

**DRAFT ORDINANCE TO BE CONSIDERED BY
THE CITY COUNCIL ON MARCH 15, 2022**



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE ZONING MAP TO CHANGE THE ZONING FOR A PORTION OF THE PROPERTY ADDRESSED AS 10306 SE MAIN STREET FROM RESIDENTIAL R-5 TO DOWNTOWN MIXED USE.

WHEREAS the proposed amendment to the Zoning Map does not change the Town Center land use designation of the subject property on Comprehensive Plan Map 2 (Land Use); and

WHEREAS the proposed amendment will make the zoning designation consistent across the subject property and will eliminate the previous split-zoning situation; and

WHEREAS the Planning Commission held a public hearing on July 27, 2021, and voted unanimously to approve the proposed amendment; and

WHEREAS the Planning Commission approval included a condition of approval establishing a transportation-related “trip cap” to limit future redevelopment of the rezoned area until additional analysis and evaluation can confirm consistency with Oregon’s Transportation Planning Rule requirements; and

WHEREAS no appeal of the Planning Commission decision was received within the appeal period, which closed on August 13, 2021; and

WHEREAS Milwaukie Municipal Code (MMC) Subsection 19.1006.5.D provides that, for Zoning Map Amendments evaluated by the Planning Commission through a Type III process, an adopting ordinance shall be before the Council at the first meeting following the close of the appeal period that meets the applicable public notice requirements of the Milwaukie Charter (Chapter VIII, Section 31).

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

Section 1. The Planning Commission’s Findings in Support of the zoning map amendment are adopted by the City Council and are attached as Exhibit A.

Section 2. The Milwaukie Zoning Map is amended as described in Exhibit B (Proposed Zoning Map Amendment).

Section 3. The amendment will become effectively immediately.

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 _____.

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Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Stauffer, City Recorder

Justin D. Gericke, City Attorney

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**EXHIBIT A
Findings in Support of Approval
Zoning Map Amendment, File #ZA-2021-001
(Master File #DR-2021-003, Kellogg Bowl Redevelopment)**

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, Pahlisch Commercial, Inc., has applied for approval to construct a six-story multifamily residential building on the two lots that comprise the Kellogg Bowl site at 10306 SE Main St. The majority of the site is in the Downtown Mixed Use (DMU) zone, with a small portion zoned Residential R-5. The land use application master file number is DR-2021-003, with accompanying applications for downtown design review, zoning map amendment (file #ZA-2021-001), natural resource review, transportation facilities review, and variances to development standards.
2. The proposed development involves demolishing the existing bowling alley on the site and replacing it with a six-story, 178-unit multifamily building. The applicant proposes to rezone the Residential R-5 zone portion of the northeast corner of the site to match the DMU designation of the rest of the subject property.
3. The zoning map amendment portion of the proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held by the Planning Commission on July 27, 2021, as required by law.

4. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

- a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including new construction.

The applicant proposes to develop a multifamily apartment building with a ground-floor live/work and structured parking. The proposed new construction triggers the requirements of MMC 19.700.

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b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff on August 27, 2020, prior to application submittal. The proposed development triggers a Transportation Impact Study (as addressed in Finding 4-c). The proposal's compliance with MMC 19.700 has been evaluated through a concurrent Transportation Facilities Review application. Finding 4-f addresses the proposal's compliance with the approval criteria established in MMC Subsection 19.703.3, particularly the required transportation facility improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

The proposed development will trigger a significant increase in trip generation above the existing bowling alley use on the site and therefore requires a TIS. City Engineering staff and the City's on-call traffic consultant (DKS) provided the applicant with a scope of work for the TIS. Kittleson & Associates, the applicant's traffic consultant, prepared the TIS that was included with the applicant's larger submittal for the proposed development.

The TIS identified clear vision concerns on Main Street, so curb extensions are required as proposed in the revised preliminary plans submitted on June 28, 2021. The TIS concluded that the proposed development does not trigger mitigation of impacts beyond the proposed frontage improvements. The TIS also concluded that the surrounding transportation system would continue to operate at the same level of service as before the proposed development.

