designee, shall then provide the applicant with the materials necessary to complete the public notice requirements in Section 20.04.130.
3. Prior to the Ad Hoc Mural Committee Review, the applicant shall provide documentation to the City Manager, or designee, that they complied with the public notice requirements of Section 20.20.030.

**H. PUBLIC NOTICE****1. Mailed Notice**

Mailed notice is intended as a courtesy and to provide the Neighborhood District Associations a chance to invite the applicant to discuss the proposal.

- a. The City Manager, or designee, shall mail a notice to the chairperson of the Neighborhood District Association(s) containing or whose boundary is within 300 feet of the site of the proposed mural at least 14 days prior to the Ad Hoc Mural Committee's review of the proposed mural.
- b. The notice shall include instructions for how to submit comments and the name and contact information for the applicant and owner, contact information for the City Manager, or designee, and a legibly-sized color representation of the proposed Public Art Mural.

**2. Posted Notice**

A notice shall be posted at the site of the proposed Public Art Mural and shall conform to the following standards.

- a. The notice shall be posted at least 14 days prior to the Ad Hoc Mural Committee's meeting to review the proposed mural. The City Manager, or designee, shall provide the applicant with materials to be posted. The applicant shall be responsible for ensuring that the notice is posted and remains posted, and shall replace the notice as soon as practicable if the notice is damaged or removed.
- b. The notice shall be clearly visible from the public right-of-way and be at least 11 in by 17" in size. The City Manager, or designee, may require more than 1 sign to be posted depending on specific site characteristics.
- c. The notice shall include the name and contact information for the applicant and owner, contact information for the City Manager, or designee, and a legibly-sized color representation of the proposed Public Art Mural.
- d. The notice shall be durable and waterproof.

## I. AD HOC MURAL COMMITTEE REVIEW

The Ad Hoc Mural Committee shall review the proposed Public Art Mural. The intent of this review is to explore the feasibility of the mural, evaluate the community support for the proposed mural, assess the mural given its context and its placement on either a City building or building with a public art easement, and to make a recommendation the Milwaukie Arts Committee about approval of the mural, or approval with conditions.

### 1. Committee Composition

The Ad Hoc Mural Committee shall be selected by the City Manager, or designee, and will be comprised of a minimum of three members and maximum of five members. A majority of the members shall be professional mural artists and/or professional public art administrators. At least one member shall also be a member of the Milwaukie Arts Committee. When practicable, a neighborhood resident or business owner may be included.

Further selection criteria may be set forth in the Milwaukie Mural Arts Program administrative rules and procedures.

### 2. Review Process

The Ad Hoc review committee shall be convened by the City Manager, or designee, and shall meet within 30 business days of a the submitted mural application being deemed complete.

### 3. Review Criteria

#### a. Scale:

Appropriateness of scale to the wall upon which mural will be painted/attached and to surrounding physical features.

#### b. Context :

Architectural, geographical, socio-cultural and/or historical relevance to site.

#### c. Community support:

General support/advocacy from building owner/user, surrounding neighborhood, adjacent businesses, and/or arts community.

#### d. Feasibility:

Demonstrated ability to complete the proposed mural on time and within budget.

#### e. Media:

Appropriate media proposed to ensure mural's longevity and durability.

#### f. Structural and surface stability:

Commitment to repair mural surface as necessary before painting and plan for mitigating graffiti through design and/or graffiti coating.

#### g. Signed easement form from building owner:

---

**Proposed Code Amendment with Commentary**

---

Commitment to keep the mural in place as approved for minimum of 5 years and to maintain mural during that time.

- h. Public accessibility, safety and lighting:  
Compliance with city codes for safety, accessibility and lighting.

**J. MILWAUKIE ARTS COMMITTEE REVIEW**

## 1. Authority

The Milwaukie Arts Committee shall have the authority to determine if an application for a Public Art Mural substantially meets all of the applicable requirements and to issue a final approval, denial, or approval with conditions regarding the Public Art Mural application.

## 2. Notice of Decision

The City Manager, or designee, shall issue in writing the notice of decision. The decision shall include the following information:

- a. A brief summary of the proposal.
- b. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
- c. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
- d. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
- e. The date the decision is rendered shall become final, unless appealed. The decision shall state the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
- f. A statement that the complete Public Art Mural application file, including findings, conclusions, and conditions of approval, if any, is available for review. The decision shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

**K. APPEALS**

A decision on the approval, denial or approval with conditions of Public Art Mural application may be appealed by filing a written request to the City Manager, within 15 days of the date on the notice of decision. If the 15th day falls upon a weekend or legal holiday, the end of the

appeal period shall be extended to the end of the next day which is not a weekend or legal holiday.

## **L. MURAL MAINTENANCE**

Art Murals shall be maintained by the property owner for five years. Public Murals shall be maintained per for five years and per the terms outlined in the Public Art Easement.

### **20.04.030 ORIGINAL ART MURALS**

#### **A. STANDARDS FOR ORIGINAL ART MURALS**

1. Original Art Murals are allowed on properties described in this subsection.
  - a. Properties in the sign districts 14.16.020 Residential-Office-Commercial Zone; 14.16.030 Neighborhood Commercial Zone; 14.16.040 Commercial Zone; 14.16.050 Manufacturing Zone; and 14.16.060 Downtown Zones.
  - b. Community service use properties, as defined in Subsection 19.904.2, regardless of the sign district in which the property is located.
  - c. Irrespective of Subsections 14.16.070.A.1 and 2, properties designated as a significant or contributing historic resource per Section 19.403 are not eligible for painted wall signs as allowed in this subsection. This does not prohibit any signage otherwise allowed by the sign district in which the historic resource is located or under Section 14.12.010.
2. An Original Art Mural may comprise up to 40% of the surface area of a building wall. The area allowed for an Original Art Mural is considered in conjunction with the size regulations for other wall signs as allowed by the sign districts in Section 14.16. so that the combination of the wall sign and Original Art Mural shall not exceed 40% of the wall face.
3. No compensation may be given or received for placement of an Original Art Mural. Prior to issuance of a sign permit for an Original Art Mural, the building owner shall provide an affidavit that no compensation was or will be received for placement of the Original Art Mural.
4. Where compensation is involved, nothing in Subsections 14.16.070.A or C shall prohibit a Original Art Mural from being permitted as a regular wall sign allowed per the sign district in which the property is located.

**B. REVIEW AND PERMITTING OF ORIGINAL ART MURALS**

## 1. Authority

The Milwaukie Planning Director, or designee, shall have the authority to determine if an application for an Original Art Mural meets all of the applicable requirements and to issue a final approval, denial, or approval with conditions.

## 2. Notice of Decision

The Planning Director, or designee, shall issue the Original Art Mural Permit in writing.