

COUNCIL ORDINANCE No. 2235

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING VARIOUS PARTS OF THE MUNICIPAL CODE (MMC) AS NECESSARY TO FORMALLY RETIRE THE DESIGN AND LANDMARKS COMMITTEE (DLC) (FILE #ZA-2023-005).

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

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

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

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

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

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

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

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

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

Read the first time on 8/15/23, and moved to second reading by 3:2 vote of the City Council.

Read the second time and adopted by the City Council on 9/19/23.

Signed by the Mayor on 9/19/23.



Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

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

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

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

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

3. MMC Section 19.902 Amendments to Maps and Ordinances

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

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

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

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

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

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

This standard is met.

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

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

Section 2 – History, Arts, & Culture

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

Goal 2.1 – Milwaukie’s Heritage

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

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

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

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

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

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

Section 8 – Urban Design & Land Use

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

Goal 8.1 – Design

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

Policy 8.1.1 – Downtown Milwaukie Policies

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

Goal 8.3 – Process

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

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

Policy 8.3.2

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

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

This standard is met.

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

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

This standard is met.

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

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

Goal 1 – Citizen Involvement

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

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

Goal 2 Land Use Planning

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

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

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

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

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

This standard is met.

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

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

This standard is met.

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

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

4. MMC Section 19.1008 Type V Review

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

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

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

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

MMC 19.1008.3.A establishes the requirements for public notice.

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

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

- (b) MMC Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

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

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

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

- (2) MMC Subsection 19.1008.3.B DLCD Notice

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

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

- (3) MMC Subsection 19.1008.3.C Metro Notice

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

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

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

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

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

b. MMC Subsection 19.1008.4 Type V Decision Authority

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

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

c. MMC Subsection 19.1008.5 Type V Recommendation and Decision

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

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

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

Exhibit B

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

TITLE 2 ADMINISTRATION AND PERSONNEL

CHAPTER 2.10 BOARDS, COMMITTEES, AND COMMISSIONS GENERALLY

SECTION 2.10.010 APPLICABILITY

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

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

CHAPTER 2.16 PLANNING COMMISSION

SECTION 2.16.010 ESTABLISHED—PURPOSE

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

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

CHAPTER 2.17 MILWAUKIE ARTS COMMITTEE

SECTION 2.17.010 ESTABLISHMENT

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

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

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

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

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

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

B. ~~Appointment and Composition~~

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

C. ~~Annual Meetings~~

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

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

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

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

SECTION 14.04.030 DEFINITIONS

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

CHAPTER 14.16 SIGN DISTRICTS

SECTION 14.16.060 DOWNTOWN ZONES

H. Illumination

Illuminated signs may be permitted subject to the following:

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

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

CHAPTER 14.32 ADJUSTMENTS

SECTION 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS

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

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

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

TITLE 19 ZONING

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

SECTION 19.401 WILLAMETTE GREENWAY ZONE WG

Subsection 19.401.6 Criteria

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

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

CHAPTER 19.900 LAND USE APPLICATIONS

SECTION 19.907 DOWNTOWN DESIGN REVIEW

Subsection 19.907.3 Review Process

B. Review Types

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

1. Type I

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

2. Type II

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

3. Type III

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

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

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

Subsection 19.907.76 Variances

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

SECTION 19.911 VARIANCES

Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone

C. Review Process

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

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

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

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

CHAPTER 19.1000 REVIEW PROCEDURES

SECTION 19.1005 TYPE II REVIEW

Subsection 19.1005.3 Type II Public Notice

A. Referral

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

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

SECTION 19.1006 TYPE III REVIEW

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

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

Subsection 19.1006.3 Type III Public Notice

C. Referral

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

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

SECTION 19.1007 TYPE IV REVIEW

Subsection 19.1007.3 Type IV Public Notice

C. Referral

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

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

SECTION 19.1010 APPEALS

Subsection 19.1010.6 Specific Provisions for Appeal of a Type III Decision

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

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

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

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

~~The City shall:~~

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

~~Subsection 19.1011.2 Design Review Meeting Notice Requirements~~

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

~~Subsection 19.1011.3 Rules of Procedure~~

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

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

~~Subsection 19.1011.4 Challenges to Impartiality~~

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

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

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

~~Subsection 19.1011.6 Ex Parte Contacts~~

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

~~Subsection 19.1011.7 Disqualification~~

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

~~Subsection 19.1011.8 Burden and Nature of Proof~~

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

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

~~Subsection 19.1011.9 Continuance of Meeting~~

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

~~Subsection 19.1011.10 Design Review Recommendation~~

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

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

~~Subsection 19.1011.11 Record of Proceedings~~

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

Exhibit C

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

TITLE 2 ADMINISTRATION AND PERSONNEL

CHAPTER 2.10 BOARDS, COMMITTEES, AND COMMISSIONS GENERALLY

SECTION 2.10.010 APPLICABILITY

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

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

CHAPTER 2.16 PLANNING COMMISSION

SECTION 2.16.010 ESTABLISHED—PURPOSE

~~B.~~—*[subsection deleted]*

CHAPTER 2.17 MILWAUKIE ARTS COMMITTEE

SECTION 2.17.010 ESTABLISHMENT

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

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

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

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

SECTION 14.04.030 DEFINITIONS

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

CHAPTER 14.16 SIGN DISTRICTS

SECTION 14.16.060 DOWNTOWN ZONES

H. Illumination

Illuminated signs may be permitted subject to the following:

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

CHAPTER 14.32 ADJUSTMENTS

SECTION 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS

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

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

TITLE 19 ZONING

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

SECTION 19.401 WILLAMETTE GREENWAY ZONE WG

Subsection 19.401.6 Criteria

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

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

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

CHAPTER 19.900 LAND USE APPLICATIONS

SECTION 19.907 DOWNTOWN DESIGN REVIEW

Subsection 19.907.3 Review Process

B. Review Types

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

1. Type I

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

2. Type II

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

3. Type III

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

Subsection 19.907.6 Variances

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

SECTION 19.911 VARIANCES

Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone

C. Review Process

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

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

CHAPTER 19.1000 REVIEW PROCEDURES

SECTION 19.1005 TYPE II REVIEW

Subsection 19.1005.3 Type II Public Notice

A. Referral

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

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

SECTION 19.1006 TYPE III REVIEW

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

Subsection 19.1006.3 Type III Public Notice

C. Referral

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

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

SECTION 19.1007 TYPE IV REVIEW

Subsection 19.1007.3 Type IV Public Notice

C. Referral

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

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

SECTION 19.1010 APPEALS

Subsection 19.1010.6 Specific Provisions for Appeal of a Type III Decision

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

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