The TIS recommended establishing a "trip cap" on the 0.2-acre portion of the site that is currently zoned R-5 but is being rezoned to Downtown Mixed Use (DMU) as part of the proposed development. The trip cap would be equivalent to 18 daily, one weekday AM peak hour, and two weekday PM peak hour trips and is needed to assure that any future development traffic on this site complies with Oregon's Transportation Planning Rule (TPR). The TIS recommended that the need for the trip cap should be re-evaluated relative to TPR requirements if this portion of the site should be redeveloped in the future. A condition has been established to ensure that the proposed trip cap remains linked to the subject property until it is re-evaluated and deemed to no longer be necessary.

As submitted and conditioned, the applicant's TIS, including required mitigation measures and a condition related to the proposed trip cap, is sufficient to meet the requirements of MMC 19.704.

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d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

The TIS concluded that no additional mitigation measures are required beyond the proposed frontage improvements on Main Street and 23rd Avenue.

As proposed, mitigation for the transportation impacts of the proposed development is consistent with MMC 19.705.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The subject property fronts Main Street, which is classified as a collector street and is part of a transit route. The application was referred to the Oregon Department of Transportation (ODOT), Clackamas County Department of Transportation and Development (DTD), TriMet, and Metro for comment.

This standard is met.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As proposed, the development is consistent with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

No improvements to Main Street are proposed, only a reconstructed driveway access. The proposed cross section for 23rd Avenue is a 22-ft-wide local residential street. As proposed, the development will have gated emergency-only access to 23rd Avenue, and the street will be established as a turn-around route with new curb and no on-street parking. The proposed cross sections conform to applicable requirements and are consistent with MMC 19.708.2.

As proposed, this standard is met.

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(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

The proposed development includes two new ADA ramps with curb extensions on Main Street and an updated pedestrian crossing of the accessway connecting to the existing sidewalk. The future design for 23rd Avenue does not include pedestrian facilities and no pedestrian facilities are required. The proposed improvements include pedestrian access to the site from 23rd Avenue and will otherwise match the existing frontage improvements on 23rd Avenue to the east, which includes curb on both sides of the street.

As proposed, the development is consistent with all applicable standards of MMC 19.708.3.

(4) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

The portion of Main Street fronting the proposed development is classified as a transit route in the Milwaukie Transportation System Plan (TSP). However, transit facilities are already in place. As a result, transit facility improvements are not required for the proposed development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.6.

As proposed, the development will meet all applicable standards of MMC 19.708 and any other applicable City requirements.

The Planning Commission finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

5. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. Specifically, MMC Subsection 19.902.6 establishes the process for amending the Zoning Map.

a. MMC Subsection 19.902.6.A Review Process

MMC 19.902.6.A establishes the review process for Zoning Map amendments. Generally, changes that involve fewer than five properties or that encompass less than two acres of land are quasi-judicial in nature and subject to Type III review.

The proposed amendment, which would change the zoning of the northeastern portion of the site from Residential R-5 to Downtown Mixed Use (DMU), involves one property that encompass approximately 84,475 sq ft or 1.94 acres. The Planning Commission finds that the change is quasi-judicial in nature and therefore subject to Type III review.

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b. MMC Subsection 19.902.6.B Approval Criteria

MMC 19.902.6.B establishes the following approval criteria for changes to the Zoning Map.

- (1) The proposed amendment is compatible with the surrounding area based on the following factors:
 - (a) Site location and character of the area.
 - (b) Predominant land use pattern and density of the area.
 - (c) Expected changes in the development pattern for the area.

The majority of the subject property is zoned DMU. It is located at the north end of downtown Milwaukie, adjacent to other DMU-zoned properties—the Pietro’s Pizza and Oddfellow’s sites to the north and a veterinary clinic to the south. Across Main Street to the west are other small commercial buildings. The northeast corner of the site is zoned residential R-5 and is adjacent to several other residential (R-5) properties to the east.

As established in MMC Subsection 19.304.1.A, the DMU zone allows for a wide range of uses—including retail, office, commercial, and residential—that will bring people to the downtown to live, work, shop, dine, and recreate. The City anticipates continued redevelopment of this part of the downtown area, with more of the existing single- or low-story commercial-type buildings being replaced over time with new buildings more suitable for more intensive mixed use.

