



## **AGENDA**

### **MILWAUKIE PLANNING COMMISSION Tuesday, July 22, 2014, 6:30 PM**

**MILWAUKIE CITY HALL  
10722 SE MAIN STREET**

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
  - 2.1 May 13, 2014
  - 2.2 May 27, 2014 **Revised**
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
- 6.0 Worksession Items**
  - 6.1 Summary: Medical Marijuana  
Staff: Denny Egner
- 7.0 Planning Department Other Business/Updates**
  - 7.1 Planning Commission Notebook Update pages
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
  - August 12, 2014 1. TBD
  - August 26, 2014 1. Worksession: Moving Forward Milwaukie – Central Milwaukie draft concept

### Milwaukie Planning Commission Statement

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

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

#### Public Hearing Procedure

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

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

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

#### Milwaukie Planning Commission:

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

#### Planning Department Staff:

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

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, MAY 13, 2014  
6:30 PM**

**COMMISSIONERS PRESENT**

Sine Bone, Chair  
Wilda Parks, Vice Chair  
Shannah Anderson  
Shaun Lowcock

**STAFF PRESENT**

Denny Egner, Planning Director  
Li Alligood, Associate Planner  
Brett Kelter, Associate Planner  
Vera Kolias, Associate Planner  
Peter Watts, City Attorney

**COMMISSIONERS ABSENT**

Scott Barbur  
Gabe Storm

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

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

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

**2.0 Planning Commission Minutes**

2.1 March 11, 2014

**Chair Bone** noted that the spelling of a few names had been corrected.

**It was moved by Vice Chair Parks and seconded by Commissioner Lowcock to approve the March 11, 2014 Planning Commission minutes as corrected. The motion passed unanimously.**

**3.0 Information Items**

There were no information items.

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

**5.0 Public Hearings**

**6.0 Worksession Items**

6.1 Summary: Original Art Mural Area Measurement Discussion

Staff: Denny Egner

**Denny Egner, Planning Director**, reminded the Commission of the approval of the Public Art Mural program with the changes noted regarding the size and layout of the murals. He noted the draft procedure for measuring the mural percentage in the staff report. The changes would be outside of the hearing process since it would involve the new Title 20, but he wanted to confirm that the proposed Title 20 was what the Commission had in mind.

**Vice Chair Parks** appreciated the proposed Title 20. She felt that once applications started being submitted, what changes were needed would become clear.

6.2 Summary: Metro Climate Smart Communities

Staff: Denny Egner

**Mr. Egner** noted that Vice Chair Parks and Councilor Dave Hedges have both been involved in the Climate Smart Communities project. At this point, the project was at an important step that involved making a recommendation to Metro Council regarding what direction to go next. He gave a brief overview of the project and where it was in the process.

The project's objective was to develop, through a scenario-planning process, regional strategies that would help the region reduce greenhouse gas emissions in response to a state law passed in 2009. Each jurisdiction was given a reduction target: the estimated emissions in 2005 were 4 million tons of CO2 per capita and the target was 1.2 million tons per capita by 2035. The vast majority of the reduction was expected to come about through broader transportation-related changes, such as advances in fleet technology, and would be independent of local decisions.

The local focus was on the smaller target of a 20% reduction, and scenario strategies dealt with land use design, pricing, marketing and incentives, road improvements, and technology. Also, a primary focus had been on alternative transportation modes, improved public transit, technological changes, education, etc. However, the methods came with a hefty price tag; how much was the region willing to spend to get to the target goals.

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78 Metro developed three scenarios, which were included in the staff report, and involved A-recent  
79 trends, B-current plans, and C-enhanced plans. At a joint meeting of the Metropolitan Policy  
80 Advisory Committee (MPAC) and the Joint Policy Advisory Committee on Transportation  
81 (JPACT), committee members expressed preference for a "B=" scenario. The next meeting was  
82 scheduled for May 30 which would focus on the costs. A standing question was if the State was  
83 going to contribute funding toward the project; much of the scenarios came down to how  
84 transportation was paid for/funded and would require lobbying at the state level. The "B+"  
85 scenario was about three times the recent trends in terms of expenditures. The proposal that  
86 was hoped to come out of the May 30 meeting would then go on to public comment and further  
87 review by the Fall 2014. The adopted plan could result in changes to the Urban Growth  
88 Management Plan (UGMA) and the Regional Transportation Functional Plan, which would then  
89 filter down to local jurisdictions.

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91 **Mr. Egner** felt that Metro's goals were shifting from requirements to more incentive-driven  
92 programs. With light rail coming and current bike-improvement projects underway, Milwaukie  
93 was in good shape locally. This project would help build out plans in place as the region  
94 continues to grow in town and regional centers and corridors with transit-oriented development.  
95 That was the underlying assumption in the analysis that has been done.

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97 **Vice Chair Parks** noted the focus on technology; ways to use technology more effectively and  
98 efficiently which would require partnerships between local jurisdictions and organizations (i.e.  
99 City and Oregon Department of Transportation, etc.)

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101 **Commissioner Lowcock** asked about public-private partnerships to help achieve some of the  
102 transportation goals. He noted, as an example, Telsa's intent to build high-speed charging  
103 infrastructure for their cars along the coast. That type of partnership would encourage the  
104 purchase and use of electric vehicles.

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106 **Vice Chair Parks** noted the different programs that try to promote reducing vehicles on the  
107 road. Through her experience with Clackamas County, it was difficult to work with businesses in  
108 terms of getting information to their employees about transit options; and was extremely difficult  
109 to get travel option information out to households and consumers. Hopefully an outcome of this

project would be a more concentrated effort in educating the public on transportation options and alternatives.

**Mr. Egner** concurred that a strategy was the outreach component.

**Commissioner Lowcock** noted that some cities like Paris have instituted 'no-drive' days, although the reality of that in the Portland area was unlikely. Public transportation also needed to be affordable.

