



## AGENDA

### MILWAUKIE PLANNING COMMISSION Tuesday, May 24, 2016, 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 September 8, 2016
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
  - 5.1 Summary: 19th Ave Garage  
Applicant/Owner: Tim Austin LLC/Terrance & Esperanza Martin  
Address: 11906 SE 19th Ave  
File: WG-2016-001  
Staff: Brett Kelter
  - 5.2 Summary: Washington St Nonconforming Use  
Applicant/Owner: Daniel Hallock, Dynasty Construction  
Address: 2926 SE Washington St  
File: NCU-2016-001  
Staff: Keith Liden
  - 5.3 Summary: Marijuana Businesses Regulations Code Amendments  
Applicant: City of Milwaukie  
File: ZA-2016-001  
Staff: Denny Egner
- 6.0 Worksession Items**
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
  - June 14, 2016
    - 1. Public Hearing: ZA-2016-001 Marijuana Businesses Code Amendments *tentative*
    - 2. Public Hearing: VR-2016-004 10922 SE 42nd Ave
  - June 23, 2016
    - 1. Joint Study Session: Economic Opportunities Analysis Update
  - June 28, 2016
    - 1. Public Hearing: CU-2016-002 Bob's Red Mill Restaurant & Sign

### 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 Adams, Chair  
Shaun Lowcock, Vice Chair  
Shane Abma  
Shannah Anderson  
Adam Argo  
Scott Barbur  
Greg Hemer

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

Denny Egner, Planning Director  
David Levitan, Senior Planner  
Brett Kelver, Associate Planner  
Vera Kolas, Associate Planner  
Keith Liden, Temporary Planner  
Alicia Martin, Administrative Specialist II

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, September 8, 2015  
6:30 PM**

**COMMISSIONERS PRESENT**

Sine Bone, Chair  
Shaun Lowcock, Vice Chair  
Shane Abma  
Shannah Anderson  
Scott Barbur  
Greg Hemer

**STAFF PRESENT**

Denny Egner, Planning Director  
Li Alligood, Senior Planner  
Brett Kelper, Associate Planner  
Shelby Rihala, City Attorney

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

**Chair Bone** 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.milwaukieoregon.gov/meetings>.*

**2.0 Planning Commission Minutes****3.0 Information Items**

**Denny Egner, Planning Director**, noted the upcoming celebration for the opening of the light rail Orange Line on Saturday, September 12.

Also, the City Council would be hosting a forum on food carts at the Pond House on Tuesday, September 23.

**Commissioner Hemer** noted that included in the Orange Line celebration at 1pm at City Hall, there would be an event about the Interurban Portland Trolley Line hosted by the City and the Milwaukie Historical Society. There would also be a Trolley Trail Lantern Walk and tour at 6pm starting at Klein Point.

**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: ZA-2015-002 Neighborhood Main Streets Code Amendments #1  
Staff: Li Alligood

This item was taken out of order.

**Li Alligood, Senior Planner**, presented the staff report via PowerPoint. This was the first briefing for Phase 3 of the Moving Forward Milwaukie project. She reviewed the project goals and noted that the Neighborhood Main Streets (NMS) phase was different than the Downtown and Central Milwaukie phases as the focus for NMS was more on community-serving and pedestrian-friendly commercial areas. She reviewed the background that included a 2012 Portland State University student project that resulted in a Neighborhood Main Streets Plan. The areas include 32nd Ave and 42nd Ave roughly between King Rd and Monroe St. She noted the Plan's vision and recommendations for creating a new neighborhood commercial zone and establishing development standards focused on pedestrian-scale. A third recommendation involved expanding the commercial zone which would require Comprehensive Plan text and map amendments and Code amendments, and was a much larger project and therefore was not included in this phase.

**Mr. Alligood** reviewed the proposed zoning and noted that the current Limited Commercial zone along 32nd Ave was limited and restrictive. The 42nd Ave General Commercial zone was liberal and allowed nearly everything which may not be compatible to the surrounding neighborhoods. The proposal was to apply a new Neighborhood Mixed Use (NMU) zone to both areas with generally the same regulations.

- The proposed use standards for the new zone addressed community feedback about the types of businesses wanted in the area such as coffee shops, restaurants, etc. The proposed approach would allow uses that served everyday needs, restricted uses with potential negative impacts, and prohibited uses that did not contribute to walkability. The new and revised use standards involved size limits, standalone residential, vehicle sales and rental prohibition, mixed use development, and a broader range of allowed uses along 32nd Ave.
- The proposed development standards increased pedestrian-focused development including maximum setbacks, entrances on the street, parking behind the building, and transition area measures.
- There were no current design standards in the project areas. The proposed new design standards addressed corners, weather protection, building materials, windows and doors, roofs and screening, and ground floor screening.
- Since some existing uses would become nonconforming as a result of the code amendments, a new Type II Nonconforming Situation review process was proposed to address uses that would come closer into conformance.

**Ms. Alligood** answered questions from the Commission. She noted the first public hearing was scheduled for October 13.

6.2 Summary: Monroe Street Neighborhood Greenway Concept Plan Informational Overview  
Staff: Brett Kelter

This item was taken out of order.

**Brett Kelter, Associate Planner**, presented the staff report via PowerPoint and gave a brief overview of the project. The project was included in the Transportation System Plan (TSP) and was funded through a Transportation Growth Management Grant. In terms of adoption of the document, the Concept Plan would function as a guide for finding future funding to construct the elements of the plan. It would not be incorporated into the Public Works Standards or as an ancillary document to the TSP.

**Mr. Kelper** noted the involvement of a Project Advisory Committee composed of representatives from the neighborhoods the route passes through, the local bike advocacy group Bike Milwaukie, the Public Safety Advisory Committee, the Clackamas County Pedestrian/Bikeway Advisory Committee, and also staff from Engineering, Streets/Stormwater, and the Clackamas Fire District. He noted that there was general interest in making Monroe Street safer for bikes and pedestrians; however, there was not a consensus on how to accomplish that.

City Council would be the adopting body for the plan, and a public hearing was scheduled for November 3, 2016, which would give opportunity for Council to hear the public's comments and concerns. At the Council's worksession in August, they expressed interest in adopting the plan as a draft in order to test some of the plan's elements before adopting a final version.

**Mr. Kelper** answered questions from the Commission.

- The plan was intended to function within the existing right-of-way.
- Regarding the potential increased pressure on 42nd Avenue and King Road if a diverter were to be put in at 42nd Avenue and Monroe Street, traffic counts show that there was already some natural diversion and decreased demand on Monroe Street east of 42nd Avenue.
- Improvements to the intersection at 42nd Avenue and Harrison Street are a listed need in the TSP, as it is a failing intersection. Changes from the Monroe Street Greenway would not likely increase the issues with the intersection.
- The project did not look at elements such as pavement quality. The goal of the project was to reduce speeds and reduce volumes to make a more comfortable shared environment. Diversion was a tool for accomplishing that. However, there was awareness that some issues would need to be addressed when looking at engineering and design specifics in a later phase.
- The original proposal called for a diverter at 37th Avenue and Monroe Street; the diversion at 42nd Avenue and Monroe Street was developed as an alternative, with the greenway route crossing the McFarland site to cross 37th Avenue at Washington Street and then following Washington Street to reconnect with Monroe Street at either Home Avenue or Garrett Street. Washington Street was less busy, the grade was easier, and if the bike/pedestrian access through the McFarland site was built per the TSP, it would allow for a potentially easier option than Monroe Street.
- The general complaint against the greenway concept involved confusion among some people about the reasoning behind elements of the plan such as diverters, etc. Some people perceive the trips along the Monroe Street corridor to be primarily by neighborhood residents, with minimal bike traffic. However, improvements for pedestrians were seen by many as needed.

**Commissioner Hemer** commended staff on the project. He noted that, although as a frequent driver on the eastern part of Monroe Street he was hesitant about having to change his route due to the project, he also felt that Monroe St was not a safe route for pedestrians and other non-auto users and so agreed with the need for improvements.

**Mr. Egner** noted a comment received early on in the project from a mother of two small children regarding her excitement about the project and the opportunity for her children to be able to walk to school as they got older.

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

**Mr. Egner** noted that on September 23 there would be a meeting with neighborhood leaders and operators of short-term rentals (AirB&Bs) in Milwaukie to work together to craft a proposal for code amendments to allow these uses. Currently it was only allowed as a boarding and lodging facility in high-density residential and commercial zones. He explained the background and complexity of the issue.

## **8.0 Planning Commission Discussion Items**

**Commissioner Hemer** noted that it was rewarding to see the light rail station and the Adams Street Connector built after so much time and effort spent by staff and committees and others involved. He looked forward to seeing development on the McFarland and Murphy sites as well.

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

- |                    |   |
|--------------------|---|
| September 22, 2015 | 1. Worksession: ZA-2015-002 Neighborhood Main Streets Code Amendments #2 <i>tentative</i> |
|                    | 2. Worksession: Ethics Training <i>tentative</i>  |
| October 13, 2015   | 1. Public Hearing: ZA-2015-002 Neighborhood Main Streets Code Amendments #1               |
|                    | 2. Public Hearing: NR-2015-003 Riverway Ln pool/slope project                             |

**The Commission** agreed to cancel the September 22nd meeting.

Meeting adjourned at approximately 7:43 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

**Through:** Dennis Egner, Planning Director

**From:** Brett Kolver, Associate Planner

**Date:** May 17, 2016, for May 24, 2016, Public Hearing

**Subject:** **File:** WG-2016-001  
**Applicant:** Tim Austin, LLC  
**Owner(s):** Terrance and Esperanza Martin  
**Address:** 11906 SE 19<sup>th</sup> Avenue  
**Legal Description (Map & Tax Lot):** 1S1E35DA02400  
**NDA:** Island Station

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## ACTION REQUESTED

Approve application WG-2016-001 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow for construction of a new detached accessory structure on the site.

## BACKGROUND INFORMATION

The applicant, Tim Austin, LLC, on behalf of the property owners (Terrance and Esperanza Martin) has applied for approval to construct a detached residential accessory structure on the subject property, to replace an existing smaller shed in the same location. The subject property is zoned for residential use but is entirely covered by the Willamette Greenway overlay, which requires additional land use review.

### A. Site and Vicinity

The subject property is located at 11906 SE 19<sup>th</sup> Avenue, at the southeast corner of 19<sup>th</sup> Avenue and Eagle Street (see Figure 1). The site is developed

Figure 1. Site and vicinity



with a single-family detached dwelling, with another existing detached garage situated in the northern corner of the property. The existing house faces 19<sup>th</sup> Avenue, the existing garage is accessed from Eagle Street, and the proposed new garage will be accessible from an existing driveway to 19<sup>th</sup> Avenue.

The new structure is a detached garage, 20 ft by 24 ft in size, which will replace an existing smaller shed located in the southeast corner of the subject property. The proposed development triggers land use review against the applicable standards of the Willamette Greenway section of the zoning code.

The surrounding properties are developed with detached single-family dwellings, except where the Kellogg Creek Water Pollution Control Plant property (including park space) is situated to the north across Eagle Street.

## B. Zoning Designation

The site is zoned Residential R-5 (see Figure 2). A Habitat Conservation Area (HCA) designation for natural resources extends through the western portion of the site (see Figure 3) and the Willamette Greenway overlay covers the entire property.

## C. Comprehensive Plan Designation

Low Density

## D. Land Use History

City records indicate no previous land use actions for this site.

## E. Proposal

The applicant is seeking land use approval for the proposed new accessory structure as a conditional use in the Willamette Greenway overlay zone. The proposal includes the removal of an existing smaller shed in the southeastern corner of the property and replacement with the proposed detached garage.

The project requires approval of the following application(s):

1. Willamette Greenway review (file #WG-2016-001)

The Applicant's Narrative and Supporting Documentation includes more information and detail about the proposed activity (see Attachment 3).

Figure 2. Zoning designations



Figure 3. HCA designation





## KEY ISSUES

### Summary

Staff has determined that there are no key issues that require extensive analysis or discretion by the Planning Commission. As addressed in the Recommended Findings (see Attachment 1), staff believes that the proposed development does not present any negative impacts related to the Willamette Greenway overlay zone and that the applicable criteria are met.

### Analysis

None

## CONCLUSIONS

### A. Staff recommendation to the Planning Commission is as follows:

1. Approve the Willamette Greenway review for the proposed new accessory structure on the subject property. This will result in replacement of an existing smaller shed with a larger detached garage structure.
2. Adopt the attached Findings and Conditions of Approval.

### B. Staff recommends no significant conditions of approval (see Attachment 2 for the full list of Conditions of Approval).

## CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Section 19.1006 Type III Review
- MMC Section 19.401 Willamette Greenway Zone WG
- MMC Section 19.905 Conditional Uses
- MMC Section 19.301 Low Density Residential Zones (including R-5)
- MMC Section 19.502 Accessory Structures

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

- A. Approve the application subject to the recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.
- D. Continue the hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by August 6, 2016, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

## COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Building Department, City of Milwaukie Engineering Department, City of Milwaukie Operations Department (Stormwater Division), Clackamas Fire District #1, Island Station Neighborhood District Association (NDA), Oregon Parks and Recreation Department, Oregon Department of State Lands, Oregon Department of Fish and Wildlife, Oregon State Marine Board, and Oregon Department of Transportation. The following is a summary of the comments received by the City. See Attachment 4 for further details.

- **Chrissy Dawson, Engineering Tech II, Milwaukie Engineering Department:** MMC Chapter 19.700 Public Facility Improvements is not applicable to the proposed development.
- **Pam Denham, LUC Chair for Island Station NDA:** No objections to the application.

## ATTACHMENTS

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

	Early PC Mailing	PC Packet	Public Copies	E-Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Applicant's Narrative and Supporting Documentation dated April 8, 2016				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Site Plan Sheets (including Site Plan, Construction Management Plan, and Vegetation Plan)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Photo Sheets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Elevation Drawings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Application Forms	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Preapplication Conference Notes (Dec. 10, 2015)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Comments Received	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

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

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

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-150>.

**Recommended Findings in Support of Approval**  
**File # WG-2016-001**  
**Martin Garage at 11906 SE 19<sup>th</sup> Avenue**

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, Tim Austin, LLC, on behalf of the property owners (Terrance and Esperanza Martin), has applied for approval to construct a detached residential accessory structure on the subject property. The subject property is a single tax lot located at 11906 SE 19<sup>th</sup> Avenue and is zoned Residential R-5, with Natural Resource and Willamette Greenway overlays. The proposed development triggers land use review against the applicable standards of the Willamette Greenway section of the zoning code. The land use application file number is WG-2016-001.
2. The proposed development is a new detached garage, 20 ft by 24 ft in size, which will replace an existing smaller shed located in the southeast corner of the subject property. The site is on the southeast corner of 19<sup>th</sup> Avenue and Eagle Street and is developed with a single-family detached dwelling. Another existing detached garage is situated in the northern corner of the property and will remain. The existing house faces 19<sup>th</sup> Avenue, the existing garage is accessed from Eagle Street, and the proposed new garage will be accessible from an existing driveway to 19<sup>th</sup> Avenue. The surrounding properties are developed with detached single-family dwellings, except where Clackamas County's Kellogg Creek Water Pollution Control Plant property (including park space) is situated to the north across Eagle Street.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1006 Type III Review
  - MMC Section 19.401 Willamette Greenway Zone WG
  - MMC Section 19.905 Conditional Uses
  - MMC Section 19.301 Low Density Residential Zones (including R-5)
  - MMC Section 19.502 Accessory Structures

The subject property includes a designated Habitat Conservation Area (HCA) along the 19<sup>th</sup> Avenue frontage on the western edge of the site. Although the proposed development will not disturb any portion of the HCA, the project area is within 100 ft of the HCA and so triggers the need for a construction management plan as per MMC Subsection 19.402.9. The construction management plan will be reviewed in conjunction with the building permit for the new garage and is not addressed in these findings.

4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held by the Planning Commission on May 24, 2016, as required by law.
5. MMC Section 19.401 Willamette Greenway Zone  
MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is entirely within the Willamette Greenway zone as shown on the City's zoning map.

## a. MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

The construction of a new accessory structure constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

## b. MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

(1) *Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan*

The State Willamette River Greenway Plan defines “lands committed to urban use” in part as “those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate.”

The subject property has been developed for private residential use since at least 1930, when the existing house was built. The land is committed to an urban use.

(2) *Compatibility with the scenic, natural, historic, economic, and recreational character of the river*

The project area is not adjacent to the Willamette River and is separated from the river by 19<sup>th</sup> Avenue, other residential properties to the west, and the Kellogg wastewater treatment plant property to the north and northwest. The proposed new garage will match the style of the existing house and will be located in the southeastern corner of the subject property, as far from the river as possible. The proposed development presents no significant impacts to the character of the river and is compatible with it.

(3) *Protection of views both toward and away from the river*

The project area is not adjacent to the Willamette River. The location of the proposed new garage is the southeastern corner of the subject property, about as far from the river as is possible for this site. Existing vegetation and structures on the subject property, as well as those on adjacent properties across 19<sup>th</sup> Avenue to the west and the wastewater treatment plant to the north and northwest, allow only minimal views of the river. The proposed development does not affect views toward and away from the river.

(4) *Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable*

The proposed development will not affect existing landscaping, vegetation, open space, or any aesthetic enhancement between the location of the new detached garage and the river.