The proposed map amendment would reconcile the nonconforming use of the R-5 portion of the site (off-street parking for the former bowling alley) with the zoning of the rest of the subject property (DMU). Interestingly, the land use designation of the whole subject property (including the portion currently zoned R-5) is Town Center (TC), so the proposed map amendment will also bring the zoning into alignment with the assigned land use designation.

The Planning Commission finds that the proposed amendment is compatible with the surrounding area. This standard is met.

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

The DMU zone allows a wide variety of uses, including multifamily residential housing like the proposed development. The City’s Housing Needs Analysis, prepared in 2016 and looking ahead through 2036, notes that multifamily housing of five units or more comprise approximately 30% of the needed stock for both ownership and rental housing. That is second only to single-family detached housing (46%) in terms of projected need. Although the map amendment is not critical for the proposed multifamily residential development because the area being rezoned is already used for off-street parking and would continue being used in that way, the change would remove the split-zone aspect of the site, resolve the existing nonconforming status of the parking use on the portion currently zoned R-5, and remove one more obstacle for the potential redevelopment of that portion of the site for a use allowed in the DMU zone.

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The Planning Commission finds that the need is demonstrated for uses allowed by the proposed amendment. This standard is met.

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

The area adjacent to the eastern boundary of the subject property includes some properties zoned R-5 (moderate density) and others zoned R-1-B (residential-business office). The adjacent area is currently developed primarily with detached single-family houses, one multifamily building (14 units), and a couple of small offices. The adjacent R-5 area extends further east by two blocks, and there are several other large areas of R-5 zoning throughout the city (including in the Island Station, Lake Road, Ardenwald, Hector Campbell, and Lewelling neighborhoods).

The Planning Commission finds that there is sufficient availability of alternative areas with the R-5 zoning designation. This standard is met.

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

The City's Engineering Department has confirmed that the water and sewer services in the adjacent streets are adequate to serve any redevelopment needs for the subject property. The site's existing street frontages on Main Street and 23rd Avenue will be brought up to City standards by the proposed development. Any future redevelopment of the portion of the subject property being rezoned (adjacent to 23rd Avenue), beyond the proposed off-street parking use, will trigger the requirement to reevaluate the 23rd Avenue frontage and require any further improvements necessary to support a new use.

The Planning Commission finds that the subject property and adjacent properties presently have adequate public facilities, utilities, and services to support uses allowed by the proposed amendment. This standard is met.

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

Main Street is classified as a collector street; 23rd Avenue is a local street. As discussed in Finding 12-c with respect to the proposed trip cap for future redevelopment, the proposed zone change from R-5 to DMU will not significantly increase the potential peak-hour trips for that portion of the site without requiring a new TIS and an assessment of whether additional transportation facility improvements are required. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.

The Planning Commission finds that the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. This standard is met.

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

The Land Use Map within the City's Comprehensive Plan (Comp Plan) shows a Town Center designation for the subject property, including the portion that is currently zoned R-5. The proposed amendment will make the zoning of the overall site consistent with the property's designation on the Land Use Map.

The Comp Plan includes the following goals and policies that are applicable to the proposed development:

Section 8 Urban Design and Land Use

Goal 8.1 (Design)—Use a design framework that considers location and development typology to guide urban design standards and procedures that are customized by zoning district.

Policy 8.1.1(a) is a policy for Downtown Milwaukie that calls for allowing a variety of dense urban uses in multi-story buildings that can accommodate a mix of commercial, retail, office, and higher density residential uses. The proposed map amendment will revise the current moderate density residential zone designation (R-5) of the northeastern portion of the site to be consistent with the majority zoning of the subject property (DMU). This change would reconcile the inconsistency of the current split zoning of the site with both the Town Center designation on the Land Use Map and the proposed multifamily residential development, which is allowed outright in the DMU zone but not even as a conditional use in the R-5 zone. The subject property is committed to the type of dense urban use allowed in the DMU zone and that should be reflected by applying the DMU zone across the entire site.

