

COUNCIL ORDINANCE No. 2234

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE TITLE 19 ZONING TO MAKE CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF REGULATING PSILOCYBIN FACILITIES (FILE #ZA-2023-003).

WHEREAS the proposed amendments to Milwaukie Municipal Code (MMC) Title 19 make changes that will regulate psilocybin facilities in the city; and

WHEREAS legal and public notices have been provided as required by law, and opportunities for public review and input has been provided; and

WHEREAS on May 23, 2023, the Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the amendments; and

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

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

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

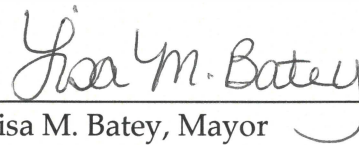
Section 2. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit B (underline/strikeout version), and Exhibit C (clean version).

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

Read the first time on **August 1, 2023** and moved to second reading by **4:0** vote of the City Council.

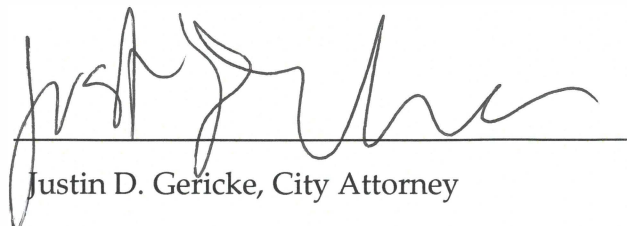
Read the second time and adopted by the City Council on **August 1, 2023.**

Signed by the Mayor on **August 1, 2023.**



Lisa M. Batey, Mayor

APPROVED AS TO FORM:



Justin D. Gericke, City Attorney

ATTEST:



Nicole M. Madigan,
Deputy City Recorder

Recommended Findings in Support of Approval File #ZA-2023-003, Psilocybin Code Amendments

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

1. The applicant, the City of Milwaukie, proposes to amend various regulations that are contained in Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2023-002.
2. The purpose of the proposed code amendments is to regulate psilocybin-related businesses in the city. The amendments are located in several titles of the municipal code:
 - Zoning Ordinance –
 - MMC 19.201 – Add a definition for psilocybin-related business
 - MMC 19.309 – Manufacturing zone – Revise the list of permitted uses
 - MMC 19.312 – NMIA zone – Revise the list of permitted uses
 - MMC 19.507 – Home Occupations – Revise the list of prohibitions
 - MMC 19.509 – Marijuana Business Standards – Revise the section
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.1000 Review Procedures
4. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on May 23, 2023 and August 1, 2023 as required by law.
5. MMC 19.902 Amendments to Maps and Ordinances
 - a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.
 - (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations 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 May 23, 2023. A public hearing before City Council was held on August 1, 2023. Public notice was provided in accordance with MMC Subsection 19.1008.3.
 - (2) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.
 - (a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code. The amendments are specific to regulating psilocybin-related businesses.

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

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

- (i) Goal 11.1 for Economic Development reads as follows:

Provide a diverse range of uses, services, and amenities that contribute to a sustainable, equitable, and resilient economy and are adaptable to changing land uses and technology.

Policy 11.1.2 states:

Adapt to industry trends and emerging technologies that have the potential to affect employment, land use, and infrastructure needs, such as automation, the sharing economy, autonomous vehicles, and other future technological advances.

The proposed amendments revise the list of permitted uses in the Manufacturing zone and North Milwaukie Innovation Area Zone to include psilocybin-related businesses. The proposed amendments also prohibit psilocybin-related businesses as home occupations.

- (c) 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 identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (d) 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.

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

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that the amendments are specific to regulating psilocybin-related businesses in the city.

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

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

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

The amendments were initiated by the Planning Manager on April 5, 2023.

b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V review have been met as follows:

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

Opportunity for public comment and review has been provided. The City Council held two work sessions on the proposed amendments on February 21 and April 4, 2023.