- (5) *Public access to and along the river, to the greatest possible degree, by appropriate legal means*

The subject property is a private residential property and does not provide public access to the Willamette River. Public access to the river is available through the park west of the Kellogg wastewater treatment plant, which is located adjacent to the subject property across Eagle Street to the north and northwest.

- (6) *Emphasis on water-oriented and recreational uses*

The site is a private residential property and has no direct access to the Willamette River. Water-oriented and recreation uses are available in the public park behind the Kellogg wastewater treatment plant, adjacent to the subject property across Eagle Street to the north and northwest.

- (7) *Maintain or increase views between the Willamette River and downtown*

The subject property is approximately a quarter mile from the nearest portion of downtown Milwaukie located on the east side of McLoughlin Boulevard (Highway 99E), though it is only approximately 250 ft from the Kellogg wastewater treatment plant property, a majority of which is zoned for Downtown Mixed Use. The proposed new garage will be located on the opposite side of the subject property from the wastewater plant site, where it will not be very visible behind the other existing garage on the subject property. The other existing structures and vegetation in the general area already block most views between the river and the downtown-zoned portion of the wastewater treatment plant site. The proposed development will have no effect on views between the river and downtown-zoned areas.

- (8) *Protection of the natural environment according to regulations in Section 19.402*

As noted in Finding 3, above, the subject property includes a designated Habitat Conservation Area (HCA) along the 19<sup>th</sup> Avenue frontage on the western edge of the site. The proposed development will not disturb any portion of the HCA, though the project area is within 100 ft of the HCA and so triggers the need for a construction management plan as per MMC Subsection 19.402.9. The applicant's construction management plan will be reviewed in conjunction with the building permit for the new garage to ensure that the HCA is adequately protected.

- (9) *Advice and recommendations of the Design and Landmarks Committee, as appropriate*

The subject property is not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee.

- (10) *Conformance to applicable Comprehensive Plan policies*

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. These policies include the requirement of a conditional use permit for new development and intensification of existing uses, evaluation of development impacts to visual corridors, and limitations on authorizing the unrestricted public use of private land.

The Natural Hazards Element includes policies that prohibit development in known areas of natural disasters and hazards without appropriate safeguards.

The Open Spaces, Scenic Areas, and Natural Resources Element includes policies to conserve open space and protect and enhance natural and scenic resources.

The proposed development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not impact visual corridors. The proposed development is on private property and does not involve any changes to public access to the river over private land. The project area is outside the 100-year floodplain. A construction management plan has been submitted and will be reviewed in conjunction with the building permit for the new garage to ensure that the designated HCA on the site is adequately protected.

*(11) The request is consistent with applicable plans and programs of the Division of State Lands*

The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL).

*(12) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C*

The subject property is not immediately adjacent to the Willamette River and does not include a vegetation buffer area as described in MMC Subsection 19.401.8.A.

The Planning Commission finds that the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.

The Planning Commission finds that the proposed activity meets all applicable standards of the Willamette Greenway zone.

6. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses. As noted in Finding 5-a and as provided in MMC Subsection 19.401.5.A, activities within the Willamette Greenway zone that trigger Willamette Greenway review are subject to the provisions of Section 19.905 as conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use, or a major or minor modification of an existing conditional use, must be reviewed.

As noted in Finding 6-a, the proposed development is an activity within the Willamette Greenway zone that requires review as a conditional use. The existing use on the subject property is a private residence, which is an allowed use in the underlying residential R-5 zone. The proposed development involves construction of a new detached accessory structure, which represents a major modification to the existing use.

MMC 19.905.3.A requires that a major modification of an existing conditional use be evaluated through the Type III review process per MMC Section 19.1006.

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the approval criteria for a new conditional use or a major modification to an existing conditional use.

- (1) *The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.*

The subject property is a residential lot approximately 10,000 sq ft in area. The property is developed with a detached single-family dwelling, two detached accessory structures, and accompanying landscaped areas. The site provides adequate area for replacement of one of the existing detached accessory structures (a small shed) with the proposed new accessory structure (a detached garage).

The Planning Commission finds that this standard is met.

- (2) *The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.*

The subject property is adjacent to other single-family residential properties on all sides except the north, where the Kellogg wastewater treatment plant is located across Eagle Street from the site. The proposed development involves replacing an existing small shed with a detached garage that will meet all applicable yard setbacks. Views toward and from the river in the project area are already minimal, and the proposed development's impacts on nearby uses will be negligible.

The Planning Commission finds that this standard is met.

- (3) *All identified impacts will be mitigated to the extent practicable.*

The proposed development presents no significant impacts.

The Planning Commission finds that this standard is met.

- (4) *The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.*

The proposed development will not result in any different use of the subject property than currently exists and will not generate any unmitigated nuisance impacts.

The Planning Commission finds that this standard is met.

- (5) *The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.*

The subject property is in the Residential R-5 zone, with development standards provided in MMC Section 19.301. The applicable development standards are those for lot coverage (maximum of 35% of lot area) and minimum vegetation (minimum of 25% of lot area). Currently, the 10,000-sq-ft lot is covered by approximately 3,000 sq ft of structural footprint (30% lot coverage) and another approximately 1,000 sq ft of non-vegetated area (60% minimum vegetation). The proposed development will slightly expand the footprint of existing structures to approximately 3,400 sq ft (34% lot coverage) and will increase the amount of non-vegetated area to approximately 1,400 sq ft (52% minimum vegetation), leaving the site well over the minimum thresholds for compliance with both applicable standards.

In addition, the new garage is subject to the standards for accessory structures provided in MMC Section 19.502. Specifically, the proposed new garage falls into the “Type B” category in MMC Table 19.502.2.A.1.a for residential accessory structures, which allows a maximum building height of 15 ft, maximum structural footprint of 600 sq ft, and side and rear setbacks of 5 ft. The proposed new garage has an average roof height of less than 14 ft, is 480 sq ft in area, and will be located 5 ft from the side and rear property lines. The new structure will be approximately 8 ft from the existing house on the site, exceeding the 5-ft minimum requirement established in MMC Subsection 19.502.2.A.1.b(3).

As addressed in Finding 5, the proposed activity will comply with the relevant standards of the Willamette Greenway overlay zone. As addressed elsewhere in Finding 6, the proposed activity is compliant with the other standards of MMC 19.905.

The Planning Commission finds that this standard is met.

- (6) *The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.*

As addressed in Finding 5-b-10, the proposed development is consistent with all relevant polices in the Comprehensive Plan.

The Planning Commission finds that this standard is met.

- (7) *Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.*

The Engineering Department has reviewed the proposal and confirmed that existing public transportation facilities and public utilities are adequate to serve the proposed development.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets all of the approval criteria outlined in MMC 19.905.4.A for a major modification to an existing conditional use.

c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

The Planning Commission finds that, as proposed, the new development sufficiently mitigates any negative impacts as proposed and that no additional conditions are necessary to ensure compatibility with nearby uses.

d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The provisions include a requirement to record the conditional use permit with the Clackamas County Recorder’s Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.



An advisory note has been included with the conditions of approval to outline the conditional use permit process.

The Planning Commission finds that the proposed development is consistent with the relevant standards established in MMC 19.905 for conditional uses.

7. The application was referred to the following departments and agencies on April 21, 2016:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Operations Department (Stormwater Division)
- Clackamas Fire District #1
- Island Station Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Oregon Parks and Recreation Department
- Oregon Department of State Lands (DSL)
- Oregon Department of Fish and Wildlife
- Oregon State Marine Board
- Oregon Department of Transportation (ODOT)

The comments received are summarized as follows:

- a. **Chrissy Dawson, Engineering Tech II, Milwaukie Engineering Department:** MMC Chapter 19.700 Public Facility Improvements is not applicable to the proposed development.
- b. **Pam Denham, LUC Chair for Island Station NDA:** No objections to the application.

**Recommended Conditions of Approval**  
**File # WG-2016-001**  
**Martin Garage at 11906 SE 19<sup>th</sup> Avenue**

**Conditions**

1. At the time of submittal of the associated development permit application(s), the following shall be resolved:
  - a. Final plans submitted for development permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on April 8, 2016.
  - b. As needed, provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.

**Additional Requirements**

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various point in the development and permitting process.

1. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon approval of an application to allow major modification of an existing conditional use (including Willamette Greenway conditional uses). The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

2. Construction Management Plan

The project area is within 100 ft of a designated Habitat Conservation Area (HCA). Although the proposed development will not disturb any portion of the HCA, the proximity of the project area to the HCA triggers the need for a construction management plan as per MMC Subsection 19.402.3.J. A construction management plan consistent with the requirements of MMC Section 19.402.9 shall be submitted for review with the building permit application for the new structure.

3. Limitations on Development Activity

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as per MMC Subsection 8.08.070(I).

4. Expiration of Approval

As per MMC 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.

**Type 3 Greenway Approval Application**

**Martin Residence**

**11906 SE 19<sup>th</sup> Ave**

**Milwaukie OR 97222**

**Contractor:**

**Tim Austin LLC**

**(503) 577-7782**

**637 SE Paropa Pl**

**Gresham OR 97080**

Included are: Written approval from owner for application, site plans, vegetation plans, construction management plan, building plans, Copy of the pre-application conference and pictures of the existing site from all angles.

We are proposing a 20' x 24' garage. The proposed garage meets all base zone standards for a Residential R-5 Zone. Thank you for your consideration.

**Lot Coverage and Minimum Vegetation (19.301.2) (see vegetation Plan. Attached)**

A minimum of 25% of the site must be landscaped. This site will have 64% landscaped.

40% of the existing front yard must be landscaped. This property will have 80% landscaped in the front yard.

**Base Zone Standards. (19.300)**

Currently there is a single family home and a single car garage on the property.

The property consists of a 10,000 sq. ft. lot.

The property has a existing 255 sq. ft. garage in the NW corner of the property that is used as a garden shed and storage.

There is a 2200 sq. ft. house residing on the property with a 440 sq. ft. deck. We are proposing a new 437 sq. ft. double car garage that will be used for parking and storage.

It is our opinion that the garage does not effect the scenic, natural, historic, economic or recreational character of the river.

The new garage will be 437 sq. ft. After adding the new garage there will be 33% lot coverage. The limit is 35% for a R-5 Zone.

After construction of the new garage and partial driveway 36% of the lot will be covered by impervious surfaces.

A minimum of 25% of the site must be landscaped. This site will have 64% landscaped.

40% of the existing front yard must be landscaped. This property will have 80% landscaped in the front yard.

### **Overlay Zone Standards (19.400) Willamette Greenway approval criteria**

This project does not effect access to the river and does not impact views

The following shall 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;

Yes, the site is developed with a residential property

B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;

It is our opinion that the garage does not effect the scenic, natural, historic, economic or recreational character of the river. The garage will be built to match the house. It will be in the back corner of the property as far away

from the river as possible. There is no view of the garage from the river. There is no meaningful view of the river from the garage. (see pictures)

C. Protection of views both toward and away from the river;

No impact on views—not visible

D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;

There is a road and another residential property between the property where the garage is located and the river. Not Applicable.

E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;

Not applicable.

F. Emphasis on water-oriented and recreational uses;

Not applicable.

G. Maintain or increase views between the Willamette River and downtown;

Not applicable.

H. Protection of the natural environment according to regulations in Section 19.402;

Not applicable.

I. Advice and recommendations of the Design and Landmark Committee, as appropriate;

Not applicable.

J. Conformance to applicable Comprehensive Plan policies;

Not applicable.

K. The request is consistent with applicable plans and programs of the Division of State Lands;

Not applicable.

L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

Not applicable.

### **Construction Management Plan (19.402.9)**

We have provided a Construction Management Plan. ( see attached)

### **Supplementary development regulations (19.500)**

#### **19.502.1 General Provisions**

A. No accessory structure shall encroach upon or interfere with the use of any adjoining property or public right-of-way including but not limited to streets, alleys, and public and private easements.

The garage does not encroach upon or interfere with the use of adjoining properties.

B. Multiple accessory structures are permitted subject to building separation, building coverage, and minimum vegetation requirements of the zoning district in which the lot is located.

There will be more than 6' between the existing house and the new garage.

There will be a minimum of 5' between the fence and the new garage.

The new garage will be 437 sq. ft. After adding the new garage there will be 33% lot coverage. The limit is 35%.

After construction of the new garage and partial driveway 36% of the lot will be covered by impervious surfaces. The limit is 40%.

A minimum of 25% of the site must be landscaped. This site will have 64% landscaped.

40% of the existing front yard must be landscaped. This property will have 80% landscaped in the front yard.

C. An accessory structure shall comply with all of the requirements of the Uniform Building Code.

The new garage will be permitted and inspected.

D. Accessory structures excluding fences, flagpoles, pergolas, arbors, or trellises may not be located within the required front yard except as otherwise permitted in this chapter.

The garage will not be in the front yard setback.

E. Regardless of the base zone requirements in Chapter 19.300, the required side and rear yards for an accessory structure are reduced to 5 ft., except as described below.

1. Accessory structures are subject to the minimum street side yard requirements of the base zones in Chapter 19.300.

Not Applicable.

2. Regulations for overlay zones or special areas in Chapter 19.400 may require an accessory structure to be set back beyond the minimum side or rear yard requirements.

Not Applicable.

3. If the rear or side yard requirement in the base zone in Chapter 19.300 is less than 5 ft, then the yard requirements of the base zone shall apply.

Not Applicable.

4. The rear or side yard requirement for residential accessory structures per Subsection 19.502.2.A or 19.910.1.E.4 may specify a different yard requirement.

The rear and side setbacks are both 5'.

F. Alteration or modification of nonconforming accessory structures is subject to the provisions of Chapter 19.800 Nonconforming Uses and Development.

100% of the work will be on a new accessory structure.

G. Fences, flagpoles, pergolas, arbors, and trellises are permitted in yards in all residential zones.

#### 19.502.2 Specific Provisions for Accessory Structures

Not Applicable. We are only building a garage.

#### **Specific Provisions for Accessory Structures (19.502.2)**

A. The following standards apply for residential accessory structures on single family detached, duplex, row house, and cottage cluster properties. The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios. The purpose of these standards is to allow accessory structures that accommodate the typical needs of a single-family residence, while protecting the character of single-family neighborhoods.

##### 1. Development Standards

###### a. Height and Footprint

The maximum height and footprint allowed for an accessory structure is determined by the yard depths between the structure and the lot lines. Accessory structures with a larger height and footprint must meet the increased yard requirements. An accessory structure is allowed the maximum building height and footprint listed in Table 19.502.2.A.1.a only if the entire structure meets or exceeds all the yard requirements in the same column. See Figure 19.502.2.A.1.a.

The new garage will be a "Type B" accessory structure.

The new garage will have a gable roof.

The garage will be 13' 8" to the average height of the roof.

There will be a 5' setback between the garage and the rear fence and side fence.



There will be a minimum setback of 5' between the garage and the house.

The siding on the garage will match the house. We will be installing lap siding on the lower section and cedar shake siding on the gable ends. This will match the house.

The garage will be painted to match the house.

The roof pitch will be 8/12. Please see attached plans for any questions on construction.

### **Off-street parking and loading standards and requirements (19.600)**

There are more than the required 1 off-street parking spaces. (MMC 19.607) Currently there is a asphalt driveway that extends back into the yard approx. 60 feet. The driveway will be extended to the new garage providing at least 1 9' x 18' off street parking spaces. See site plan for more details.

### **Public facility standards and requirements (19.700)**

Per pre-application conference report: "Construction of a garage structure does not trigger the requirements of MMC Chapter 19.700 Public Facility Improvements". (see attached.)

We are not modifying the existing driveway access.

### **Conditional use approval criteria from MMC (19.905.4)**

A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:

1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

The characteristics of the lot are suitable. It conforms to lot coverage, vegetation coverage, setbacks etc.

2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

It doesn't have any effects on nearby uses.

3. All identified impacts will be mitigated to the extent practicable.

Not Applicable.

4. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

There will be no nuisance impacts. Not Applicable.

5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

Yes. It will.

6. The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

Yes.

7. Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

Not Applicable.

In summary. We believe that this garage should be approved for a land use permit. We believe that it conforms to the Milwaukie Municipal Code and specifically to the Willamette Greenway Zone Requirements. I hope that I have provided the necessary information to make it obvious that this project will not effect the views of the neighbors, the views from the river and will not effect the river in any way.

If you need more information don't hesitate to let me know.

Thank you  
Sincerely,  
Tim Austin

TERRANCE MARTIN 2/13/2016  
ESPERANZA MARTIN  
11906 SE 19<sup>TH</sup> AVE  
MILWAUKIE, ORE 97222

City of Milwaukie  
Building Permit

To whom it may concern:

We have employed Timothy Austin of Tim Austin LLC Construction to act on our behalf to provide any information needed by the City of Milwaukie for the purpose of obtaining a building permit to construct a garage on our property.

Terrance Martin  
Esperanza Martin

**SITE PLAN**  
1/10" = 1'

LOT SIZE = 10,000 SQ. FT.  
 BUILDING COVERAGE:  
 HOUSE = 2000 SQ. FT.  
 EXISTING GARAGE = 285 SQ. FT.  
 PROPOSED GARAGE = 487 SQ. FT.  
 DECK (PARTIALLY COVERED) = 440 SQ. FT.  
 TOTAL BUILDING COVERAGE = 3212 SQ. FT.  
 32% LOT COVERAGE. LIMIT IS 35%.