**Mr. Egner** noted that redevelopment efforts were focused in town and regional centers and along corridors which were generally served by public transportation. He noted that Councilor Dave Hedges was a member of the C4 group which provided input to Clackamas County representatives on Metro's advisory committees.

**Dave Hedges, Milwaukie representative on the Clackamas County Coordinating Committee (C4)**, noted he found that at the County Commissioner meeting that morning and the last C4 meeting, the people who were assumed to be supportive of environmental change were actually not. The problem was sticker-shock - Scenario B would cost Clackamas County \$217 million and many of the members felt that was not attainable. However, he noted that the County could not afford not to do it. However, there was no drive at the County level to try to find a funding solution. Better maintained infrastructure would allow for more efficient transportation. He felt that the community needed to decide what would be best to fund.

**Chair Bone** asked about new revenue options for funding: would that be local, regional, or at the state level.

**Mr. Hedges** described the Street Surface Maintenance Program (SSMP) that had been successful in funding resurfacing roads in Milwaukie. However, more revenue was needed to continue maintenance and repair of the City's roads. He noted England and Europe's tax and public transit methods that were successful, although the population density, subsidization, and tax system were quite different. It was important for committee and community members to get past the sticker shock to be able to make progress.

**Mr. Egner** noted that Metro's 2040 Functional Plan helped achieve much of the Climate Smart Communities' project goals and this region was ahead of the game because of the framework that was in place.

**Commissioner Lowcock** mentioned the National Climate Assessment report published that month that outlined the true impact of climate change on the country.

**Mr. Hedges** concurred that it would cost much more if nothing was done.

**Vice Chair Parks** requested that the topic be revisited after the May 30 meeting. She noted the County Commission would hold a C4 meeting, scheduled for June 5, on transportation and what could be funded to move toward these goals.

### 6.3 Summary: Milwaukie Plans

Staff: Denny Egner

**Mr. Egner** discussed the different planning documents that outlined the vision for Milwaukie. He referenced the matrix included in the staff report that outlined the different documents that guide different goals and policies. Although the plan documents weren't always 100% consistent, the basic vision was for downtown to be a mixed-use, pedestrian- and transit-oriented area.

The Comprehensive Plan was the overall guiding document for the community. With regard to the recent zone change application, there was concern about the conflicts between the Comprehensive Plan and the Town Center Master Plan (TCMP), and the relationship between the Comprehensive Plan and the ancillary documents that were designed to support it. He explained that there have been pieces of some of the ancillary documents incorporated directly into the Comprehensive Plan while others provided support through information, and some, like the TSP, were equal to the Comp Plan.

He added that the two documents that were most unclear as to their use and intent were the TCMP and the Downtown and Riverfront Framework Plan; only specific sections of the TCMP were adopted into the Comprehensive Plan, and the Downtown and Riverfront Framework Plan had elements that were clearly reflected in the Comprehensive Plan and in the Zoning Ordinance. He referenced the staff report and noted specific elements regarding downtown

uses. However, hopefully through the Moving Forward Milwaukie (MFM) project's process and related amendments, the intent of and conflicts between the documents would be clarified.

Public Area Requirements (PARs) were a somewhat controversial element that was also being discussed as part of the MFM project. The street and improvement standards were high and expensive; discouraging development, so there was consideration to adjust those requirements.

**Steve Butler, Community Development Director**, clarified that the Land Use Framework Map would be remade through the MFM project to illustrate what the community wants with a reduced number of zones. Also, he reminded that the drawings within ancillary documents created a false sense of what would be. The MFM project focused on adaptive reuse and redevelopment over time as appropriate.

**Commissioner Anderson** appreciated the matrix of the plans in the staff report and found it very helpful.

**Chair Bone** agreed that it was important for the Commission to understand the intent and background of the plans, particularly going forward, as there has been a lot of work done previously by the City and the community.

**Mr. Egner** added that it was also important to note that some of the plans were created prior to light rail, which was a game changer. The PARs were good but discouraged development. Oftentimes in other jurisdictions, the improvements were done publicly to attract development; however, the Council was not interested in a downtown Urban Renewal District although there was discussion of a block-by-block improvement process through a tax-increment process.

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

**Mr. Butler** noted that a groundbreaking ceremony for Riverfront Park was scheduled for June 6, 2014, and encouraged the Commission to attend.

## **8.0 Planning Commission Discussion Items**

## **9.0 Forecast for Future Meetings:**



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227 Sine Bone, Chair

**CITY OF MILWAUKIE  
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6:30 PM**

**COMMISSIONERS PRESENT**

Wilda Parks, Vice Chair  
Shannah Anderson  
Scott Barbur  
Shaun Lowcock  
Gabe Storm

**STAFF PRESENT**

Denny Egner, Planning Director  
Li Alligood, Associate Planner  
Brett Kelter, Associate Planner  
Peter Watts, City Attorney

**COMMISSIONERS ABSENT**

Sine Bone, Chair

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

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

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**2.0 Planning Commission Minutes**

2.1 March 25, 2014

**It was moved by Commissioner Storm and seconded by Commissioner Barbur to approve the March 25, 2014, Planning Commission minutes as presented. The motion passed unanimously.**

**3.0 Information Items**

There were no information items.

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

**5.0 Public Hearings**

5.1 Summary: Wichita Park

Applicant/Owner: City of Milwaukie

Address: 5908 SE Monroe St

File: CSU-13-12

Staff: Brett Kelter

**Vice Chair Parks** called the hearing to order and read the conduct of quasi-judicial hearing format into the record.

**Brett Kelter, Associate Planner**, presented the staff report via PowerPoint and stated that the Community Service Use request was to allow future development of the park site. He noted that the site was located on one neighborhood greenway route (Monroe Street) and is also very near another (Stanley Avenue). He generally oriented the Commission to the site.