The Planning Commission finds that the proposed amendment is consistent with the applicable goals and policies of the Comprehensive Plan, including the Land Use Map. This standard is met.

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

Within the Metro Urban Growth Management Functional Plan, Title 1 (Housing Capacity) and Title 6 (Centers, Corridors, Station Communities, and Main Streets) provide guidance related to the proposed amendment. Title 1 calls for a compact urban form to meet regional housing needs. Title 6 recognizes centers, corridors, station communities, and Main Streets as the principal centers of urban life in the region and calls for actions and investments by cities and counties to enhance this role.

The proposed change of a small portion of the subject property from R-5 to DMU zoning will eliminate the existing and future nonconformity of the off-street parking use of the area being rezoned. By making the site's zoning uniformly DMU, the proposed amendment will facilitate any future efforts to further develop or redevelop the subject property for the uses allowed in the DMU without the need for variances.

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The Planning Commission finds that the proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies. This standard is met.

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

Several of the Statewide Planning Goals are applicable to the proposed amendment. Goal 1 (Citizen Involvement) focuses on developing a citizen involvement program that ensures the opportunity for all citizens to be involved in all phases of the planning process. Goal 2 (Land Use Planning) deals with establishing a land use planning process and policy framework as a basis for all decisions and actions related to use of land, assuring that all such decisions and actions have an adequate factual base. Goal 14 (Urbanization) is intended to ensure efficient use of land and provide for livable communities.

In addition, the Metro Housing Rule, as established in Oregon Administrative Rule (OAR) 660 Division 7, aims to ensure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the metropolitan Portland urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs.

The proposed zone change has been processed with Type III (quasi-judicial) review. Notice of the public hearing was provided to property owners and current residents of properties within 300 ft of the subject properties. The Planning Commission held a public hearing on July 27, 2021, with an opportunity for testimony and comment by anyone with interest in or concern about the proposed amendment. These findings demonstrate that the proposed amendment complies with the applicable criteria for approval established in the City's municipal code.

The proposed amendment will resolve the current inconsistency between the subject property's Town Center land use designation in the Comp Plan and the moderate density residential zoning (R-5) of a small portion of the site. This will eliminate the existing nonconforming situation, as the area being rezoned was mostly recently used for off-street parking for a longstanding commercial recreation use (bowling alley) and will continue to be used for off-street parking for a new multifamily residential building. Any future redevelopment of the subject property will be able to be conducted without the current split-zoning designations on the site (DMU and R-5). The proposed amendment also will ensure that the subject property can be used in its entirety for the efficient and intensely urban purposes for which the majority of its area is already zoned (DMU).

In OAR 660-007-0035, the Metro Housing Rule sets a base minimum density of eight units per acre for new residential construction in Milwaukie. The existing R-5 zone has a minimum density of 7.0 units per acre; the proposed DMU zone has a minimum

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density of 30 units per acre for stand-alone multifamily dwellings. The proposed amendment exceeds the minimum density required by Metro.

The Planning Commission finds that the proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule. This standard is met.

The Planning Commission finds that the proposed amendment meets all applicable approval criteria for zoning map changes as established in MMC 19.902.6.B. This standard is met.

c. MMC Subsection 19.902.6.C Conditions of Approval

As per MMC 19.902.6.C, conditions of approval may be applied to Zoning Map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, State, or federal regulations.

As discussed in Finding 4-c, a condition has been established to require the documentation of a trip cap on the portion of the subject property being rezoned from R-5 to DMU. The Planning Commission finds that no conditions of approval are necessary for fulfilling identified public facility needs and/or meeting applicable regional, State, or federal regulations.

d. MMC Subsection 19.902.6.D Modification of Official Zoning Map

For Zoning Map amendments not involving conditions of approval, the Zoning Map will be modified when the adopting ordinance goes into effect. For zoning map amendments involving conditions of approval, the Zoning Map will not be modified until all conditions of approval have been met.