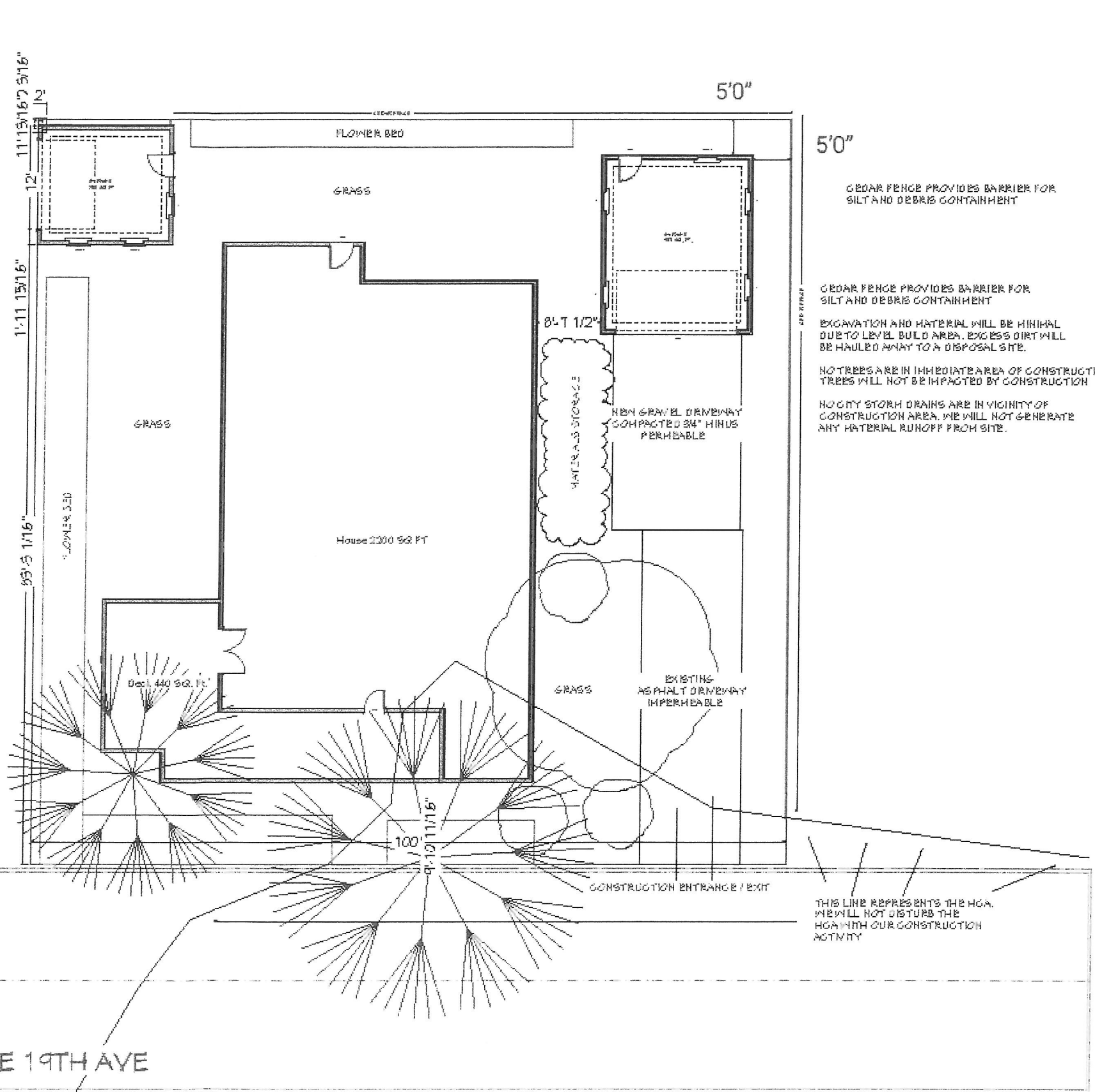


MARTIN RESIDENCE  
 11906 SE 19TH AVE  
 MILWAUKIE OR 97222

CONTRACTOR:  
 TIM AUSTIN LLC  
 (503) 577-7782  
 637 SE PAROPA PL  
 GRESHAM OR 97080

SE EAGLE ST

SE 19TH AVE



CEDAR FENCE PROVIDES BARRIER FOR SILT AND DEBRIS CONTAINMENT

CEDAR FENCE PROVIDES BARRIER FOR SILT AND DEBRIS CONTAINMENT

EXCAVATION AND MATERIAL WILL BE MINIMAL DUE TO LEVEL BUILD AREA. EXCESS DIRT WILL BE HAULED AWAY TO A DISPOSAL SITE.

NO TREES ARE IN IMMEDIATE AREA OF CONSTRUCTION TREES WILL NOT BE IMPACTED BY CONSTRUCTION

NO CITY STORM DRAINS ARE IN VICINITY OF CONSTRUCTION AREA. WE WILL NOT GENERATE ANY MATERIAL RUNOFF FROM SITE.

THIS LINE REPRESENTS THE HOA. WE WILL NOT DISTURB THE HOA WITH OUR CONSTRUCTION ACTIVITY

**CONSTRUCTION  
MANAGEMENT  
PLAN 1/16" = 1'**

LOT SIZE = 10,000 SQ FT  
 BUILDING COVERAGE:  
 HOUSE = 2500 SQ FT  
 EXISTING GARAGE = 285 SQ FT  
 PROPOSED GARAGE = 437 SQ FT  
 DECK (PARTIALLY COVERED) = 440 SQ FT  
 TOTAL BUILDING COVERAGE = 3662 SQ FT  
 36% LOT COVERAGE. LIMIT IS 35%

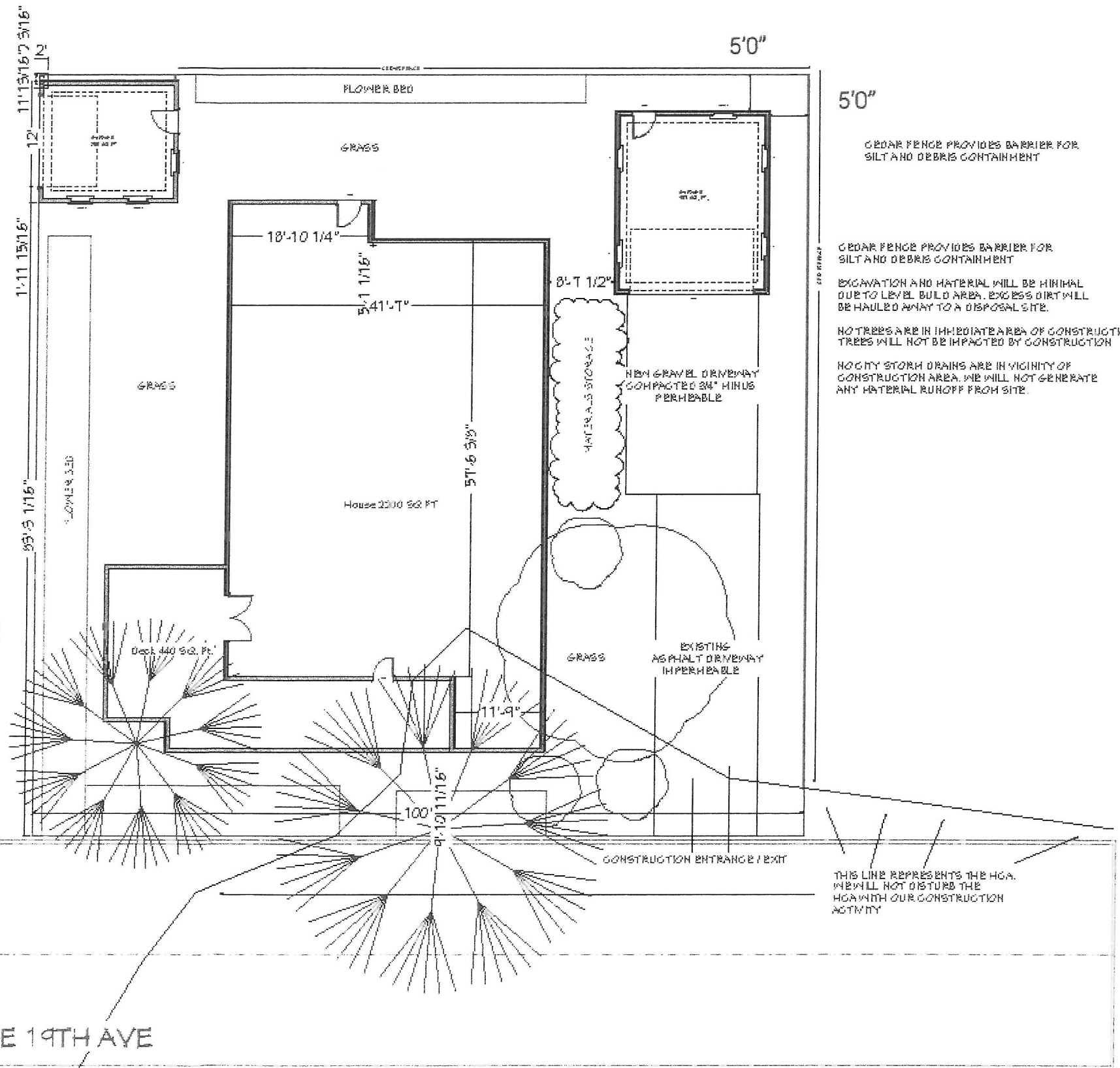


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 MILWAUKIE OR 97222

CONTRACTOR:  
 TIM AUSTIN LLC  
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SE EAGLE ST

SE 19TH AVE



5'0"

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NO CITY STORM DRAINS ARE IN VICINITY OF CONSTRUCTION AREA. WE WILL NOT GENERATE ANY MATERIAL RUNOFF FROM SITE.



SE 19th Ave  
Milwaukie, Oregon  
Street View - Aug 2011

VIEW LOOKING DOWN THE DRIVEWAY IN THE SUMMER NOTE

THAT THE LEAVES OBSTRUCT THE VIEW MUCH MORE



Google





VIEW OF THE EXISTING DRIVEWAY



VIEW OF EXISTING YARD





VIEW OF RIVER FROM THE CORNER OF THE YARD 10 FEET HIGH. THERE IS A SMALL SLIVER OF RIVER THAT IS VIEWABLE. THIS IS NOT VIEWABLE WHEN THE TREES HAVE THEIR LEAVES. I DONT BELIEVE THAT THE PROPOSED GARAGE WILL BE VIEWABLE FROM THE RIVER IN ANY MEANINGFUL AMOUNT.



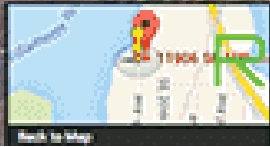
VIEW OF NEIBORS DECK. LOOKING EAST.



THIS PICTURE WAS TAKEN FROM A SELFIE STICK HELD 10 FEET IN THE AIR SIMULATING THE VIEW FROM THE NEIBORS DECK BEHIND THE PROPERTY IN THE WINTER MONTHS. THE VIEW WOULD BE MORE OBSTRUCTED DURING THE MONTHS WHERE THE FOILAGE HAS LEAVES ON IT.