**Mr. Kelter** described the proposed improvements, including play and picnic structures, landscaping, and other standard park features, and he compared the original plan (adopted in the park master plan) with the current plan. The key issues included consistency with the original plan, park lighting, signage, and extension of the land use approval to allow for the proposed development.

**Mr. Kelter** answered questions from the Commission regarding frontage improvements (particularly with regard to the fire hydrant and power pole), whether the park would continue to be dog-friendly, fencing, etc.

**Commissioner Storm** asked about the fences that lined the park, which he assumed were owned by the property owners. Would there be an agreement with the City regarding vandalism, privacy, etc.? He felt that some type of maintenance agreement would be important to address.

**Peter Watts, City Attorney**, noted that the property owner would be responsible for maintenance if the fence or barrier was on the owner's property, but for a situation like a tree in the park falling upon the fence, etc. Aside from any City restrictions, an owner could build a fence of their liking. Regarding vandalism, that issue would likely need to be addressed once it came about, to decide how to prevent it.

**Mr. Kelter** noted that no lighting was proposed, similar to other area parks, which are open only during daylight hours. However, the Code required lighting for on-site walkways. Staff

suggested the Commission condition the approval to allow for no lighting, considering the park hours.

**Mr. Kelter** reviewed how the application met the CSU approval criteria and presented staff recommendations and decision options.

**Commissioner Storm** asked about additional signage, since there was a dangerous blind spot on Monroe St near the park.

**Mr. Egner** noted that the Engineering Department could be involved with that, and reminded the Commission of the Monroe Street Neighborhood Greenway project that was in the works, which would include bike and pedestrian improvements along Monroe St.

**Mr. Kelter** handed out additional comments received after the staff report was finalized.

**Vice Chair Parks** called for applicant's testimony.

**Steve Butler, Community Development Director**, applicant, noted the background of the project. He described a partner project with North Clackamas Parks and Recreation District (NCPRD) of the Four Parks Master Plan, of which Wichita Park was the current focus. He expected the funding and construction planning to begin in June. The overall context was to work toward to development of the City's undeveloped parks.

**Vice Chair Parks** called for public testimony.

**Michelle and Greg Hemer, 5822 SE Harrison St**, supported the project and the staff recommendations for the park.

**Zac Perry, 11011 SE Stanley Ave, Linwood Neighborhood District Association (NDA)**

**Chair**, appreciated the Commission's consideration of the application and the City staff for collaborating with the NDA on this project. He noted the public outreach that had been done on the project and planning that had gone into the proposed improvements to bring better amenities to the neighborhood. He added that the park would be the only public greenspace on

the proposed Monroe Street Neighborhood Greenway. He felt the two projects would greatly benefit the neighborhood and the community as a whole.

**The Commission** asked about the feedback from the community meetings regarding dog use, surrounding neighbors' input on the park design, and the decision regarding the disc golf basket.

- **Mr. Perry** responded that, as it was now, the park was not ideal for recreational use, due to use by dog owners; however, the park users acknowledged it was not an ideal dog park and therefore did not expect to have a specified dog use area.
- The new design of the park resulted in part from feedback from those neighbors as well as input from the police; for example, the location of the path around the park, the location of the picnic tables, and vegetation impacts on line of site.
- The disc golf basket was intended as a sort of putting green and was a better option than a basketball court, with respect to noise and maintenance. Also, disc golf was a growing sport.

**Matthew Lauer, 10414 SE Stanley Ave**, noted he used the park often with his children and dog, but added that currently it was not kid-friendly due to the use by dog owners. He felt the new park design would add a great amenity to the community and neighborhood, and would give the park a more meaningful purpose than it had currently.

**Bryan Trotter, 4997 SE Winworth Ct**, noted that although he did not live in the Linwood neighborhood, he was the Lewelling NDA Chair and said that his neighborhood went through a lot of effort to get a park that had now become a focal point for the neighborhood. He was encouraged by the momentum behind this project.

**Lynn Sharpe, 10906 SE 54<sup>th</sup> PI**, stated she helped to plant trees in the park years ago and had wanted to see a park at the site for some time. She supported the proposed plan. She acknowledged that she was a member of the Milwaukie Park and Recreation Board.

**Nancy Jacobson**, stated she owned the rental house just east of the park with the freestanding garage, at 5940 SE Monroe St. She and her husband were very much in favor of the proposed park, as was the current tenant. She questioned the location of the disc golf basket with regard to its proximity to their fence, and she noted her opposition to lighting for the park. She

suggested adding speed humps to Monroe St at either end of the park, to help ease the issue with the dip in the road in front of their property.

**Vice Chair Parks** asked for comments from staff.

**Mr. Kelter** mentioned that the findings had been adjusted to allow for construction of whatever designed improvements are identified in the concept plan for the upcoming Monroe Street Neighborhood Greenway project, rather than the standard requirements for public improvements from the zoning code (i.e. sidewalks, street widening, landscaping, etc.). He wanted to make clear that the public improvement standards would need to be flexible in order to determine what was best for each site on Monroe St, including in front of the park.

**Vice Chair Parks** closed the public hearing.

**The Commission** agreed that the proposed park would be a great asset to the neighborhood and liked the changes from the original plan. They thanked staff and the neighborhood for their work on the project.

**It was moved by Commissioner Storm and seconded by Commissioner Barbur to approve land use application CSU-13-12 for Wichita Park at 5908 SE Monroe St with the findings and conditions as presented. The motion passed unanimously.**

## **6.0 Worksession Items**

### **6.1 Summary: Moving Forward Milwaukie project update**

Staff: Li Alligood

**Li Alligood, Associate Planner**, presented the staff report via PowerPoint. She noted staff had been to City Council the previous week with a project update which had focused on financial tools, and the feedback had been to keep the tools on the table but recognized that there would be specific projects those would be used for. She noted the feedback from the Commission should be focused on the policy and regulatory recommendations.