As noted above in Finding 5-c, the proposed amendment includes one condition of approval related to the proposed trip cap. Once the condition has been met, an adopting ordinance will be brought before the City Council as required by MMC Subsection 19.1006.5.D, and the Zoning Map will be modified accordingly when the ordinance goes into effect.

As conditioned, the Planning Commission finds that the applicable requirements for an amendment to the City's Zoning Map are met.

6. The application was referred to the following departments and agencies on June 15, 2021:

- Milwaukie Community Development Department
- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- City Attorney
- Historic Milwaukie Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Clackamas Fire District #1 (CFD #1)
- ESA (City's on-call Natural Resource consultant)

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- Clackamas County Department of Transportation & Development
- Metro
- ODOT
- TriMet
- North Clackamas School District
- NW Natural

The comments received are summarized as follows:

- **Alex McGladrey, Lieutenant – Deputy Fire Marshal, CFD #1:** The subject property is in an area with public water supply. Fire apparatus access roads cannot route continuously around the exterior walls of the building due to site constraints. CFD #1 accepted the application for alternative or modification of the 2019 Oregon Fire Code (pending Milwaukie Building Department approval) where the applicant proposed the following:
 - The building will be equipped with an approved NFPA 13 automatic sprinkler system throughout.
 - There are no combustibles concealed in attic spaces.
 - All stairway enclosures have a fire-resistance rating of not less than 2-hour.
 - The roof slope is essentially flat with a slope of 3/8 inch per foot (less than 33% slope).
 - Approved access is provided to the roof from all the stairways. The north and south stairways extend to the roof within a 2-hour enclosure and a compliant roof hatch.
 - Each stairwell is equipped with a standpipe; both standpipes terminate at the roof.
- **Jeremy Lorence, East Metro Engineer, NW Natural:** No comments.
- **Cindy Detchon, Assistant Superintendent of Operations, North Clackamas School District:** No comments.
- **Jennifer Backhaus, Engineering Technician III, City of Milwaukie Engineering Department:** The Engineering Department has provided comments that have been incorporated into the findings for MMC Chapter 12.16 and MMC Chapter 19.700.
- **John Vlastelicia, Senior Environmental Scientist, ESA (City's on-call natural resources consultant):** Peer review of the applicant's Water Quality Resource Site Assessment was provided in a memo dated July 16, 2021, and was incorporated into the findings for MMC Section 19.402.
- **Kate Hawkins, Associate Transportation Planner, ODOT:** Confirmation of the assessment provided by the applicant's Traffic Impact Study. No other comments.
- **Richard Recker, Chair, Historic Milwaukie NDA:** No specific comments on the proposed development; general suggestion to revisit the overall process of community engagement in development review.