681 110th Ave  
Milwaukie, Oregon  
Street View Aug 2011

VIEW OF THE RIVER FROM THE FRONT OF THE  
DRIVEWAY SUMMER ALMOST NO VIEW OF THE



RIVER

Google



SE 19th Ave  
Milwaukie, Oregon

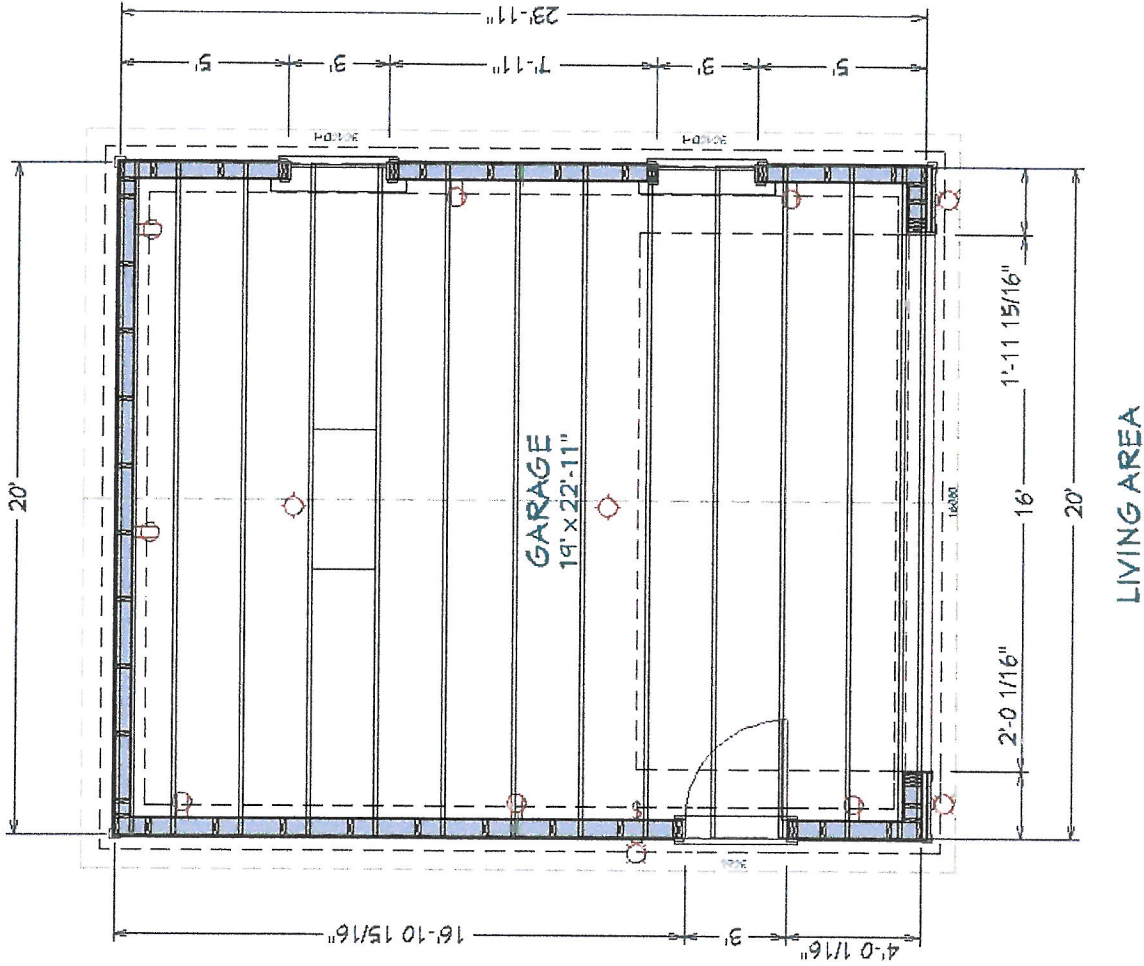
Street View - Aug 2011

VIEW OF THE RIVER FROM THE FRONT OF THE  
DRIVEWAY SUMMER ALMOST NO VIEW OF THE  
RIVER

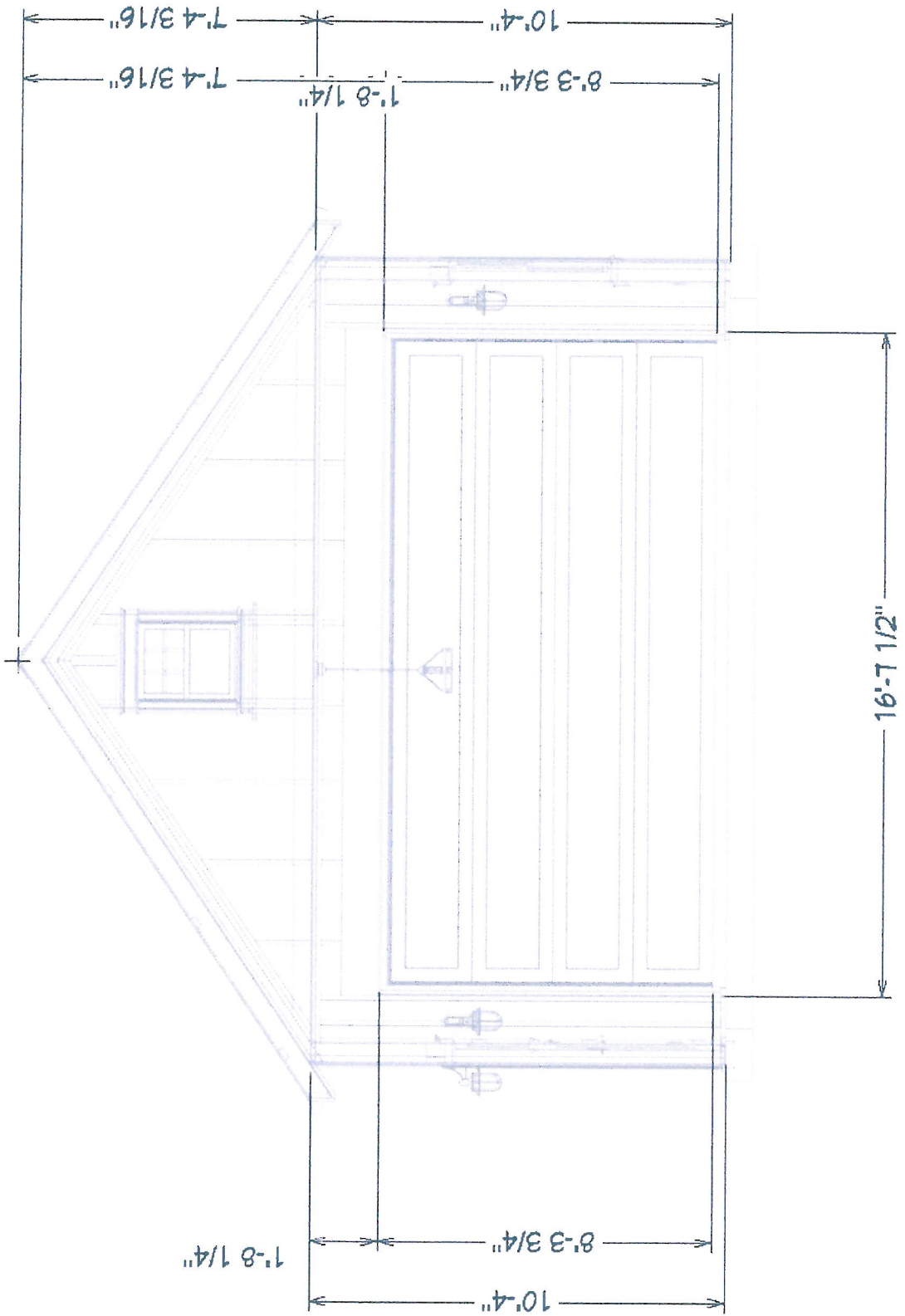


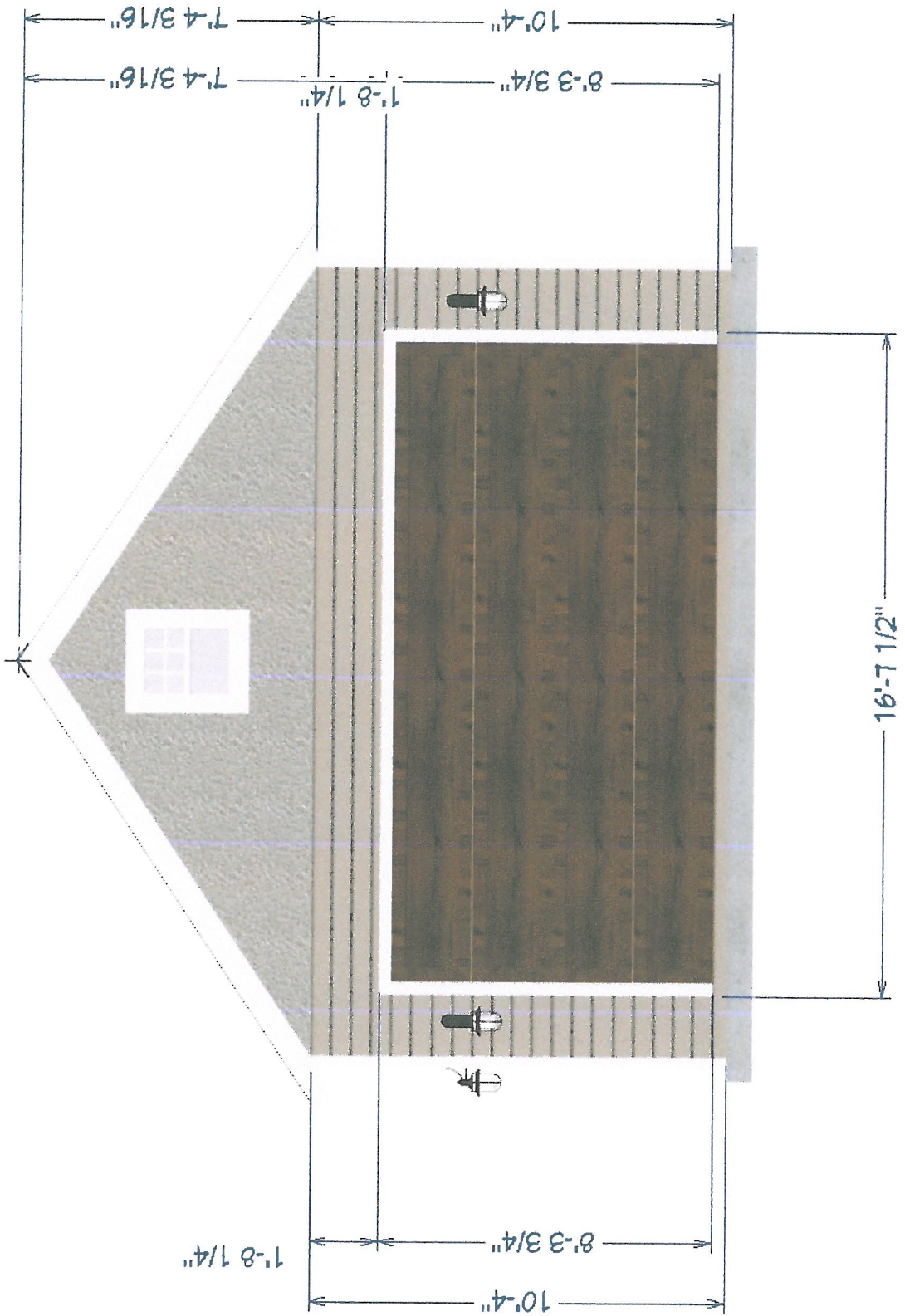
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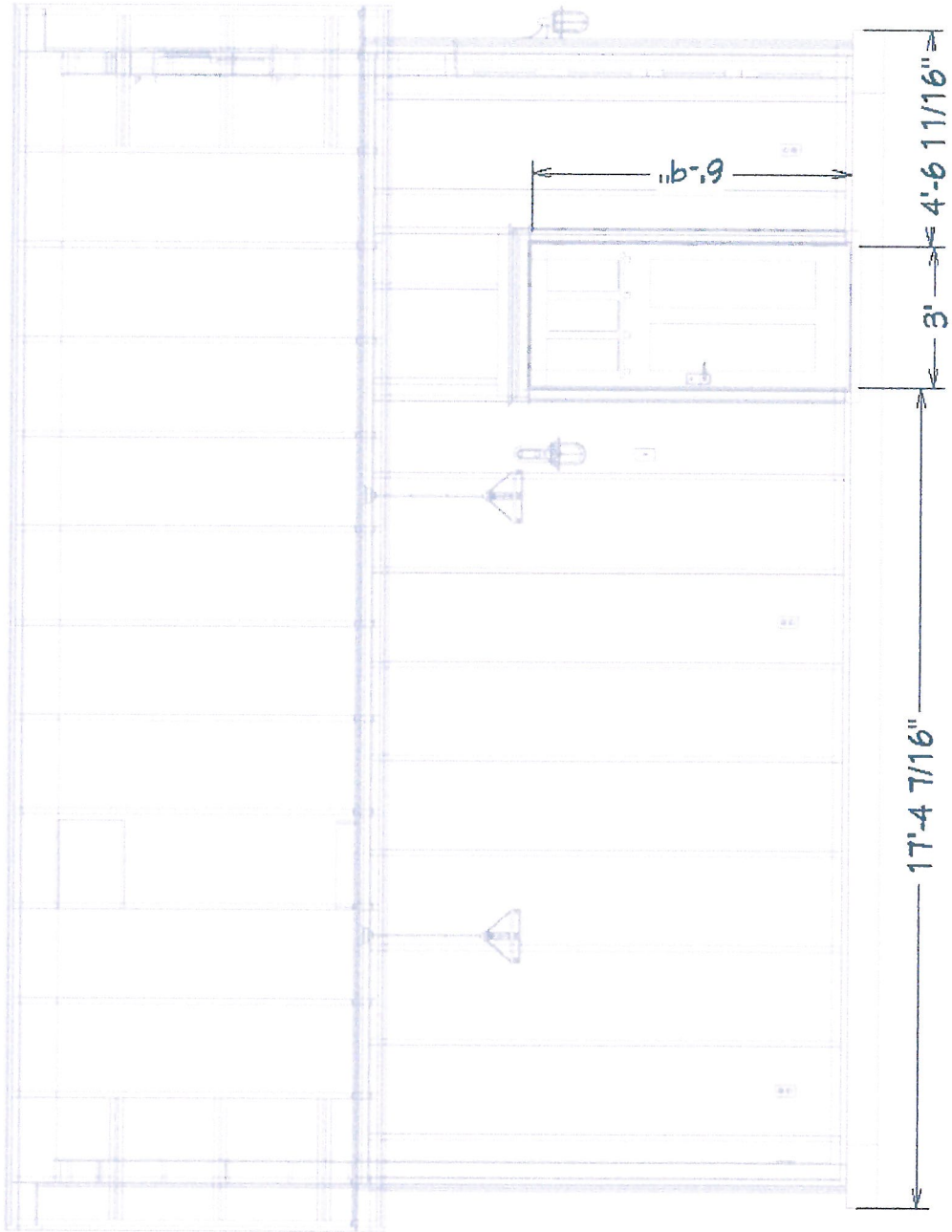
11/11/16







10'-5" 7'-4"



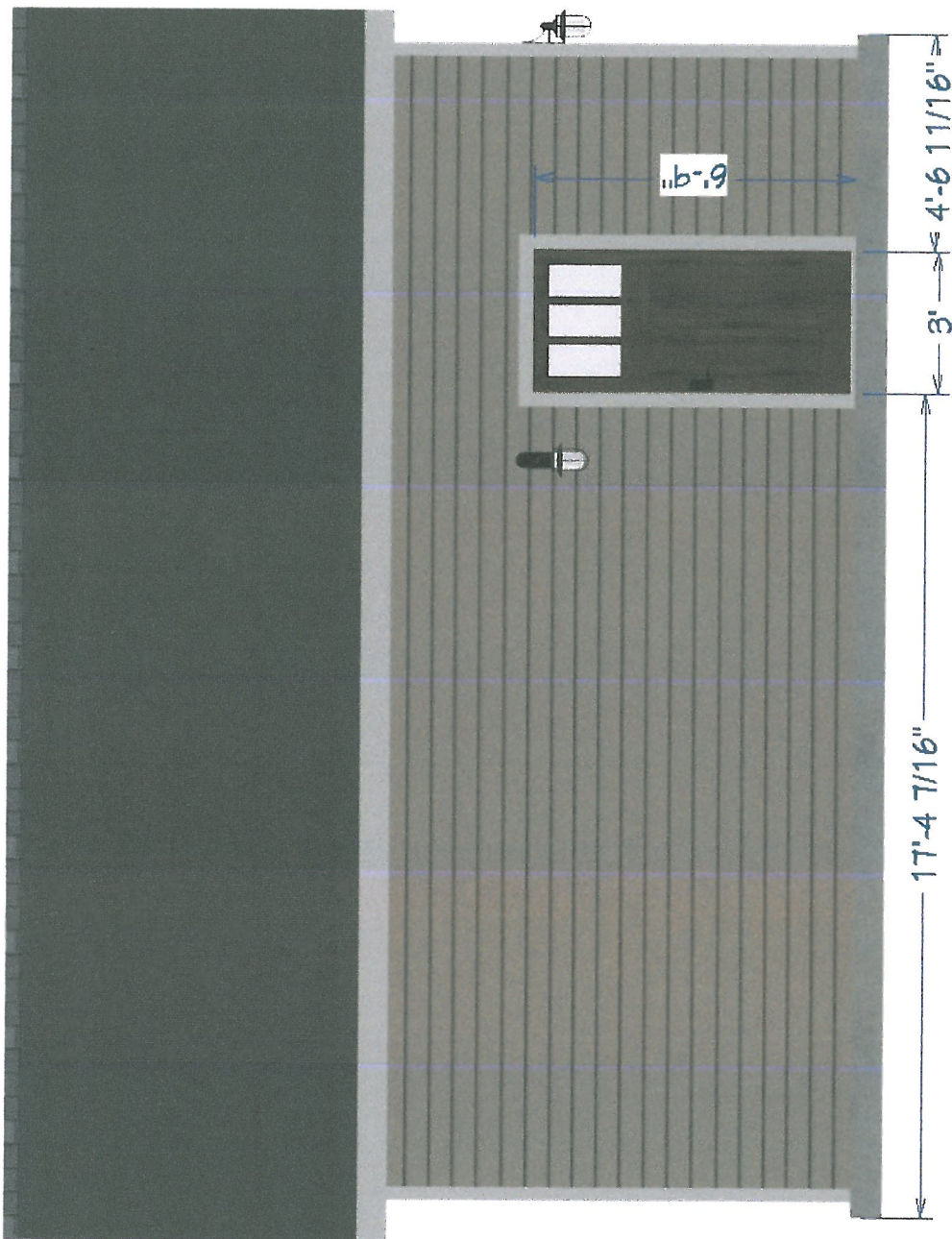
17'-4 7/16"

4'-6 11/16"

3'

6'-9"

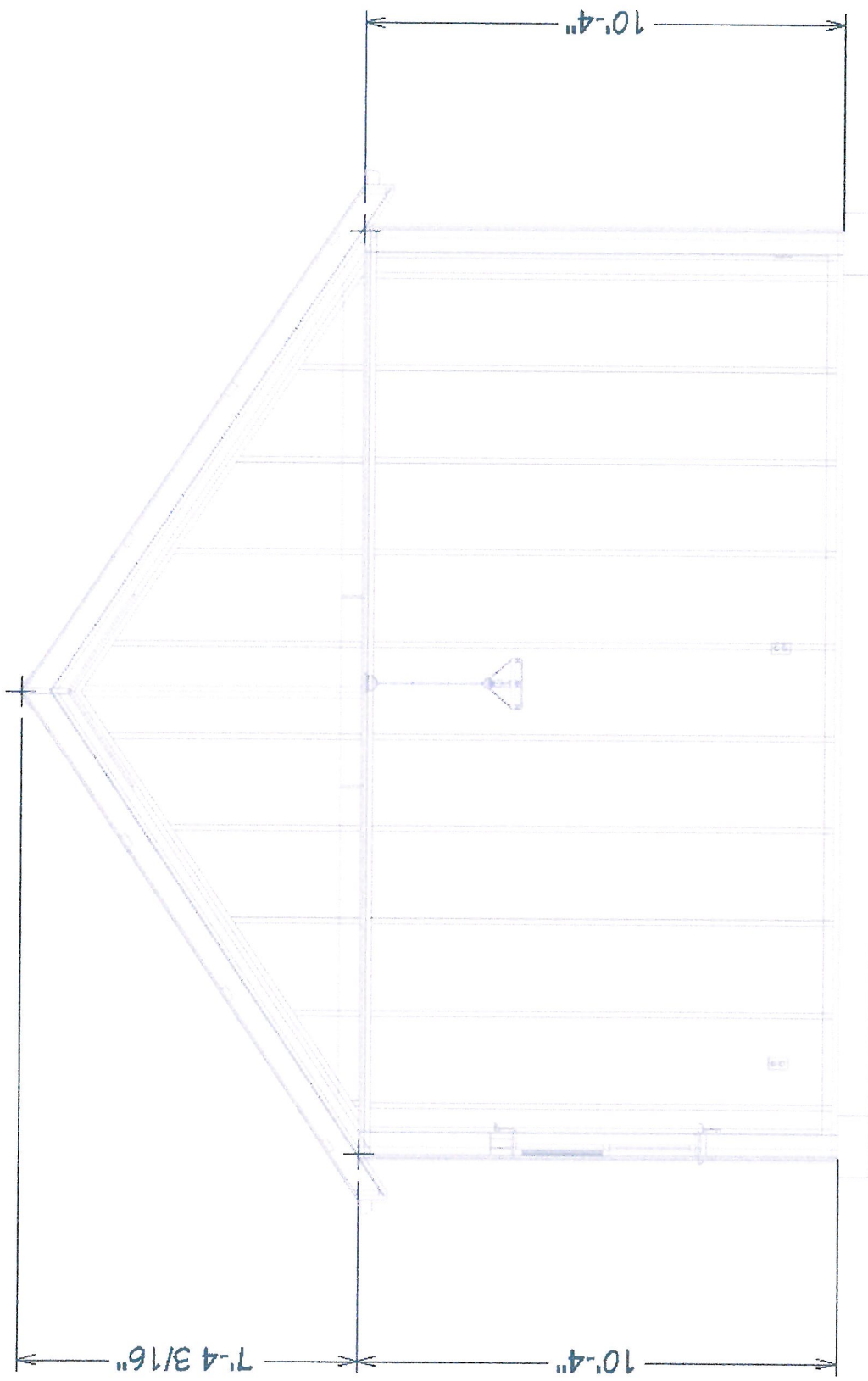
10'-5" 7'-4"