**Ms. Alligood** explained that the matrix included in the staff report was a simplistic version of what the final Action & Implementation Plan would be, and was divided into three sections;

Citywide, Downtown, and Central Milwaukie. She explained that this was the third phase of the project and would result in an Action and Implementation Plan for Downtown and Central Milwaukie to be adopted by Council resolution. She reviewed the recommendations per section, including code changes, financial tools, development outreach and business support, and when to use various tools. Regarding the downtown concepts, she noted that implementation of the 2011 South Downtown Concept Plan would be included in the Action and Implementation plan.

**Commissioner Lowcock** asked about the process of prioritization for the concepts and projects.

**Ms. Alligood** referred to the Project Types column on the matrix which identified generally the department or team that would be involved in implementing the specific project, which in turn indicated possible project timeframes.

**Mr. Egner** stated the City was working with a consultant on this project, funded through a grant from Metro, so items identified as “MFM” were being worked on with the consultant. There were ongoing economic development components that would involve Planning and Community Development staff, and some were capital projects that involved updating the public improvement requirements.

**Ms. Alligood** added that many of the regulatory recommendations came from feedback over the years regarding barriers to development in implementing the current standards. The downtown public area requirements (PARs) were also identified as a barrier as it put the cost burden on the property owners. Both were part of a broader discussion about how to move forward.

**Commissioner Lowcock** asked staff’s opinion regarding where Milwaukie stood among other area cities in terms of progressiveness and implementing similar initiatives, etc.

**Mr. Egner** felt there was a good and clear vision, although there were some inconsistencies, and the code was written to implement the vision. There were some barriers, however, such as the PARs which were considered high standards, and other communities didn’t place as high of a burden on private development. What this project was about was to better focus and clarify the code and plans to implement the vision.

**Commissioner Lowcock** asked how much thought was being put into making Milwaukie an attractive relocation option in terms of the growing population of the region. Due to the increasing cost of rent in Portland, people were beginning to look outside of the city to places such as Milwaukie.

**Ms. Alligood** noted that through her experience helping citizens, there had been a lot of interest in the Tacoma and Historic Milwaukie areas due to light rail access, and agreed that Milwaukie had an advantage in terms of its close proximity to Portland. Historically, Milwaukie had been conservative in its approach to development and the tools it has been willing to use. However, she was unclear of the differences between Milwaukie and other cities and the consultant had not identified any critical differences.

**Commissioner Storm** clarified that this plan identified how changes could be implemented to then be able to advertise the city for development. He wanted to ensure that what this project was identifying was what in fact developers would want to build.

**Ms. Alligood** agreed that, for example, the Murphy site was prime property for development that had a lot of interest in it but currently nothing was allowed on the site outright. The project feedback coming from private sector developers had been based on market realities. She noted that under the current code, there was a high level of uncertainty about what would be allowed on the site and that developers did not like uncertainty. She reiterated the need to get the baseline regulatory environment fixed.

**Commissioner Lowcock** added that commercial and residential developers he knew have noted the barriers in Milwaukie.

**Mr. Egner** assured that once the Action and Implementation Plan was approved, the code amendments would be the next task. He noted the business outreach component of the matrix, which was primarily a function of the economic development team.

**Commissioner Lowcock** commended staff on their work.

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



7.1 Riverfront Park update

**Steve Butler, Community Development Director**, handed out the presentation given to City Council. He noted there was a groundbreaking ceremony scheduled for June 6, 2014.

**Mr. Butler** noted staff had a preconstruction meeting at the site with the contractors and other companies involved in the project that morning. He added that although the park and the boat ramp would essentially be closed after the ceremony, the boat ramp would be greatly improved once it was reopened. He explained the next steps and some details of this phase. The next phase would involve the construction of the plaza and other detailed amenities.

**Mr. Butler** gave a summary of the project so far and the costs of the project, noting some elements that were adjusted to close a funding gap, and added other funding sources that were being explored. He noted that the Council was researching the option of Clackamas County returning the funds paid for an easement involved with the project.

**Commissioner Lowcock** asked about the relationship between the Kellogg Lake project and the Riverfront Park project; was there funding to further the Kellogg Lake project

**Mr. Butler** agreed that they were complimentary projects, and explained that the City was working with Wildlands Inc. on the Kellogg-for-Coho project currently. Although slow-moving, the project was still proceeding. The two projects would be co-beneficial.

**Commissioner Storm** asked for clarification about what "Phase II" was.

**Mr. Butler** described the elements involved with Phase II, including new parking lot, boat ramp and boat float, some tree and invasive removal, tree and vegetation planting, new restroom, regrading and pedestrian path construction. The next phase would involve the plaza, amphitheater, water features, play structure, etc., once funding was available.

**8.0 Planning Commission Discussion Items**

**Mr. Egner** noted the appeal hearing the previous week for the Northwest Housing Alternatives zone change application, adding that Council approved the appeal which reversed the

Commission's decision. He was unsure if the applicant would appeal that decision to the Land Use Board of Appeals.

**9.0 Forecast for Future Meetings:**

June 10, 2014 1. Public Hearing: P-14-01 Moda Health Parking Modification

June 24, 2014 1. TBD – *Mr. Egner noted that a Moving Forward Milwaukie worksession was scheduled for June 24, 2014.*

Meeting adjourned at approximately 9:03 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

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Sine Bone, Chair



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission  
**From:** Dennis Egner, Planning Director  
**Date:** July 15, 2014, for July 22, 2014, Worksession  
**Subject:** Zoning Amendments for Medical Marijuana Facilities

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## **ACTION REQUESTED**

Staff requests that the Planning Commission provide direction on options to regulate medical marijuana facilities in Milwaukie.

## **SUMMARY**

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

**Note:** Oregon law only addresses medical marijuana facilities. There are currently no provisions for the sale or dispensing of marijuana for recreational use. According to news reports, it is likely that there will be a state ballot measure in November that addresses recreational marijuana.