The current version of the draft amendments has been posted on the City's website since April 17, 2023. On April 25, 2023 staff emailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments.

(2) 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 May 23, 2023, hearing was posted as required on April 17, 2023. A notice of the City Council's August 1, 2023 public hearing was posted as required on July XX, 2023.

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

The Planning Manager has determined that the proposal affects a large geographic area. Notice to individual property owners and individual properties was not required.

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

Notice of the proposed amendments was sent to DLCD on April 18, 2023.

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

Notice of the proposed amendments was sent to Metro on April 18, 2023.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director’s opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments clarify state law related to psilocybin-related businesses on residential properties.

- (7) 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 May 23, 2023 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 1, 2023 and approved the amendments.

Underline/Strikeout Amendments

Title 19 Zoning Ordinance

CHAPTER 19.200 DEFINITIONS

“Psilocybin-related business” means a state-licensed psilocybin facility as defined in ORS 475A, including, but not limited to, psilocybin product manufacturing facilities, psilocybin service centers, and psilocybin testing facilities.

CHAPTER 19.300 BASE ZONES

19.309 MANUFACTURING ZONE M

19.309.2 Permitted Uses

I. Marijuana and psilocybin production and cultivation facilities are subject to the regulations in Subsection 19.509.

19.312 NORTH MILWAUKIE INNOVATION AREA

Table 19.312.2				
Uses Allowed in the North Milwaukie Innovation Area				
	Uses and Use Categories	NME	MUTSA	Standards/Additional Provisions
Marijuana and Psilocybin Businesses				
3.	Marijuana production subject to the conditional use process and the standards of Subsections 19.509.2 and 19.509.3.	CU	CU	Subsection 19.509.2 Security and Odor Control for Certain Marijuana Businesses Subsection 19.509.3 Marijuana Production Limitations Section 19.905 Conditional Uses
4.	<u>Psilocybin cultivation only, as defined in ORS 475A, including planting, growing, harvesting, and propagation.</u>	<u>CU</u>	<u>CU</u>	Subsection 19.509.4 <u>Psilocybin</u>

				<u>Cultivation Limitations</u>
				<u>Section 19.905 Conditional Uses</u>

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.507 HOME OCCUPATION STANDARDS

19.507.2 Prohibitions and Use Restrictions

F. Except as set forth in Section 19.509, all marijuana-related businesses (production, processing, testing, warehousing, and sales) are prohibited as home occupations. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards of Subsection 19.509.2.

G. All psilocybin-related businesses as defined in ORS 475A are prohibited as home occupations.

19.509 MARIJUANA AND PSILOCYBIN BUSINESS STANDARDS

The intent of these regulations is to ensure that potential impacts from marijuana and psilocybin businesses are managed and mitigated.

19.509.3 Marijuana Production Limitations

The following limitations apply to marijuana production in the M-Manufacturing, NME-North Milwaukie Employment, and MUTSA-Tacoma Station Area Mixed Use zones:

A. Within a building utilized for production, multiple producers may operate but no single producer shall operate in a manner where the mature marijuana plant grow canopy associated with that producer’s operation exceeds 10,000 sq ft.

B. A marijuana producer shall not be located in a building that is within 1,500 ft of another building that is utilized for marijuana production. (Ord. 2168 § 2, 2019; Ord. 2163 § 2, 2018; Ord. 2134 § 2, 2016)

19.509.4 Psilocybin Cultivation Limitations

The following limitations apply to psilocybin cultivation in the M-Manufacturing, NME-North Milwaukie Employment, and MUTSA-Tacoma Station Area Mixed Use zones:

A. Within a building utilized for cultivation, growing, planting, harvesting, and/or propagation, multiple growers may operate but no single grower shall operate in a manner where the mature psilocybin plant grow canopy associated with that producer's operation exceeds 10,000 sq ft.

B. A psilocybin grower shall not be located in a building that is within 1,500 ft of another building that is utilized for psilocybin cultivation.

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