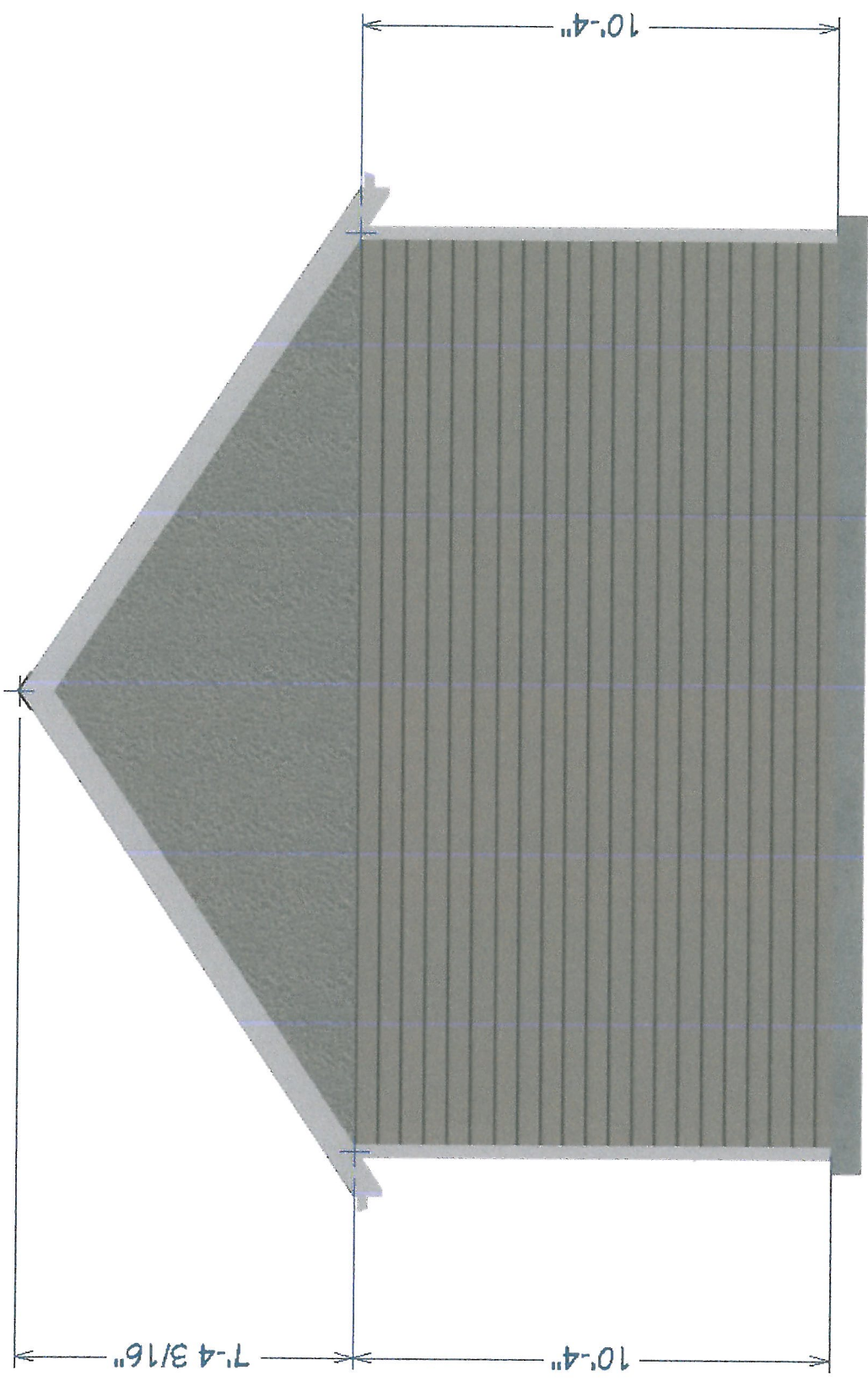


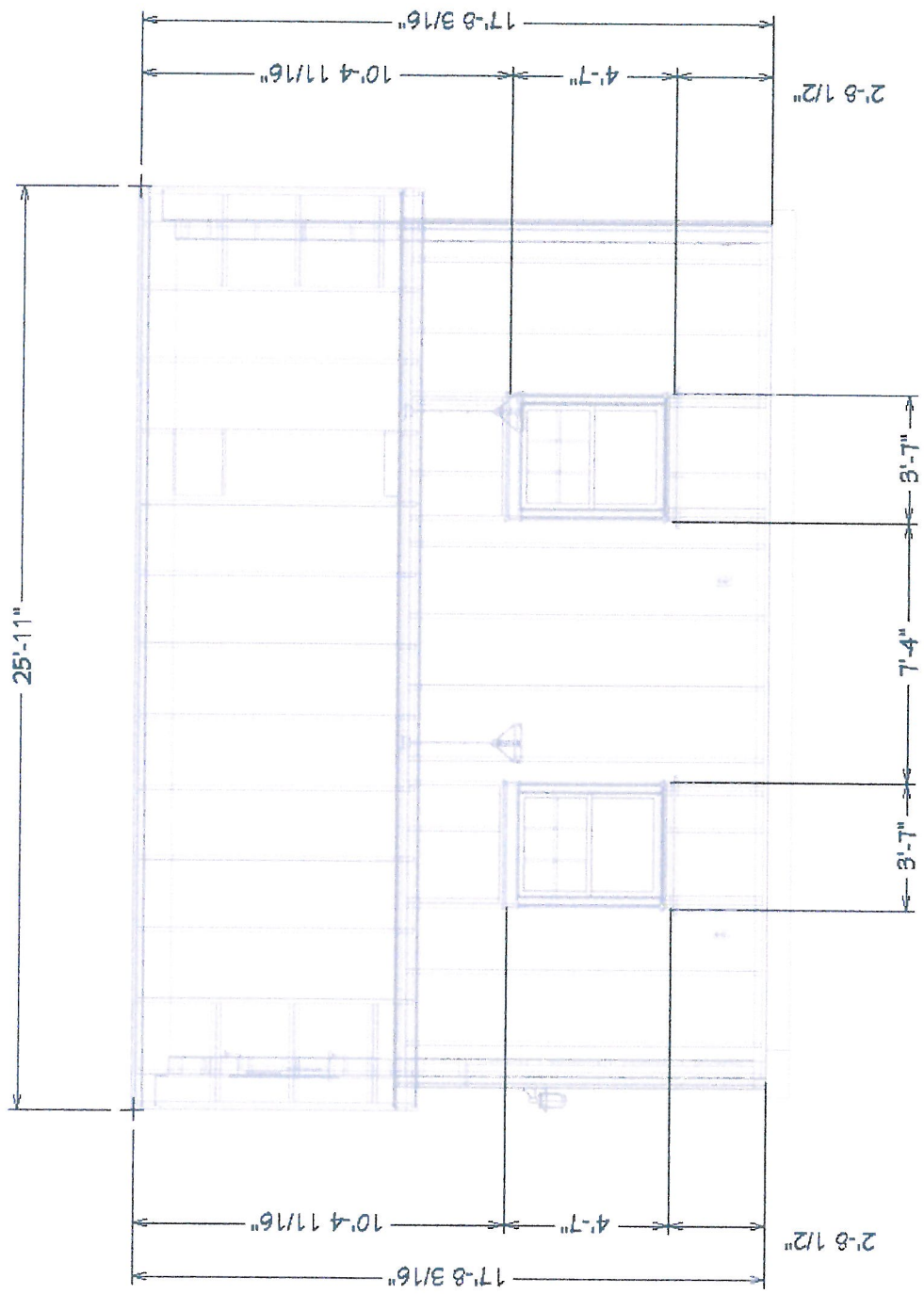
6'-9"

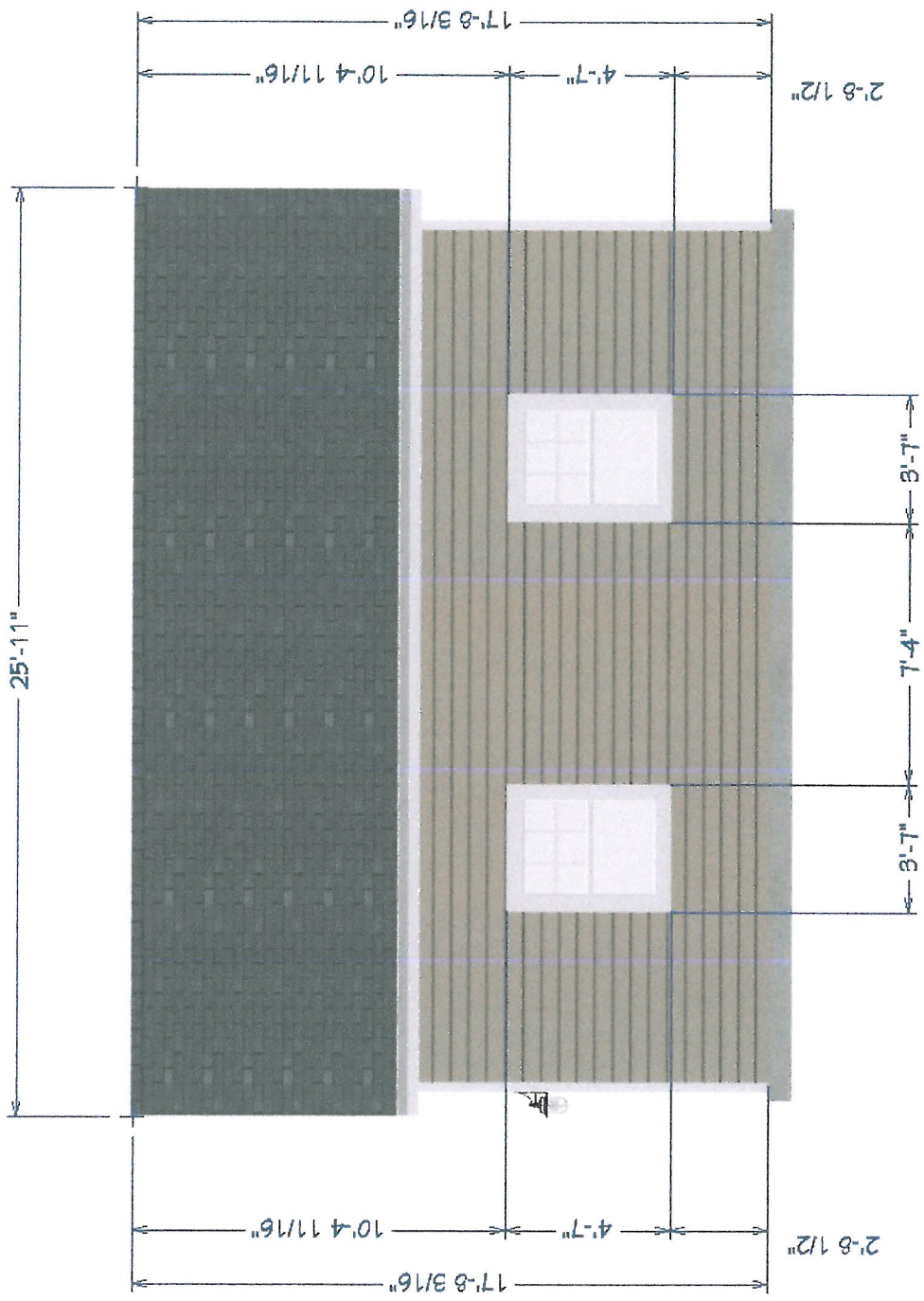
4'-6 11/16" 3'

17'-4 7/16"











PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

# Application for Land Use Action

Master File #: WG-2016-001

Review type\*:  I  II  III  IV  V

<b>CHECK ALL APPLICATION TYPES THAT APPLY:</b>		
<input type="checkbox"/> Amendment to Maps and/or Ordinances: <input type="checkbox"/> Comprehensive Plan Text Amendment <input type="checkbox"/> Comprehensive Plan Map Amendment <input type="checkbox"/> Zoning Text Amendment <input type="checkbox"/> Zoning Map Amendment <input type="checkbox"/> Code Interpretation <input type="checkbox"/> Community Service Use <input type="checkbox"/> Conditional Use <input type="checkbox"/> Development Review <input type="checkbox"/> Director Determination <input type="checkbox"/> Downtown Design Review <input type="checkbox"/> Extension to Expiring Approval <input type="checkbox"/> Historic Resource: <input type="checkbox"/> Alteration <input type="checkbox"/> Demolition <input type="checkbox"/> Status Designation <input type="checkbox"/> Status Deletion	<input type="checkbox"/> Land Division: <input type="checkbox"/> Final Plat <input type="checkbox"/> Lot Consolidation <input type="checkbox"/> Partition <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Replat <input type="checkbox"/> Subdivision <input type="checkbox"/> Miscellaneous: <input type="checkbox"/> Barbed Wire Fencing <input type="checkbox"/> Bee Colony <input type="checkbox"/> Mixed Use Overlay Review <input type="checkbox"/> Modification to Existing Approval <input type="checkbox"/> Natural Resource Review <input type="checkbox"/> Nonconforming Use Alteration <input type="checkbox"/> Parking: <input type="checkbox"/> Quantity Determination <input type="checkbox"/> Quantity Modification <input type="checkbox"/> Shared Parking <input type="checkbox"/> Structured Parking	<input type="checkbox"/> Planned Development <input type="checkbox"/> Residential Dwelling: <input type="checkbox"/> Accessory Dwelling Unit <input type="checkbox"/> Duplex <input type="checkbox"/> Manufactured Dwelling Park <input type="checkbox"/> Temporary Dwelling Unit <input type="checkbox"/> Sign Review <input type="checkbox"/> Transportation Facilities Review <input type="checkbox"/> Variance: <input type="checkbox"/> Use Exception <input type="checkbox"/> Variance <input checked="" type="checkbox"/> Willamette Greenway Review <input type="checkbox"/> Other: _____ <b>Use separate application forms for:</b> <ul style="list-style-type: none"> <li>• Annexation and/or Boundary Change</li> <li>• Compensation for Reduction in Property Value (Measure 37)</li> <li>• Daily Display Sign</li> <li>• Appeal</li> </ul>

## RESPONSIBLE PARTIES:

<b>APPLICANT</b> (owner or other eligible applicant—see reverse): <u>Tim Austin LLC</u>		
Mailing address:	<u>637 SE Paropa Pl. Gresham, OR</u>	Zip: <u>97080</u>
Phone(s):	<u>503-577-7782</u>	E-mail: <u>contractorportland@gmail.com</u>
<b>APPLICANT'S REPRESENTATIVE</b> (if different than above):		
Mailing address:		Zip:
Phone(s):		E-mail:

## SITE INFORMATION:

Address:	<u>11906 SE 19th Ave</u>	Map & Tax Lot(s):	<u>11E35DA02400</u>
Comprehensive Plan Designation:		Zoning:	<u>R-5</u> Size of property: <u>10,000 sq ft.</u>

## PROPOSAL (describe briefly):

<u>build new 20' x 24' Garage</u>
-----------------------------------

## SIGNATURE:

<b>ATTEST:</b> I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.	
Submitted by: <u>Tim Austin</u>	Date: <u>2-7-16</u>

## IMPORTANT INFORMATION ON REVERSE SIDE

\*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

**WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION** (excerpted from MMC Subsection 19.1001.6.A):

**Type I, II, III, and IV** applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

**Type V** applications may be initiated by any individual.

**PREAPPLICATION CONFERENCE:**

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff.

**REVIEW TYPES:**

This application will be processed per the assigned review type, as described in the following sections of the Milwaukie Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005
- Type III: Section 19.1006
- Type IV: Section 19.1007
- Type V: Section 19.1008

**THIS SECTION FOR OFFICE USE ONLY:**

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file		\$			\$	RECEIVED MAR 16 2016 CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
SUBTOTALS		\$		\$		

TOTAL AMOUNT RECEIVED: \$	RECEIPT #:	RCD BY:
---------------------------	------------	---------

Associated application file #s (appeals, modifications, previous approvals, etc.):

Neighborhood District Association(s):

Notes:

\*After discount (if any)





PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

For all Land Use Applications  
(except Annexations and Development Review)

# Submittal Requirements

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov) for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits.  
*Applications without the required application forms and fees will not be accepted.*
2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.  
*Where written authorization is required, applications without written authorization will not be accepted.*
3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.  
*Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.*
4. **Detailed statement** that demonstrates how the proposal meets all applicable application-specific approval criteria (check with staff) and all applicable development standards (listed below):
  - a. **Base zone standards** in Chapter 19.300.
  - b. **Overlay zone standards** in Chapter 19.400.
  - c. **Supplementary development regulations** in Chapter 19.500.
  - d. **Off-street parking and loading standards and requirements** in Chapter 19.600.
  - e. **Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.
5. **Site plan(s), preliminary plat, or final plat** as appropriate.  
*See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.*
6. **Copy of valid preapplication conference report**, when a conference was required.

**APPLICATION PREPARATION REQUIREMENTS:**

- Five hard copies of all application materials are required at the time of submittal (unless submitted electronically). Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

**ADDITIONAL INFORMATION:**

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: <http://www.milwaukieoregon.gov/communityservices/neighborhoods-program>.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) Tim Austin, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

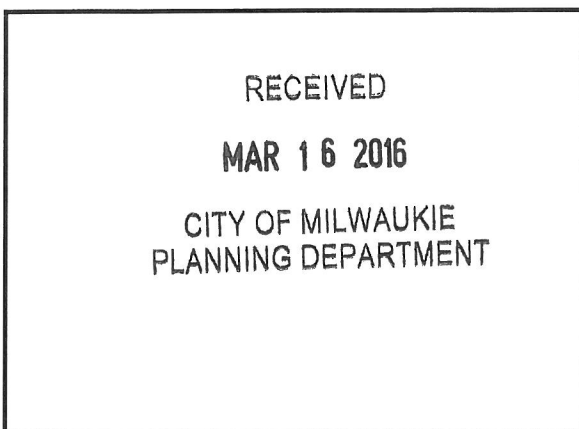
Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: Tim Austin

Date: 2-8-16

**Official Use Only**

Date Received (date stamp below):





December 23, 2015

Tim Austin  
Tim Austin LLC  
637 SE Paropa Pl  
Gresham OR 97080

**Re: Preapplication Report**

Dear Tim:

Enclosed is the Preapplication Report Summary from your meeting with the City on December 10, 2015, concerning your proposal for action on property located at 11906 SE 19<sup>th</sup> Ave.