## **BACKGROUND INFORMATION**

In 2013, the Oregon state legislature adopted HB 3460 (ORS Chapter 475.300 et. seq.) which allows the establishment and licensing of medical marijuana facilities in Oregon. On March 3, 2014, the Oregon Health Authority (OHA) began accepting applications for operation of medical marijuana dispensaries. In response, many communities, including Milwaukie, enacted temporary bans preventing the facilities within their jurisdictional boundaries. Given that there was some ambiguity in HB 3460 and the range of local government response, the 2014 Oregon Legislature found it necessary to provide clarification.

July 22, 2014

On March 19, 2014, Governor Kitzhaber signed SB 1531, which places limits on the ability of cities and counties to regulate medical marijuana facilities and outlines “reasonable regulations”. These include the hours of operation, where the facilities may locate within the zones allowed by law, and the manner in which a facility may dispense medical marijuana. SB 1531 also allowed cities and counties to enact a moratorium on the operation of registered medical marijuana facilities until May 1, 2015. On April 15, 2014, the City Council enacted a temporary ban on medical marijuana facilities to allow additional time to consider proper zoning and other regulations for the facilities. The ordinance established a city moratorium until April 30, 2015. The Council action on April 15 extended a ban that the Council had previously adopted on February 25, 2014.

A copy of ORS Sections 475.300 and 475.314 are included as **Attachment 1**. **Attachment 2** includes Section 2 of SB 1531 which was adopted this spring by the state legislature. Earlier this year, the Oregon Health Authority adopted administrative rules governing medical marijuana facilities. The section of the rules addressing facility location is included as **Attachment 3**. A full copy of the rules can be found at the following website:

<https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Documents/OARs.pdf>

## ANALYSIS AND DISCUSSION

**Analysis Maps** - Three maps are provided as attachments to assist with analysis of the issues. **Attachment 4** is a copy of the Zoning Map. **Attachments 5 and 6** present two options for the local regulation of medical marijuana facilities. State law (ORS 475.314) requires that medical marijuana facilities:

- Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;
- Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and
- Must not be located within 1,000 feet of another medical marijuana facility.

The options depicted in **Attachments 5 and 6** both comply with state law. Attachment 5 depicts the minimum regulation set forth by state law. Attachment 6 adds a buffer from park land and from school district property.

The maps include the following details:

- Areas in red are the following zones: downtown zones, excluding Downtown Open Space; Commercial General; Commercial Limited; Commercial Neighborhood; Commercial Community Scale Shopping Center; Business Industrial; Manufacturing; Tacoma Station Area Manufacturing; Residential-Business Office Zone (R-1-B) and Residential Office Commercial. These are the zones that meet the requirement that the facility be located in a commercial, industrial or mixed use zoned area.

July 22, 2014

- Sites in dark green with the 1,000-foot buffer are active public or private elementary, secondary or career schools. The source data comes from Metro's RLIS GIS library. There may be other sites in or near Milwaukie which may contain an elementary, secondary or career school that would require a 1,000-foot buffer.
- Sites in light green on **Attachment 5** are included in the school data from RLIS, but are either administrative offices, preschools (which are not considered elementary schools), or sites without an active school. The 1,000 ft buffer (diagonal lines) is applied to these sites in the map included as **Attachment 6**.
- **Attachment 6** includes a green pattern for public parks. A 1,000-foot buffer (diagonal buffer) is applied to the parks. The buffer from park land was suggested by City Council members at a work session on February 20, 2014.
- The sample 1,000-foot circle illustrates the area surrounding a dispensary from which a second dispensary would be excluded.

**Land Use and Zoning** – State law permits medical marijuana facilities in commercial, industrial, and mixed use districts. SB 1531 allows local jurisdictions to apply "reasonable regulations". This could include further limitations on where retail sales of medical marijuana is allowed and whether it is appropriate in zones designated for manufacturing or industrial uses.

A medical marijuana facility is a retail use. It is a location where registered medical marijuana cardholders can purchase medical marijuana that has been grown at authorized medical marijuana grow sites. (The cardholder does not need to have a direct connection with a grow site to obtain the medical marijuana, as was the case with Oregon's prior medical marijuana law.) This type of buyer/seller relationship is retail trade which is defined in the zoning ordinance as "... the sale, lease, or rental of new or used products to the general public. Typical uses include, but are not limited to, grocery stores, specialty stores, **drugstores** (*emphasis added*), bookstores, jewelry stores, and video stores." A medical marijuana facility is a location where one particular drug is purchased by authorized users, which is akin to a traditional pharmacy or drugstore.

The following table lists relevant City of Milwaukie zones and indicates the zones in which retail trade is allowed:

ZONE	RETAIL TRADE
Commercial General	Allowed outright
Commercial Limited	Allowed outright
Community Shopping Commercial Zone	Allowed outright
Downtown Storefront	Allowed outright
Downtown Commercial	Allowed outright
Downtown Office	Allowed, with size limitations
Downtown Residential	Allowed, as part of mixed use development including residential

July 22, 2014

Manufacturing and M-Tacoma Station Area	Allowed, as an accessory use
Business Industrial	Retail limited, likely not allowed
Commercial Neighborhood	Not allowed outright or conditionally
Residential –Business-Office R1B	Not allowed outright or conditionally
Residential Office Commercial with Mixed Use Overlay	Undeveloped sites, would need to be part of a development conforming with the Town Center Master Plan, not likely approvable as a standalone use

Note: This listing of zones is not definitive, as a medical marijuana facility may have operating characteristics different from what is assumed above, and could be combined as an accessory use to another allowed use.

**Key Observations** - Key observations regarding the maps and zoning include:

- Under the minimum limits set forth by state law, no medical marijuana facilities can be located in downtown Milwaukie. There would be no limitation on siting facilities other commercial and industrial sites within the community.
- If a 1000-foot buffer is added for parks and school sites, roughly half of the industrially designated land in the city would not be eligible for siting medical marijuana facilities.
- If medical marijuana facilities are only allowed in zones where drugstores are permitted as a retail use, facilities would be limited to the northern portion of the Central Milwaukie commercial area, the King Road shopping center area, and the limited commercial area along 32<sup>nd</sup> Ave.