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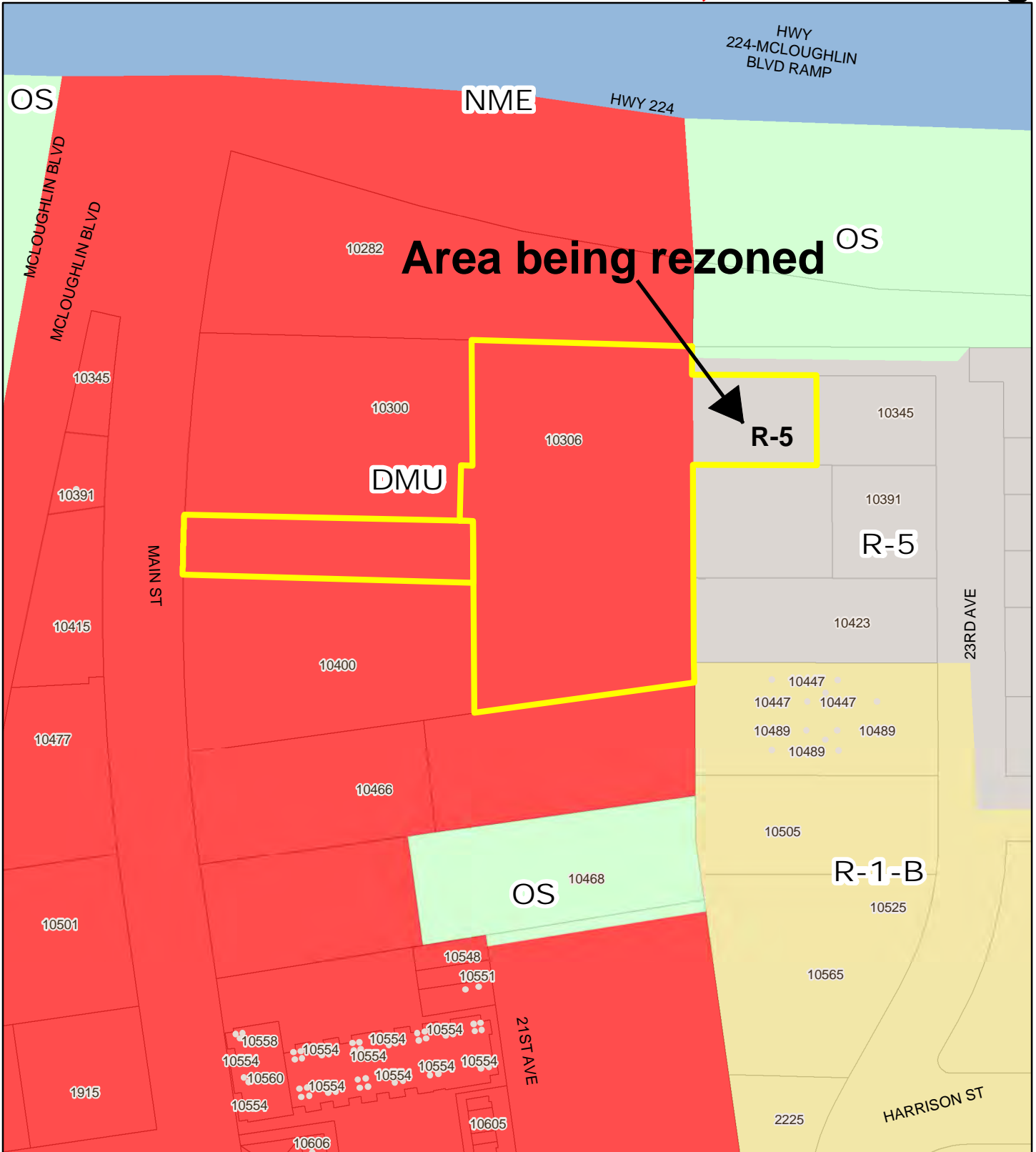
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- **Daniel Eisenbeis, resident of Historic Milwaukie neighborhood:** Bicycle parking should be dispersed to other building entrances, including those near 23rd Avenue. Unrestricted public access should be required through the site between 23rd Avenue and Main Street. Sidewalks should be required on the portion of 23rd Avenue adjacent to the site, and off-site pedestrian improvements should be required as well.
- **Craig Gustafson:** Opposition to the proposed development, citing disturbance of two sensitive ecological areas, alleged bad reputation of the applicant, potential damage to the neighborhood, and the need for a break from construction in the area.
- **Michel Ancel:** Opposition to the proposed development.
- **Nick Nyman:** Opposition to the proposed development, citing concerns about parking and questioning the applicant’s reputation.
- **Sara Chin:** Opposition to the proposed development, questioning the site location and citing potential neighborhood impacts, parking concerns, and potential ecological damage.
- **Francisco Perez:** Opposition to the proposed development, citing concerns about the project location, construction impacts, increased traffic congestion, and parking problems.
- **Kari Gueldner:** Opposition to the proposed development, citing frustration with ongoing construction downtown and noting concerns about parking and traffic impacts.
- **Peter Stevens:** Opposition to the proposed development, citing concerns about impacts to neighborhood.
- **Janella Abbas:** Opposition to the proposed development, citing concern for public health related to the COVID-19 pandemic.