A preapplication conference is required prior to submittal of certain types of land use applications in the City of Milwaukie. Where a preapplication conference is required, please be advised of the following:

- Preapplication conferences are valid for a period of 2 years from the date of the conference. If a land use application or development permit has not been submitted within 2 years of the conference date, the Planning Director may require a new preapplication conference.
- If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference.

If you have any questions concerning the content of this report, please contact the appropriate City staff.

Sincerely,

Joyce B Stahly  
Administrative Specialist II

Enclosure

cc: File

# CITY OF MILWAUKIE

PreApp Project ID #: 15-025PA

## PRE-APPLICATION CONFERENCE REPORT

---

This report is provided as a follow-up to a meeting that was held on 12/10/2015 at 10:00AM

**Applicant Name:** TIM AUSTIN  
**Company:** TIM AUSTIN LLC  
**Applicant 'Role':** Contractor  
**Address Line 1:** 637 SE PAROPA PL  
**Address Line 2:**  
**City, State Zip:** GRESHAM OR 97080  
**Project Name:**  
**Description:** BUILD 20'X24' GARAGE  
**ProjectAddress:** 11906 SE 19TH AVE  
**Zone:** Residential R-5  
**Occupancy Group:**  
**ConstructionType:**  
**Use:** Low Density (LD)  
**Occupant Load:**  
**AppsPresent:** Tim Austin  
**Staff Attendance:** Brett Kelper, Chrissy Dawson

### BUILDING ISSUES

**ADA:**  
**Structural:** Provide a minimum of 6 feet between structures.  
**Mechanical:**  
**Plumbing:**  
**Plumb Site Utilities:**  
**Electrical:**  
**Notes:**

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

### FIRE MARSHAL ISSUES

**Fire Sprinklers:**

**Fire Alarms:**

**Fire Hydrants:**

**Turn Arouds:**

**Addressing:**

**Fire Protection:**

**Fire Access:**

**Hazardous Mat.:**

**Fire Marshal Notes:** The Fire District has no comments for this proposal

### PUBLIC WORKS ISSUES

<b>Water:</b>	N/A
<b>Sewer:</b>	N/A
<b>Storm:</b>	N/A
<b>Street:</b>	N/A
<b>Frontage:</b>	N/A
<b>Right of Way:</b>	N/A
<b>Driveways:</b>	N/A
<b>Erosion Control:</b>	N/A
<b>Traffic Impact Study:</b>	N/A
<b>PW Notes:</b>	N/A

### PLANNING ISSUES

**Setbacks:** Yard setbacks for accessory structures are established in Milwaukie Municipal Code (MMC) Subsection 19.502.2 and depend on the size and height of the proposed structure. For the proposed structure (480 sq ft in area, 13.5 ft tall), the required rear and side yard setbacks are each 5 ft. The structure must also be located beyond the front yard of the existing house.

**Landscape:**

In the R-5 zone, a minimum of 25% of the site must be landscaped. In addition, at least 40% of the existing front yard area must be vegetated (measured from the front property line to the front face of the existing house). Vegetated areas can be planted in trees, grass, shrubs, or bark dust for planting beds, with no more than 20% of the landscaped area finished in bark dust (as per MMC Subsection 19.504.7). A maximum of 35% of the site may be covered by structures, including decks or patios over 18 in above grade.

**Parking:**

As per the off-street parking standards of MMC Chapter 19.600, properties that contain single-family dwellings must provide at least 1 off-street parking space per dwelling unit. As provided in MMC Subsection 19.607.1, required residential off-street parking spaces must be at least 9 ft wide and 18 ft deep. The required spaces cannot be located in a required front or street-side yard and must have a durable and dust-free hard surface.

Uncovered parking spaces and maneuvering areas cannot exceed 50% of the front yard area and 30% of the required street-side yard area. No more than 3 residential parking spaces are allowed within the required front yard. Parking areas and driveways on the property shall align with the approved driveway approach and shall not be wider than the approach within 10 ft of the right-of-way boundary.

If the existing off-street parking situation does not conform to the current standards and requirements for off-street parking, development that increases the footprint of existing structures on the site by less than 100% of the total area must do something to bring the site closer to conformance (such as by making the existing driveway a durable and dust-free hard surface).

**Transportation Review:**

Construction of a garage structure does not trigger the requirements of MMC Chapter 19.700 Public Facility Improvements, though it does require compliance with MMC Chapter 12.16 Access Management. Please see the Public Works notes for more information about the requirements of MMC 19.700 and MMC 12.16.

**Application Procedures:**

- Land use applications required:
- \* Willamette Greenway review (Type III)
- \* Natural Resource review for construction management plan (Type I)

The current application fee for Type III review is \$2,000; the fee for Type I review of Natural Resource construction management plans has been waived by City Council.

For the City's initial review, the applicant should submit 5 complete copies of the application, including all required forms and checklists. A determination of the application's completeness will be issued within 30 days. If deemed incomplete, additional information will be requested. If deemed complete, additional copies of the application may be required for referral to other departments, the Island Station Neighborhood District Association (NDA), and other relevant parties and agencies. City staff will inform the applicant of the total number of copies needed.

For Type III review, once the application is deemed complete, a public hearing with the Planning Commission will be scheduled. Staff will determine the earliest available date that allows time for preparation of a staff report (including a recommendation regarding approval) as well as provision of the required public notice to property owners and residents within 300 ft of the subject property, at least 20 days prior to the public hearing. A sign giving notice of the application must be posted on the subject property at least 14 days prior to the hearing.

Issuance of a decision starts a 15-day appeal period for the applicant and any party who establishes standing. Permits submitted during the appeal period may be reviewed but are not typically approved until the appeal period has ended.

Prior to submitting the application, the applicant is encouraged to present the project at a regular meeting of the Island Station NDA, which occurs at 6:30 p.m. on the third Wednesday of every month at the Milwaukie Grange (12018 SE 21st Ave).

**Natural Resource Review:** The subject property includes an approximately 1,300-sq-ft area in the southwest corner designated as Habitat Conservation Area (HCA). Except for a portion of the existing driveway from 19th Avenue, the proposed construction area is not within the HCA.

**Lot Geography:** The subject property is a rectilinear lot (100 ft by 100 ft) and is 10,000 sq ft in area. The property is a corner lot with SE 19th Avenue to the west and SE Eagle Street to the north.

**Planning Notes:** The proposal to construct a new garage structure within the Willamette Greenway overlay zone is considered an intensification of use and triggers Type III review. The proposal is subject to the applicable provisions of MMC Section 19.401 Willamette Greenway Zone and MMC Section 19.905 Conditional Uses. The subject property is too far from the ordinary high water line of the Willamette River to impact the vegetation buffer, but the proposal must demonstrate compliance with the conditional use approval criteria established in MMC Subsection 19.905.4.A as well as those provided in MMC Subsection 19.401.6.

In particular, the applicant's narrative should address the question of whether and/or how much the proposed development will impact views from the river or toward the river from neighboring properties. Photo simulations of the proposed structure in place might be one effective way to demonstrate the degree of anticipated impact. Neighboring properties within 300 ft of the site will receive notice of the proposed development and may submit comments or testify at the hearing. It might be useful to discuss the project with at least the adjacent neighbors in advance of submitting the application to gauge support for the project and determine whether any mitigation of impacts is necessary.

Assuming the Willamette Greenway conditional use request is approved, the City will prepare a conditional use permit that must be recorded with Clackamas County before work commences.

The proposed development will not directly impact the designated HCA on the subject property, but since the work site is within 100 ft of the HCA boundary and will disturb more than 150 sq ft, a construction management plan is required as per MMC Subsection 19.402.3.J. The information required on the plan is outlined in MMC Subsection 19.402.9.

### **ADDITIONAL NOTES AND ISSUES**

**County Health Notes:**

**Other Notes:**

**This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.**

Sincerely,

**City of Milwaukie Development Review Team**

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**BUILDING DEPARTMENT**

**Sam Vandagriff - Building Official - 503-786-7611**

**Bonnie Lanz - Permit Specialist - 503-786-7613**

**ENGINEERING DEPARTMENT**

**Chuck Eaton - Engineering Director - 503-786-7605**

**Vacant - Civil Engineer - 503-786-7609**

**Chrissy Dawson - Engineering Tech II - 503-786-7610**

**Stacy Stubblefield - Civil Engineer - 503-786-7602**

**Alex Roller - Engineering Tech I - 503-786-7695**

**COMMUNITY DEVELOPMENT DEPARTMENT**

**Alma Flores - Com Dev Director - 503-786-7652**

**Marcia Hamley - Admin Specialist - 503-786-7656**

**Joyce B Stahly - Admin Specialist - 503-786-7600**

**Alicia Martin - Admin Specialist - 503-786-7600**

**PLANNING DEPARTMENT**

**Denny Egner - Planning Director - 503-786-7654**

**Li Alligood - Senior Planner - 503-786-7627**

**Brett Kelter - Associate Planner - 503-786-7657**

**Vera Kolias - Associate Planner - 503-786-7653**

**CLACKAMAS FIRE DISTRICT**

**Mike Boumann - Lieutenant Deputy Fire Marshal - 503-742-2673**

**Matt Amos - Fire Inspector - 503-742-2661**



# Clackamas County Fire District #1

## Fire Prevention Office



### E-mail Memorandum

**To:** City of Milwaukie Planning Department  
**From:** Matt Amos, Fire Inspector, Clackamas Fire District #1  
**Date:** 12/23/2015  
**Re:** New Garage 11906 SE 19<sup>th</sup> Ave. 15-025PA

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This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

#### COMMENTS:

1. The Fire District has no comments for this proposal.

**MEMORANDUM**

**TO:** Community Development Department  
**THROUGH:** Chuck Eaton, PE, Engineering Director  
**FROM:** Chrissy Dawson, CAPM, Engineering Technician II  
**RE:** Willamette Greenway Review – 11906 SE 19<sup>th</sup> Avenue  
WG-2016-001  
**DATE:** April 26, 2016

Proposed 480 square foot detached garage in rear yard of residential property located within the Willamette Greenway overlay.

1. MMC Chapter 19.700 – Transportation Planning, Design Standards, and Procedures  
The Engineering Department finds that MMC Chapter 19.700 does not apply to this application.

**Recommended Conditions of Approval**

None

**Kelver, Brett**

---

**From:** Pamela Denham <pamdenham@gmail.com>  
**Sent:** Wednesday, May 04, 2016 7:51 PM  
**To:** Kelver, Brett; Milwaukie Planning  
**Cc:** Ellen Chaimov; Gary Michael; Paul R  
**Subject:** File # WG-2016-001 land use application

Hello,

The Island Station LandUse Committee has reviewed file # WG-2016-001.

We all agree that the proposal looks fine with no impacts on neighbors, habitat or views. We have no objections to this application.

Thank you,

Pam Denham, Island Station Land Use Committee Chair & members -  
Ellen Chiamov  
Gary Michael  
Paul Rasmussen



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Dennis Egner, Planning Director

**From:** Keith Liden, Temporary Planner

**Date:** May 16, 2016, for May 24, 2016, Public Hearing

**Subject:** **File:** NCU-2016-001  
**Applicant:** Daniel Hallock, Dynasty Construction  
**Owner(s):** Patricia Rossi, Sam Sakamoto Trust  
**Address:** 2926 SE Washington St  
**Legal Description (Map & Tax Lot):** 1S1E 36BD 01700  
**NDA:** Lake Road

---

## **ACTION REQUESTED**

Approve application NCU-2016-001 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow for the expansion of a nonconforming use.

## **BACKGROUND INFORMATION**

The subject 5,530 square-foot property is located on the south side of SE Washington St between SE 29<sup>th</sup> Ave and SE 30<sup>th</sup> Ave (see Figure 1). Because the subject property and the property immediately east are zoned C-N, which does not allow single-family residences, the existing home is a nonconforming use. The applicant proposes to remodel and expand the existing 960± sq ft house with a 570± sq ft addition on the rear yard. The addition will be single story like the existing house and the current side yard setbacks will be maintained (see Figure 2).

**Figure 1. Subject Site**

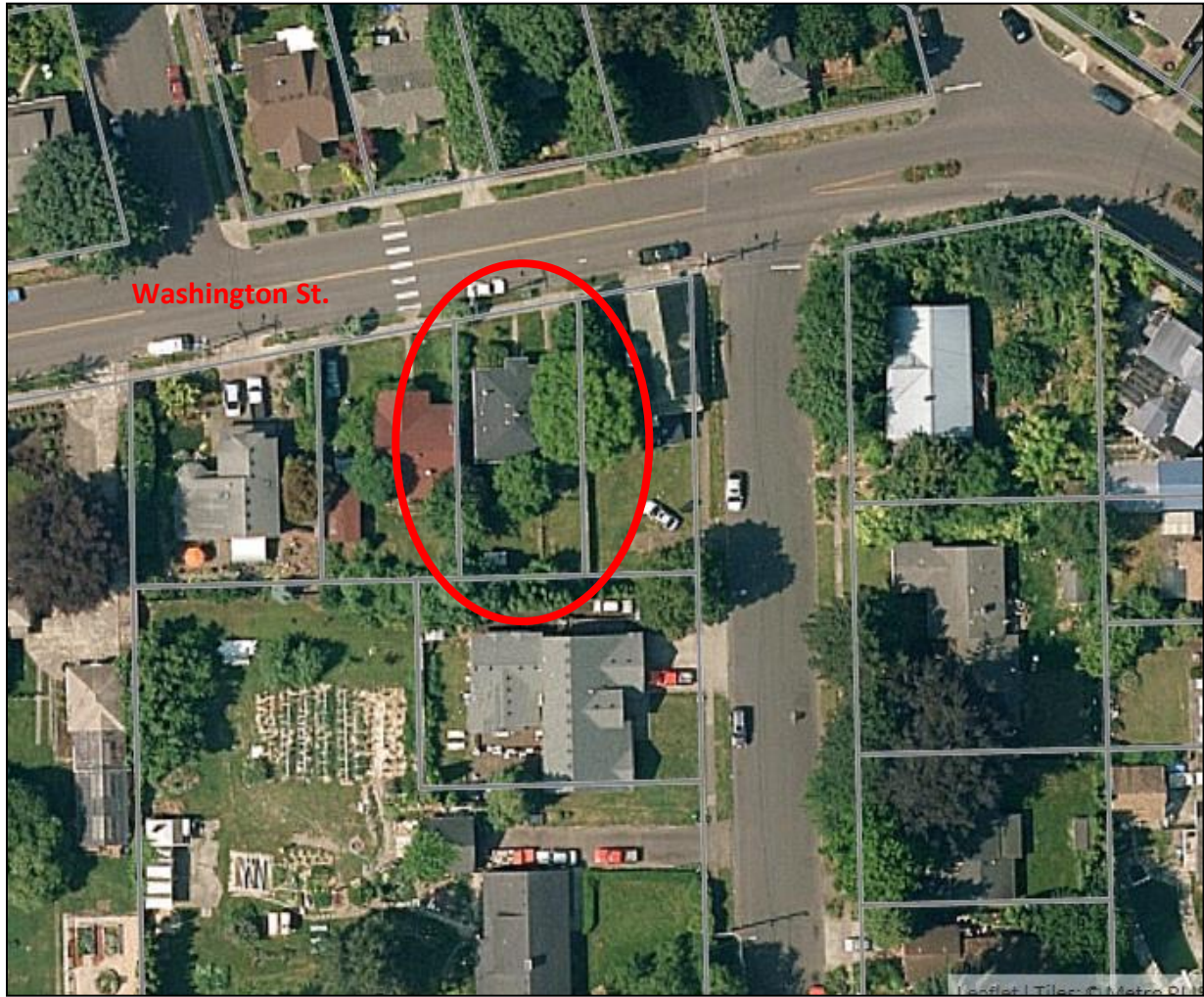
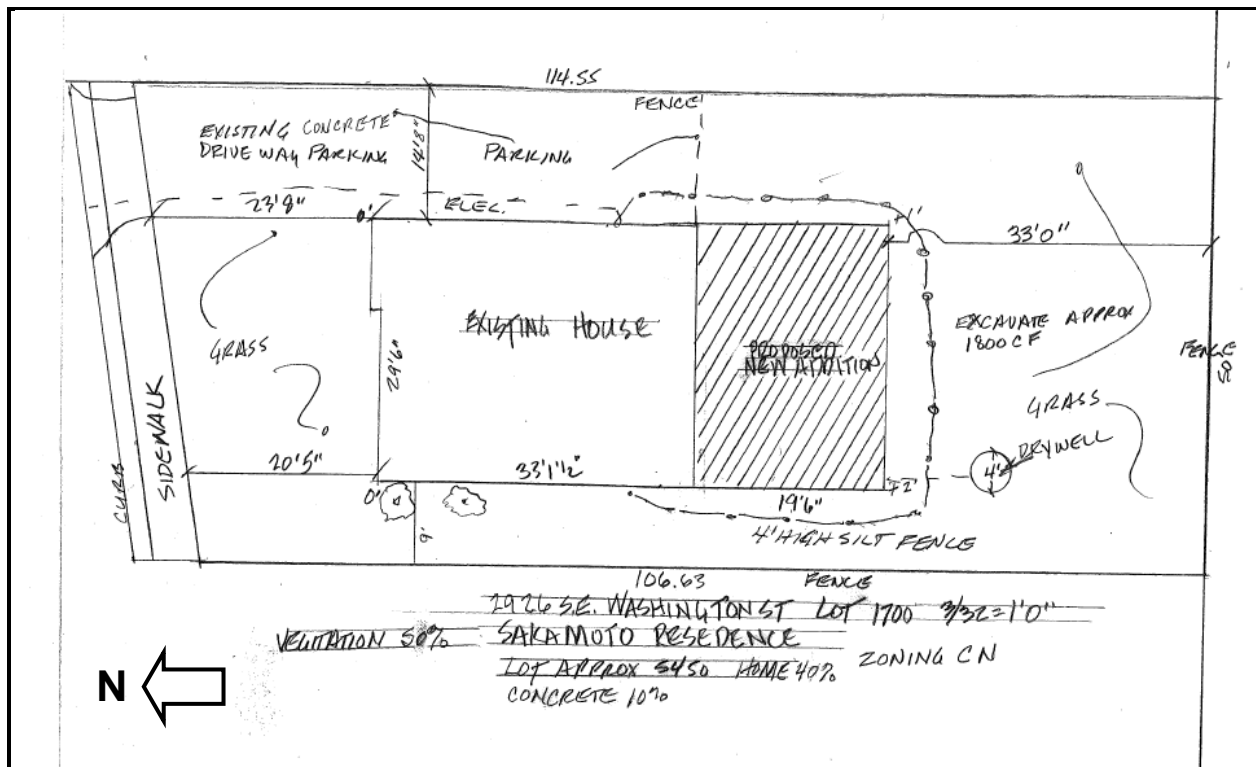