**Issues for Commission Discussion:**

- Should a buffer be applied to parks and other school-owned property?
- Should facilities be prohibited or limited in industrial areas (manufacturing and business-industrial districts)?
- Should buffers be applied to pre-schools or day care centers? How should day care homes be addressed? Would buffers also preclude a new pre-school or day care center from locating within 1000-feet of an established medical marijuana facility?
- Are any additional locational limitations needed?
- Are there operational limitations that should be considered?
  - Hours of operation?
  - Limit evening hours? Closed after 8:00 or 9:00 PM?

**STAFF RECOMMENDATION**

There is no staff recommendation at this time.

July 22, 2014

**ATTACHMENTS**

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

	PC Packet	Public Copies	E- Packet
1. ORS Sections 475.300 and 475.314: Oregon Medical Marijuana Act	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Excerpt from Section 2 of SB 1531 relating to marijuana facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Oregon Health Authority Administrative Rules Section 333-008-1110 Locations of Medical Marijuana Facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Milwaukie Zoning Map	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Medical Marijuana Eligible Areas Map: Option 1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6. Medical Marijuana Eligible Areas Map: Option 2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

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

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

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-108>

**ORS SECTIONS 475.300 AND 475.314****OREGON MEDICAL MARIJUANA ACT**

**475.300 Findings.** The people of the state of Oregon hereby find that:

- 1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;
- 2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;
- 3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and
- 4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [1999 c.4 §2]

**Note:** 475.300 to 475.346 were enacted into law but were not added to or made a part of ORS chapter 475 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

**475.314 Medical marijuana facility registration; qualifications; inspections; revocation; rules; fees.**

- 1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:
  - (a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
  - (b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.
- 2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:
  - (a) The name of the person responsible for the medical marijuana facility;
  - (b) The address of the medical marijuana facility;
  - (c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;
  - (d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and
  - (e) Any other information that the authority considers necessary.
- 3) To qualify for registration under this section, a medical marijuana facility:
  - (a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;
  - (b) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;
  - (c) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;
  - (d) Must not be located within 1,000 feet of another medical marijuana facility; and



- (e) Must comport with rules adopted by the authority related to:
  - A. Installing a minimum security system, including a video surveillance system, alarm system and safe; and
  - B. Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.
- 4) (a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.
- (b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.
- (c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.
- 5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.
- 6) (a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.
- (b) A registered medical marijuana facility shall maintain:
  - A. A copy of each authorization form described in paragraph (a) of this subsection; and
  - B. Documentation of each transfer of usable marijuana or immature marijuana plants.
- 7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.
- 8) The authority may inspect:
  - (a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and
  - (b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.
- 9) (a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.
- (b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable

marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

- 10) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346 or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.
- 11) The authority shall adopt rules to implement this section, including rules that:
  - (a) Require a medical marijuana facility registered under this section to annually renew that registration; and
  - (b) Establish fees for registering and renewing registration for a medical marijuana facility under this section. [2013 c.726 §2]

**Note:** 475.314 becomes operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013.

**Note:** See note under 475.300. 475.314 was added to and made a part of 475.300 to 475.346 by legislative action.

**475.315** [1977 c.636 §2; 1979 c.674 §2; repealed by 1993 c.571 §30]

**SB 1531 (excerpt):** Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

**SECTION 2.** Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, “reasonable regulations” includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

**Oregon Health Authority Administrative Rules****333-008-1110****Locations of Medical Marijuana Facilities**

- (1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.
- (2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.
- (3) A facility may not be located:
  - (a) At the same address as a registered marijuana grow site;
  - (b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or
  - (c) Within 1,000 feet of another medical marijuana facility;
- (4) In order for the Authority to ensure compliance with this rule a PRF must submit with an initial application documentation that shows the current zoning for the location of the proposed facility.
- (5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.
- (6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising a registered facility.
- (7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