Exhibit B

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Current Zoning

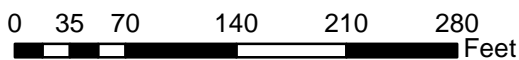


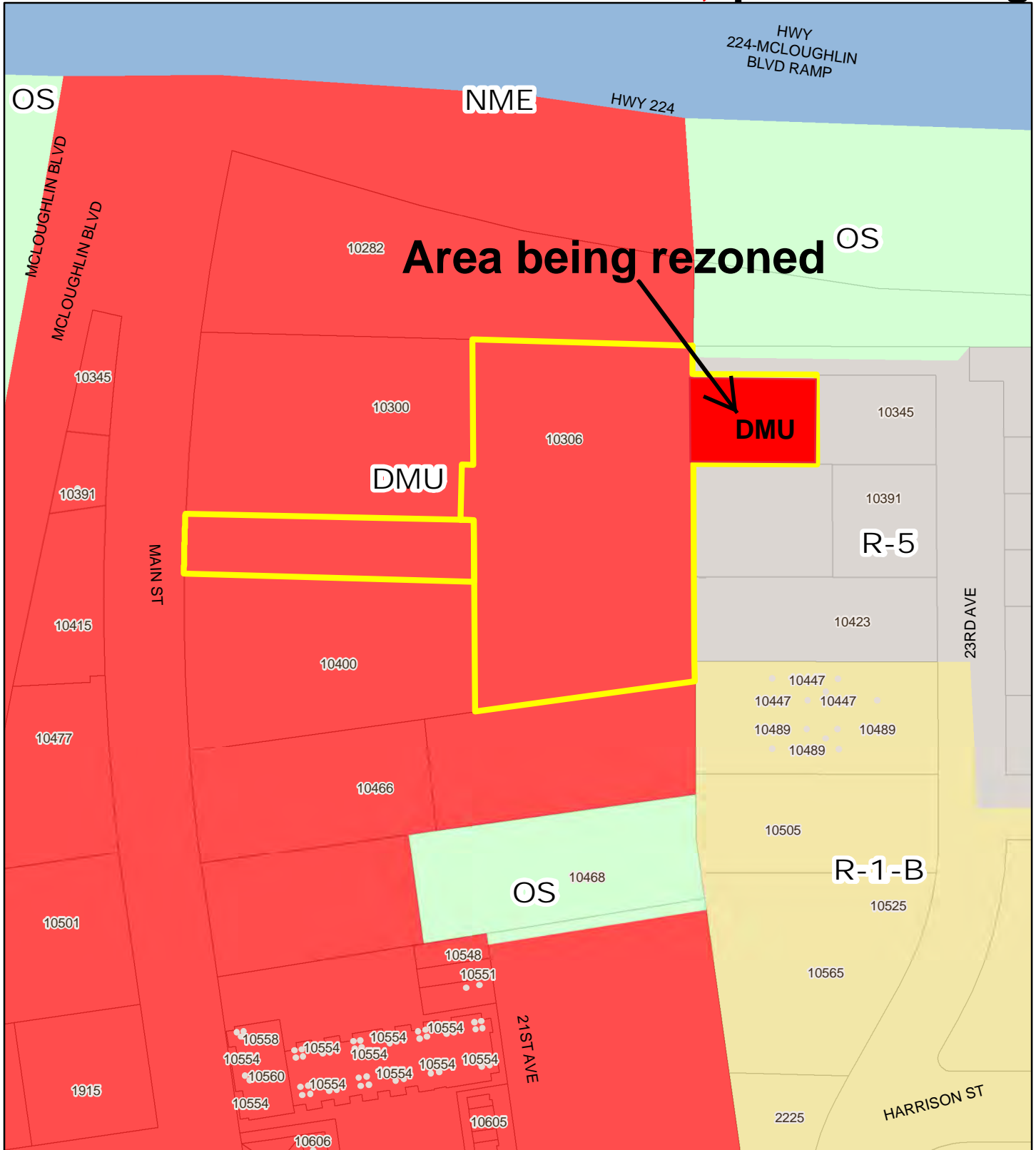
Site Map

10306 SE Main St
(Tax ID: 1S1E25CC, lots 401 & 402)
File #ZA-2021-001


Legend

 Henley Place site





Site Map
10306 SE Main St
(Tax ID: 1S1E25CC, lots 401 & 402)
File #ZA-2021-001

Legend
 Henley Place site