Figure 2. Proposed Addition



**A. Site and Vicinity**

The site is located in a predominantly residential neighborhood with lots sizes ranging from approximately 4,000 sq ft to 1 acre. The subject property is a typical lot size within this neighborhood. The surrounding properties are residential except for the property on the east side, which has a small neighborhood convenience market.

**B. Zoning Designation**

The subject property and convenience market property are zoned C-N Neighborhood Commercial and the remaining properties are zoned R-5 Residential to the west and south, and R-2 on the north side of SE Washington St (Figure 3).

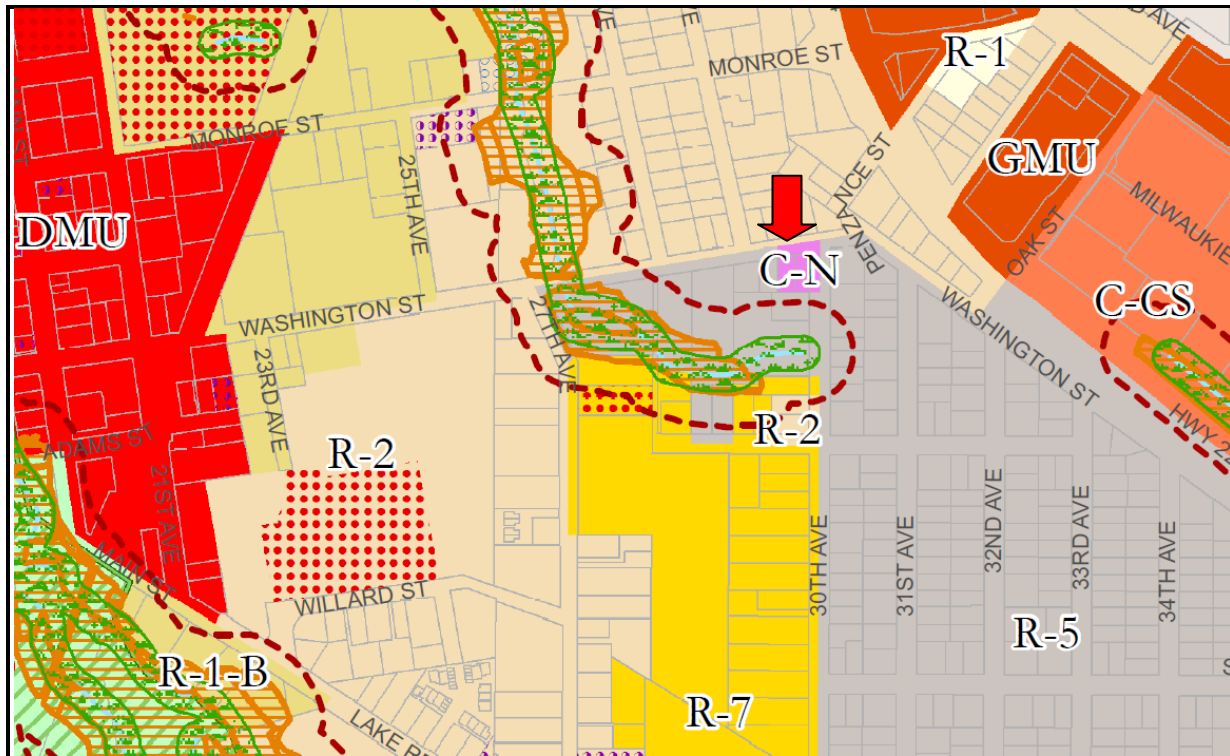
**C. Comprehensive Plan Designation**

C Commercial

**D. Land Use History**

There are no previous land use applications for this property. The home was constructed in 1950, which pre-dates the adoption of the C-N Neighborhood Commercial zone in 1968.

Figure 3. Current Zoning



### E. Proposal

The applicant is seeking land use approval to allow the expansion of a nonconforming use in the C-N Zone.

The project requires approval for the alteration of a nonconforming use through a Type III Review process.

### KEY ISSUES

#### Summary

Staff has identified the following key issues for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion by the Commission.

- A. Is the proposed expansion of a nonconforming use reasonable and appropriate?
- B. Is the expansion appropriate in the context of the surrounding neighborhood?

## Analysis

### A. Is the proposed expansion of a nonconforming use reasonable and appropriate?

The existing building and the property it occupies has been continuously used for residential purposes since 1950. The expansion of the house is modest and other than providing some additional living space, the intensity of the use will not change - it will continue to be just one single family residence.

### B. Is the proposed expansion appropriate in the context of the surrounding neighborhood?

Other than the convenience market immediately to the east, the surrounding neighborhood consists of similar single family homes, which are zoned for residential use. As demonstrated in the application, the existing house, along with the proposed expansion, will be able to satisfy all relevant development requirements, and the house will continue to be compatible with surrounding properties.

## CONCLUSIONS

### A. Staff recommendation to the Planning Commission is as follows:

1. Approve the renovation and expansion of the existing residence as proposed.
2. Adopt the attached Findings and Conditions of Approval.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Chapter 19.305 Neighborhood Commercial C-N
- MMC Chapter 19.804 Alteration of Nonconforming Uses and Development
- MMC Chapter 19.1006 Type III Review

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has four decision-making options:

- A. Approve the application subject to the recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.
- D. Continue the hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by August 25, 2016, in accordance with the Oregon Revised Statutes and the



Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

## COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Community Development and Engineering Departments, Historic Milwaukie (NDA), Clackamas County, and Clackamas Fire District #1. As of May 16, 2016, comments had been received from the Milwaukie Engineering Director and Clackamas Fire District #1.

## ATTACHMENTS

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

	Early PC Mailing	PC Packet	Public Copies	E-Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Applicant's Narrative and Supporting Documentation dated April 4, 2016.				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Preapplication Notes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Site Plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

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

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

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-140>.

**Recommended Findings in Support of Approval  
File NCU-2016-001, 2926 SE Washington St**

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, Daniel Hallock, Dynasty Construction, has applied for approval to expand a legal nonconforming use (single family residence) with an addition to the existing house. This site is in the Commercial Neighborhood Zone C-N. The land use application file number is NCU-2016-01.
2. The project site is 2926 SE Washington St, Tax Lot 1S1E 36BD 01700. The site is an approximately 5,530 sq ft parcel developed with a 960 sq ft, one-story residence. The building was constructed in 1950 and first occupied when the zoning for the parcel was residential. The Commercial neighborhood Zone C-N was adopted in 1968. The current use is therefore a legal nonconforming use.
3. The base zone of the site is Commercial Neighborhood Zone C-N, and the Comprehensive Plan land use designation is C Commercial.
4. The site has been in use as a residence since 1950, prior to the adoption of the Commercial Neighborhood Zone C-N in 1968, when the use became a legal nonconforming use.
5. The applicant proposes to construct a 570 sq ft addition in the rear yard and continue to use the building for residential purposes.
6. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 19.305 Neighborhood Commercial C-N
  - MMC 19.804 Alteration of Nonconforming Uses and Development
  - MMC 19.1006 Type III Review
7. MMC 19.804 Alteration of Uses and Development
  - A. MMC 19.804.1.A establishes three provisions for approving an alteration to a nonconforming use:
    1. *MMC 19.804.1.A.1 states that a nonconforming use shall not be moved, in whole or in part, to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.*

The applicant is not proposing to move the existing structure or use. Expansion of the building is proposed, however, the 5,530 sq ft parcel is entirely devoted to residential use, and the building addition does not constitute moving the use to another portion of the site, which is not devoted to residential use. The Planning Commission finds that MMC 19.804.1.A.1 is satisfied.
    2. *MMC 19.804.1.A.2 states that no additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1.*

The applicant is proposing an expansion, which is addressed under Subsection 19.804.1.B.1. The Planning Commission finds that MMC 19.804.1.A.2 is satisfied as noted under Subsection 19.804.1.B.1.

3. *MMC 19.804.1.A.3 states that no intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.*

The proposed addition will provide some additional living space for the residence, but it will not intensify the use because it will continue to be one single family home. The Planning Commission finds that provision 19.804.1.A.3 has been met.

- B. MMC 19.804.1.B establishes the requirement for a land use review and that the application meet the following criteria for approval of an alteration to a nonconforming use:

1. *MMC 19.804.1.B.1 states that a nonconforming use shall not be moved, altered, or intensified unless it is approved by the Planning Commission through a Type III review. The applicant shall demonstrate the proposed alteration would be no more detrimental to surrounding properties than the one it is replacing.*

For a use to be conforming in this zone, the property would need to have a commercial use. The existing building was designed and built as a single family residence. The building's lot placement, design, and infrastructure are such that the current building and its relatively small lot size are not particularly well-suited for conversion to commercial use. The Planning Commission finds that this criterion is met.

2. *MMC 19.804.1.B.2 also states that the applicant shall demonstrate the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.*

The applicant is not proposing to change the use. therefore, the Planning Commission finds that this criterion is not applicable.

As conditioned, the Planning Commission finds that the applicable provisions of MMC 19.804.1 have been met.

8. MMC 19.305 Neighborhood Commercial Zone C-N

MMC 19.305 establishes criteria for both uses and development in the C-N Zone..

- A. *MMC 19.305.1 indicates there are no outright permitted uses in the C-N Zone.*  
 B. *MMC 19.305.2 lists conditional uses in the C-N Zone, which include commercial uses, such as convenience stores and restaurants. Residential uses are not permitted.*

The current use is a legal nonconforming use, which was allowed at the site when the residence was built, and as such may continue operations until such time that it has ceased operations for a year.

Approval of the land use application NCU-2016-01 would allow the expansion of the existing residence, consistent with the setback and other development standards of the C-N Zone. As proposed, the Planning Commission finds that this criterion is met.

- C. MMC 19.305.3 sets development standards for development of property in the C-N Zone. The applicable standards are contained in Subsections A. through K. are met or are not applicable as noted below:

- Lot size: The 5,530 sq ft lot meets the 5,000 minimum lot size standrd.
- Front yard: The existing house has a setback of over 20 feet satisfying the 15-foot minimum front setback.

- Side yard: The existing house has setbacks of 14.6 feet and 9 feet, and the proposed addition will have the same setbacks, meeting the 5-foot standard.
- Rear yard: The house addition will maintain a 33-foot rear yard setback meeting the 10-foot standard.
- Off-street parking and loading: MMC 19.600 is satisfied because the house will continue to have two parking spaces under the carport and the driveway. MMC Table 19.605.1 shows that one parking space is required for a single family residence.
- Height restriction: The existing building and proposed addition are or will be one story, satisfying this standard.
- Lot coverage: with the addition, the lot coverage will be under 30%, satisfying the 40% maximum coverage standard.
- Minimum vegetation: The house, carport, and driveway total less than 50% of the total lot area, and the remainder is landscaped, easily meeting the minimum 20% landscaped area standard.
- Screening: This is not applicable because it relates to screening for commercial uses.
- Frontage requirements: This standard is met because the property has frontage on a public street.
- Transportation requirements: No transportation improvements are required.

The Planning Commission finds that these standards are met.

9. Public notice has been provided in accordance with MMC Subsection 19.1006.3 Type III Public Notice. A public hearing was held on February 26, 2013, as required by law.
10. The application was referred to the following departments and agencies on April 28, 2016:
  - Milwaukie Building Division
  - Milwaukie Engineering Department
  - Milwaukie City Manager
  - Clackamas County Fire District #1
  - Lake Road and Historic Milwaukie Neighborhood District Associations

The comments received are summarized as follows:

- **Matt Amos, Clackamas Fire District #1:** Indicated the district had no comments.
- **Chrissy Dawson, Engineering Technician, City of Milwaukie Engineering Department:** The Engineering Department concluded that MMC Chapter 19.700 is not triggered with this application. The department does note that the existing sanitary sewer line, which is shared with the property to the east must be changed to have separate service to each property.

**Recommended Conditions of Approval  
File NCU-2016-001, 2926 SE Washington St**

1. The site shall be used in a manner as proposed and approved through this land use action and as submitted in materials date stamped by the City on April 4, 2016. This includes:
  - a. A remodel of the entire house.
  - b. An addition to the rear of the house not to exceed 600 sq ft.
  - c. Compliance with the development standards in MMC 19.305.3.
2. Prior to final inspection for any building on the proposed development, the following shall be resolved:

A wastewater service “party line” connection exists between this property and the property directly east, The Little Store. This means that the wastewater service line for this property and the wastewater service line for The Little Store connect to each other before connecting to the City of Milwaukie wastewater main. These two service lines shall be disconnected from each other to make two separate connections to the wastewater main.
3. The site and use shall be modified from the original proposal only as described in these conditions of approval. All other modifications shall be through a formal modification process per MMC 19.804.
4. Pursuant to Subsection 19.1001.7.E, this land use approval will expire if not utilized within 4 years from the date of approval.

Advisory Notes

1. Any signs onsite must comply with the standards of MMC 14.16.060 Downtown Zones. Permanent or daily display signs require sign permits; permanent signs may require land use review.