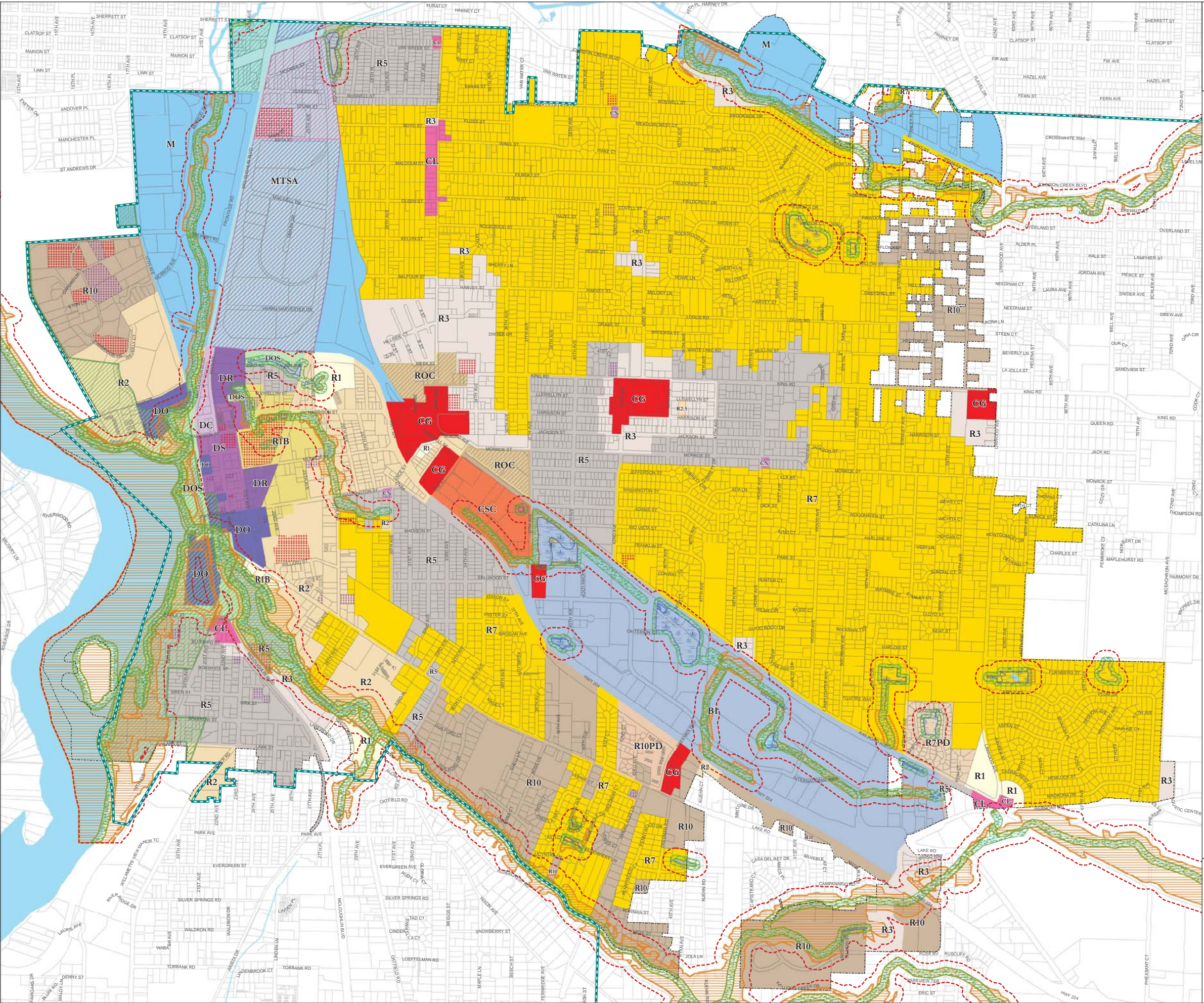
Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14



# ZONING



- Zones**
- |      |       |
|------|-------|
| MTSA | DOS   |
| BI   | ROC   |
| M    | R1    |
| CG   | R1B   |
| CL   | R2    |
| CN   | R2.5  |
| CSC  | R3    |
| DC   | R5    |
| DO   | R7    |
| DR   | R7PD  |
| DS   | R10   |
|      | R10PD |

- Natural Resources**
- 100' Compliance line
  - Wetlands
  - Vegetated Corridors
  - Habitat Conservation Areas

- Historic Resources**
- Significant
  - Contributing
  - Unranked

Natural resource areas depicted on this map are illustrative of areas on the City's NR Administrative Map. They do not depict exact boundaries of areas subject to MMC Section 19.402.

**Other Overlays**

- Willamette Greenway
- Mixed use overlay

**TSAP Overlay**

- Subarea 1
- Subarea 2
- Subarea 3
- Subarea 4

- UGMA
- City boundary
- Water body
- Tax Lots

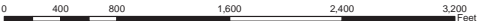
Adopted by Ord. #1438, effective Dec. 5, 1979  
Rev. as of Ord. #2071 Jul 2, 2013

Map Updated: 11/27/2013  
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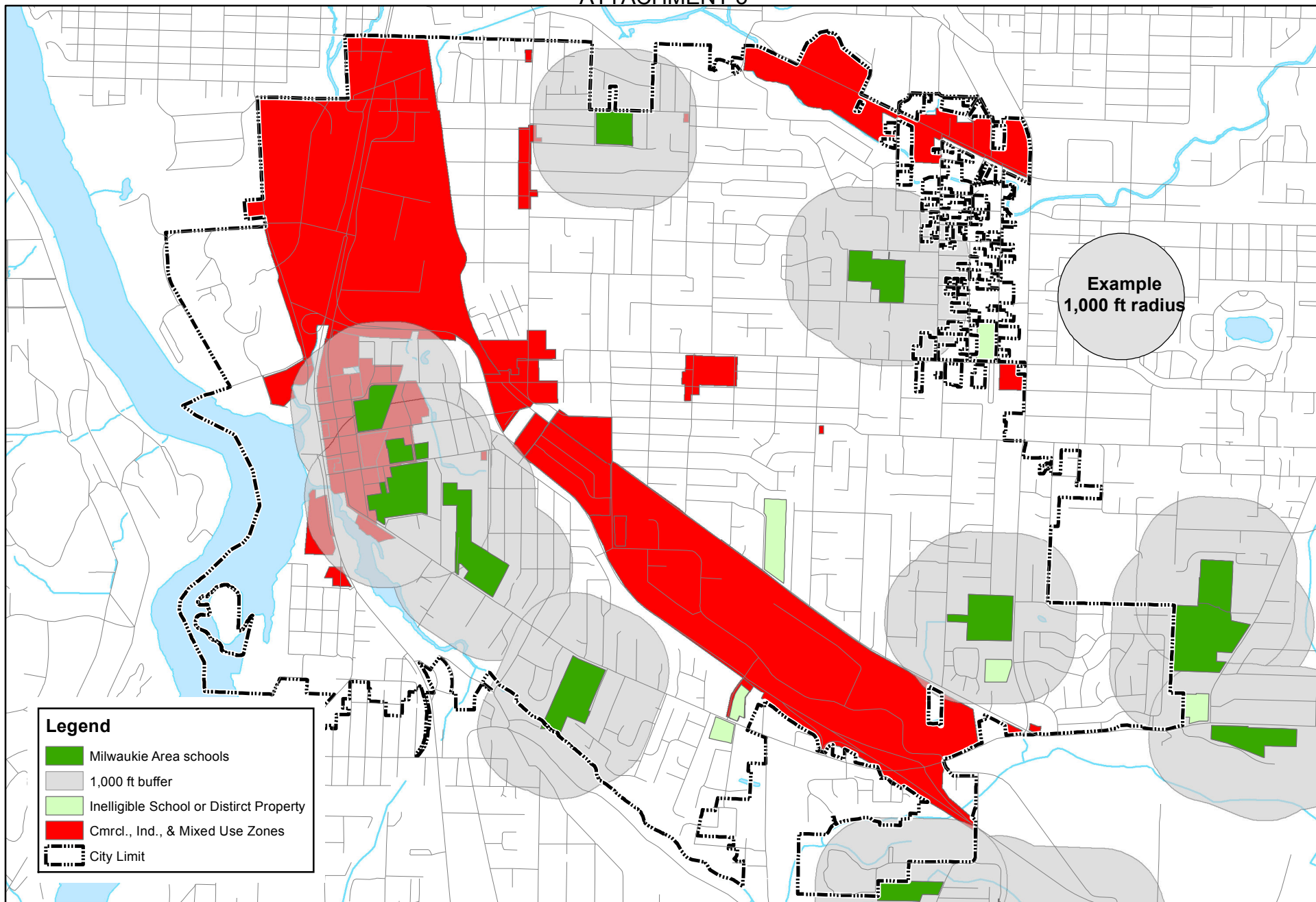
Data Sources: City of Milwaukie GIS  
Metro Data Resource Center

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Please check with Planning Department for most up-to-date information.  
503-786-7630  
planning@milwaukieoregon.gov







## Medicinal Marijuana Eligible Areas

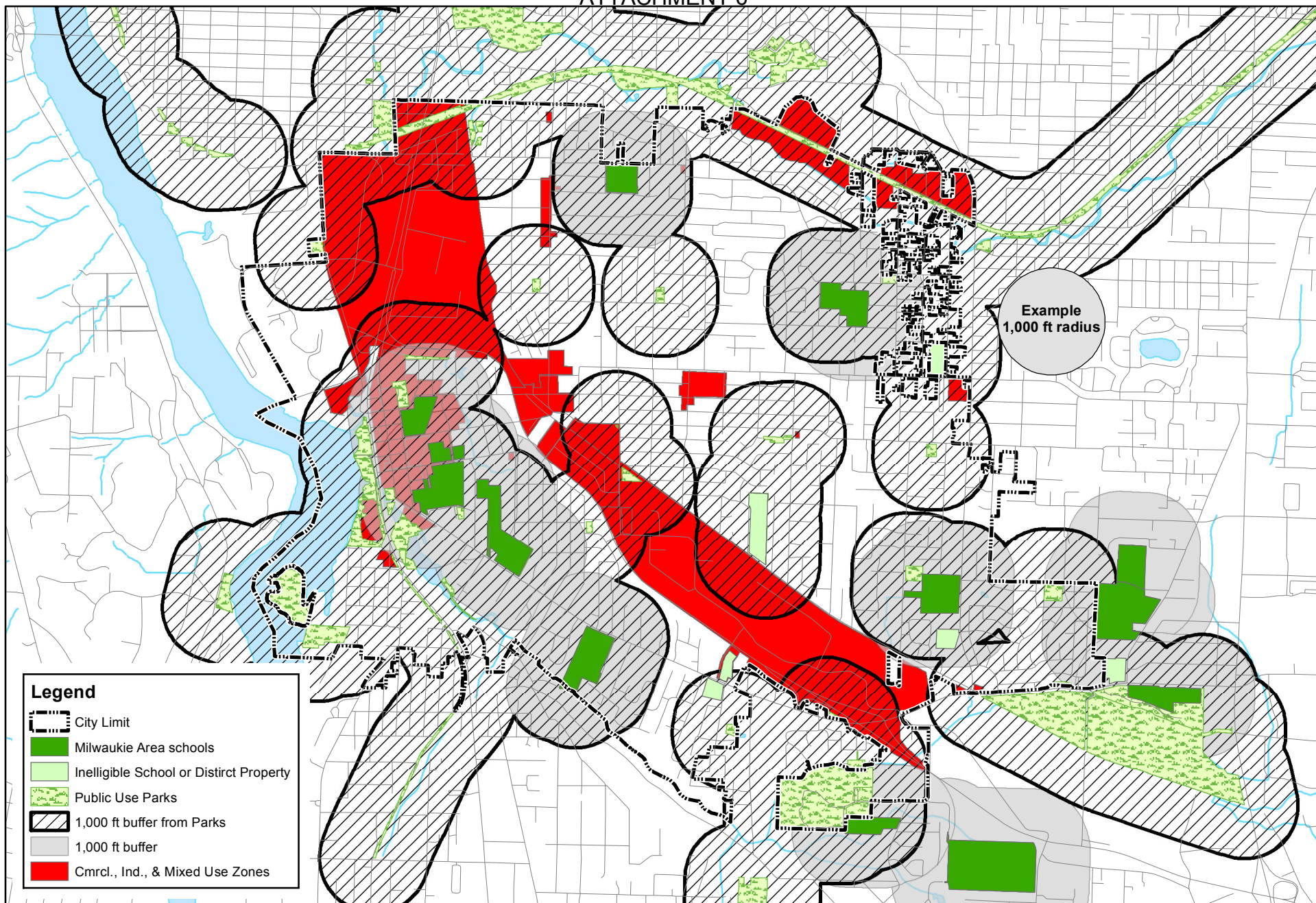
Milwaukie Planning Dept.  
Data: City of Milwaukie GIS;  
Metro RLIS  
Date: 1/10/2014

1 inch = 2,083 feet



0 390780 1,560 2,340 3,120 Feet

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## Medicinal Marijuana Eligible Areas

Milwaukie Planning Dept.  
Data: City of Milwaukie GIS;  
Metro RLIS  
Date: 3/3/2014

1 inch = 2,457 feet



0 460920 1,840 2,760 3,680  
Feet

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