ATTACHMENT 3  
**PLANNING DEPARTMENT**  
 6101 SE Johnson Creek Blvd  
 Milwaukie OR 97206

# Application for Land Use Action

PHONE: 503-786-7630  
 FAX: 503-774-8236  
 E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

Master File #: NCU-2016-001

Review type\*:  I  II  III  IV  V

<b>CHECK ALL APPLICATION TYPES THAT APPLY:</b>		
<input type="checkbox"/> Amendment to Maps and/or Ordinances: <input type="checkbox"/> Comprehensive Plan Text Amendment <input type="checkbox"/> Comprehensive Plan Map Amendment <input type="checkbox"/> Zoning Text Amendment <input type="checkbox"/> Zoning Map Amendment <input type="checkbox"/> Code Interpretation <input type="checkbox"/> Community Service Use <input type="checkbox"/> Conditional Use <input type="checkbox"/> Development Review <input type="checkbox"/> Director Determination <input type="checkbox"/> Downtown Design Review <input type="checkbox"/> Extension to Expiring Approval <input type="checkbox"/> Historic Resource: <input type="checkbox"/> Alteration <input type="checkbox"/> Demolition <input type="checkbox"/> Status Designation <input type="checkbox"/> Status Deletion	<input type="checkbox"/> Land Division: <input type="checkbox"/> Final Plat <input type="checkbox"/> Lot Consolidation <input type="checkbox"/> Partition <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Replat <input type="checkbox"/> Subdivision <input type="checkbox"/> Miscellaneous: <input type="checkbox"/> Barbed Wire Fencing <input type="checkbox"/> Bee Colony <input type="checkbox"/> Mixed Use Overlay Review <input type="checkbox"/> Modification to Existing Approval <input type="checkbox"/> Natural Resource Review <input checked="" type="checkbox"/> Nonconforming Use Alteration <input type="checkbox"/> Parking: <input type="checkbox"/> Quantity Determination <input type="checkbox"/> Quantity Modification <input type="checkbox"/> Shared Parking <input type="checkbox"/> Structured Parking	<input type="checkbox"/> Planned Development <input checked="" type="checkbox"/> Residential Dwelling: <input type="checkbox"/> Accessory Dwelling Unit <input type="checkbox"/> Duplex <input type="checkbox"/> Manufactured Dwelling Park <input type="checkbox"/> Temporary Dwelling Unit <input type="checkbox"/> Sign Review <input type="checkbox"/> Transportation Facilities Review <input type="checkbox"/> Variance: <input type="checkbox"/> Use Exception <input type="checkbox"/> Variance <input type="checkbox"/> Willamette Greenway Review <input type="checkbox"/> Other: _____ <b>Use separate application forms for:</b> <ul style="list-style-type: none"> <li>• Annexation and/or Boundary Change</li> <li>• Compensation for Reduction in Property Value (Measure 37)</li> <li>• Daily Display Sign</li> <li>• Appeal</li> </ul>

## RESPONSIBLE PARTIES:

<b>APPLICANT</b> (owner or other eligible applicant—see reverse):	<u>DYNASTY CONST. BY DANIEL HALLOCK</u>	
Mailing address:	<u>7670 SE MCBRIDE ST. MILWAUKIE Zip: 97222</u>	
Phone(s):	<u>503-349-9559</u>	E-mail: <u>DANS.DYNASTYCONSTRUCTION@GMAIL.COM</u>
<b>APPLICANT'S REPRESENTATIVE</b> (if different than above):		
Mailing address:	<u>7670 SE MCBRIDE ST. MILWAUKIE Zip: 97222</u>	
Phone(s):	<u>503-349-9559</u>	E-mail: <u>dandynastyconstruction@gmail.com</u>

## SITE INFORMATION:

Address:	<u>2906 SE WASHINGTON</u>	Map & Tax Lot(s):	<u>151E36B001700</u>
Comprehensive Plan Designation:		Zoning:	<u>CN</u>
		Size of property:	

## PROPOSAL (describe briefly):

<u>TO CUT EXISTING HOME TO STUDS THEN ADD 19' X THE WIDTH W/ NEW HEAT, ELECTRICAL, PLUMBING, SIDING WINDOWS ETC</u>
---

## SIGNATURE:

<u>Dynasty Const Inc By Daniel W Hallock Pres</u>
<b>ATTEST:</b> I am the property owner, or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.
Submitted by: <u>DANIEL W HALLOCK DYNASTY CONST</u> Date: <u>3/21/16</u>

## IMPORTANT INFORMATION ON REVERSE SIDE

\*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

**WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION** (excerpted from MMC Subsection 19.1001.6.A):

**Type I, II, III, and IV** applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

**Type V** applications may be initiated by any individual.

**PREAPPLICATION CONFERENCE:**

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff. *DONE 1/28/16 @ 10 AM*

**REVIEW TYPES:**

This application will be processed per the assigned review type, as described in the following sections of the Milwaukee Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005 *Done*
- Type III: Section 19.1006 *Done*
- Type IV: Section 19.1007
- Type V: Section 19.1008

**THIS SECTION FOR OFFICE USE ONLY:**

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file	<i>NCU-2016-001</i>	<i>\$ 2,000</i>	—	—	\$	<b>RECEIVED</b> <b>APR 04 2016</b> CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
<b>SUBTOTALS</b>		\$			\$	

**TOTAL AMOUNT RECEIVED: \$** \_\_\_\_\_ **RECEIPT #:** \_\_\_\_\_ **RCD BY:** \_\_\_\_\_

**Associated application file #s** (appeals, modifications, previous approvals, etc.):

**Neighborhood District Association(s):**

**Notes:**

\*After discount (if any)



PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

For all Land Use Applications  
(except Annexations and Development Review)

# Submittal Requirements

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov) for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits. ✓  
*Applications without the required application forms and fees will not be accepted.*
2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.  
*Where written authorization is required, applications without written authorization will not be accepted.*
3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.  
*Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.*
4. **Detailed statement** that demonstrates how the proposal meets all applicable application-specific approval criteria (check with staff) and all applicable development standards (listed below):
  - a. **Base zone standards** in Chapter 19.300.
  - b. **Overlay zone standards** in Chapter 19.400.
  - c. **Supplementary development regulations** in Chapter 19.500.
  - d. **Off-street parking and loading standards and requirements** in Chapter 19.600.
  - e. **Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.
5. **Site plan(s), preliminary plat, or final plat** as appropriate.  
*See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.*
- 6. **Copy of valid preapplication conference report**, when a conference was required.



**APPLICATION PREPARATION REQUIREMENTS:**

- Five hard copies of all application materials are required at the time of submittal (unless submitted electronically). Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

**ADDITIONAL INFORMATION:**

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: <http://www.milwaukieoregon.gov/communityservices/neighborhoods-program>.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) DYNASTY CONST. BY DANIEL HALLOTT <sup>PRES</sup> attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

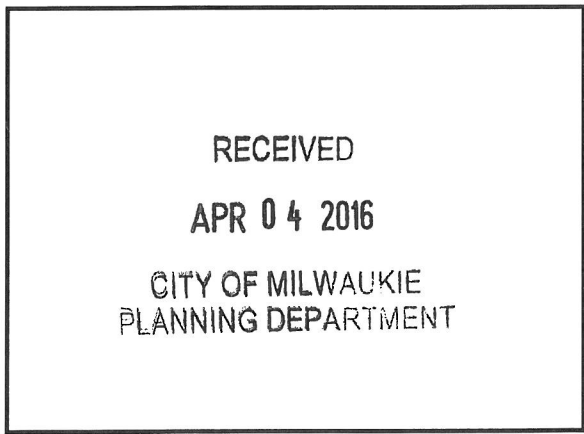
Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: Dynasty Const. Inc. By Daniel Whallo <sup>PRES</sup>

Date: 3/22/16

**Official Use Only**

Date Received (date stamp below):





~~1022 Apollo Road~~  
~~10711 10th Ave NE~~  
~~98148-3578~~ 503-349-9559

TO CITY OF MILWAUKIE

THE PLAN FOR PROPERTY AT 2926 S.E. WASHINGTON ST. IS TO COMPLETELY GUT EXISTING HOME INCLUDING WALLS, ROOF, INSULATION, SIDING, DOORS, WINDOWS, FLOORS i.e. CARPET VINYL & ETC. THEN BUILD ON A NEW PORTION OF 19' FULL WIDTH OF HOME AND TO REPLACE ALL WINDOWS, EXT. DOORS, FURNACE, ELECTIC AND PLUMBING, WITH NEW ROOF & NEW SIDING WITH NEW FOUNDATION AND FRAMING TO NEW BEDROOMS AND BATHROOMS, WITH NEW VINYL & CARPET THRU OUT HOME.

IT WILL BE A PATH HOME i.e. INSUL PER PLAN NEW ARCH 30 OWENS CORNING ROOFING AND HARDI PLANK SIDING. C.N ZONING

- (D) 19-300 B FRONT YARD IS OVER 15' REAR YARD IS
- (C) 33' MORE THAN MINIMUM, SIDE YARD IS 9' TO 14' OFF STREET PARKING CHAPTER 19-600 IS 14'8"
- (E) X 25' PAVED, THE APPROACH IS ALREADY IN PLUS PAVED TO PARKING SPACE AS SHOWN ON PLOT PLAN
- (F) HEIGHT OF HOME IS ONLY 15'6" ONE STORY
- (G) LOT COVERAGE VEGETATION IS APPROX 50% MORE THAN STANDARD

LAND USE REVIEW WE ARE GOING TO REMODEL AND ADD ON TO EXISTING HOME, WHICH WILL

This page becomes part of and in conformance with proposal for:

Job Name/No. \_\_\_\_\_

Submitted By \_\_\_\_\_ Date \_\_\_\_\_

RECEIVED

Accepted By \_\_\_\_\_ Date \_\_\_\_\_

APR 04 2016

Accepted By \_\_\_\_\_ Date \_\_\_\_\_

CITY OF MILWAUKIE  
PLANNING DEPARTMENT



DYNASTY  
CONSTRUCTION, INC. 7670 S.E. MEBRINE

# SPECIFICATIONS

6322 Apollo Road  
WESTLIN, OREGON 97146  
(503) 657-8983

503-349-9559

Page No. 2 of 2 Pages

ENHANCE THE SURROUNDING NEIGHBORHOOD  
THE PARKING SPACE IS NOT INCLUDED IN THE  
FIRST 15' OF THE FRONT LOT LINE. THE UNCOVERED  
PARKING AREA IS LESS THAN 32% FOR DRIVEWAY  
NO PARKING IN FRONT YARD. THIS REMODEL  
WILL HELP THE NEIGHBORHOOD AND BRING  
UP VALUES IN THE AREA

THANKS  
DYNASTY CONST INC  
Dynasty Const Inc  
DAVID HALLOCK PRES.  
503-349-9559

RECEIVED

APR 04 2016

CITY OF MILWAUKIE  
PLANNING DEPARTMENT

This page becomes part of and in conformance with proposal for:

Job Name/No. \_\_\_\_\_ Accepted By \_\_\_\_\_ Date \_\_\_\_\_

Submitted By \_\_\_\_\_ Date \_\_\_\_\_ Accepted By \_\_\_\_\_ Date \_\_\_\_\_



February 11, , 2016

Daniel Hallock  
Dynasty Const Inc  
7670 SE McBride St  
Milwaukie OR 97222

**Re: Preapplication Report**

Dear Daniel:

Enclosed is the Preapplication Report Summary from your meeting with the City on January 28<sup>th</sup>, 2016, concerning your proposal for action on property located at 2926 SE Washington St.

A preapplication conference is required prior to submittal of certain types of land use applications in the City of Milwaukie. Where a preapplication conference is required, please be advised of the following:

- Preapplication conferences are valid for a period of 2 years from the date of the conference. If a land use application or development permit has not been submitted within 2 years of the conference date, the Planning Director may require a new preapplication conference.
- If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference.

If you have any questions concerning the content of this report, please contact the appropriate City staff.

Sincerely,

Joyce Stahly  
Administrative Specialist II

Enclosure

cc: File

**PRE-APPLICATION CONFERENCE REPORT**

---

**This report is provided as a follow-up to a meeting that was held on 1/28/2016 at 10:00am**

**Applicant Name:** Daniel Hallock  
**Company:** Dynasty Construction Inc  
**Applicant 'Role':** Contractor  
**Address Line 1:** 7670 SE McBride St  
**Address Line 2:**  
**City, State Zip:** Milwaukie OR 97222  
**Project Name:** Gut existing home than add 19 ft x width and remodel  
**Description:** Gut existing home than add 19 ft x width and remodel with new roof, windows, heating, plumbing, sheetrock, siding, kitchen and baths' electric./  
**ProjectAddress:** 2926 SE Washington St  
**Zone:** Neighborhood Commercial Zone C-N  
**Occupancy Group:**  
**ConstructionType:**  
**Use:** Single-family residential  
**Occupant Load:**  
**AppsPresent:** Daniel Hallock  
**Staff Attendance:** Li Alligood, Chrissy Dawson, Alex Roller

**BUILDING ISSUES**

**ADA:**

**Structural:** A permit will be required and a complete set of plans will be needed for review.

**Mechanical:**

**Plumbing:**

**Plumb Site Utilities:**

**Electrical:**

**Notes:**

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

### FIRE MARSHAL ISSUES

**Fire Sprinklers:**

**Fire Alarms:**

**Fire Hydrants:**

**Turn Arounds:**

**Addressing:**

**Fire Protection:**

**Fire Access:**

**Hazardous Mat.:**

**Fire Marshal Notes:** 1.The Fire District has no comments for this proposal.

### PUBLIC WORKS ISSUES

**Water:** N/A

**Sewer:** A wastewater service “party line” connection exists between this property and the property directly east, The Little Store. This means that the wastewater service line for this property and the wastewater service line for The Little Store connect to each other before connecting to the City of Milwaukie wastewater main. These two service lines must be disconnected from each other to make two separate connections to the wastewater main

**Storm:** Construct a private storm management system (e.g. drywell) on the proposed development property for runoff created by the proposed development. Connect all rain drains to the private storm management system

**Street:** N/A

**Frontage:** N/A

**Right of Way:** N/A

**Driveways:** N/A

**Erosion Control:** N/A

**Traffic Impact Study:** N/A

**PW Notes:** N/A

### PLANNING ISSUES

**Setbacks:** Neighborhood Commercial Zone C-N: front yard 15 ft; side yard 5 ft; rear yard 10 ft; street side yard 15 ft.

Accessory structures (sheds, detached garages, etc.) cannot be located in the required front yard or street side yard. Cornices, eaves, canopies, sunshades, gutters, steps, unroofed landings, and flues may project up to 24 inches into a required side yard and up to 36 inches into a required front or rear yard.

**Landscape:** Minimum area that must be left or planted in trees, grass, shrubs, etc., shall be 20% of the total area of the lot. No more than 20% of the required vegetation area shall be covered in mulch or bark dust.

At least 40% of the front yard shall be vegetated. The front yard vegetation area required by this subsection counts toward the minimum required vegetation for the lot. A property may provide less than the 40% of the front yard vegetation requirement if it is necessary to provide a turnaround area so that vehicles can enter a collector or arterial street in a forward motion.

**Parking:** Single-family residential uses require a minimum of 1 off-street parking space per dwelling unit (minimum 9 ft by 18 ft) upon development. Required spaces cannot be located in a required front or street side yard. Parking and maneuvering areas must be paved or otherwise hard, durable, dust-free surfaces. The use of pervious materials is allowed and encouraged. See MMC Section 19.607 for more details.

**Transportation Review:** The City's transportation requirements are located in MMC 19.700. See 'Public Works' notes for details.

**Application Procedures:** The applicant is expanding an existing nonconforming single-family residential use by adding approximately 575 sq ft to the rear of the house.

The following application must be submitted and approved prior to the submittal of development permits.

Nonconforming Use Alteration (NCU): The proposed expansion is subject to NCU review. The application is reviewed through a Type III review per MMC 19.1006, and the application fee is \$2,000. The following sections of the Milwaukie Municipal Code apply to a Type III NCU: 19.804.1.B.2 (approval criteria for the expansion of a nonconforming use; 19.305 (C-N Zone standards related to setbacks and lot coverage); and 19.607 Off-Street Parking Standards for Residential Areas.

Application fees are based on the current fee schedule. Fees are typically updated on July 1st of each year. For applications submitted concurrently, the most expensive application is charged at full price and each additional application receives a 25% discount.

For the City's initial review, the applicant should submit 5 complete copies of the application, including all required forms and checklists. A determination of the application's completeness will be issued within 30 days. If deemed incomplete, additional information will be requested. If deemed complete, additional copies of the application will be required for referral to other departments, the Neighborhood District Association (NDA), and other relevant parties and agencies. City staff will inform the applicant of the total number of copies needed.

Land use application submission materials are listed below for your convenience. Please refer to the handouts distributed at the pre-application conference for more detailed information.

1. All applicable land use applications forms with signatures of property owners.
2. All applicable land use application fees.
3. Completed and signed "Submittal Requirements" form.

4. 5 copies of an existing conditions and a proposed conditions site plan, both to scale. These two site plans can be combined onto one site plan. Once the application is deemed complete, additional copies will be requested for distribution to City departments, applicable governmental agencies, and the neighborhood district association for review.
5. Detailed narrative describing compliance with all applicable code sections.

Type III applications are discretionary in nature and require minor quasi-judicial review by the Planning Commission. The timeline for review and approval is generally 3-4 months. The Planning Commission hears land use applications on the second Tuesday of every month, and complete applications need to be submitted to the Planning Department no later than 45 days prior to the target Planning Commission hearing date. In general, staff recommends that an applicant submit at least 30 days prior to the 45-day deadline in order to ensure that there is time to make all applications complete if they are initially deemed incomplete.

**Natural Resource Review:** There are no mapped natural resources on the site.

**Lot Geography:** The lot is rectilinear in shape.

- Planning Notes:**
1. The preapplication conference is valid for purposes of submitting future land use applications as described in MMC 19.1002.4. A preapplication conference is valid for 2 years.
  2. The site is located in the Lake Road Neighborhood District Association (NDA) boundary. Staff encourages the applicant to present any proposed variances to the NDA and/or its Land Use Committee, as well as to the immediate property owners. The NDA's webpage is on-line at <http://www.milwaukieoregon.gov/citymanager/lake-road-nda>. Their meetings are held at 6:30pm on the second Wednesday of the month at Rowe Middle School, 3606 SE Lake Rd. The NDA Chairperson is Debby Patten (503-806-5860, [debby.patten@gmail.com](mailto:debby.patten@gmail.com)). Please contact the Chair to coordinate a meeting to discuss the proposal.
  3. Per MMC 19.607.2.B.2, no vehicle or pleasure craft (including recreational vehicles, or RVs) shall be lived in, have housekeeping maintained, or have hook-up to utilities while parked or stored on a lot used for a single-family detached dwelling.
  4. The Milwaukie Municipal Code is located online at <http://www.qcode.us/codes/milwaukie/>.
  5. Land use application forms are located online at <http://www.milwaukieoregon.gov/planning/land-use-application>.

### **ADDITIONAL NOTES AND ISSUES**

**County Health Notes:**

**Other Notes:**



**This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.**

**Sincerely,**

**City of Milwaukie Development Review Team**

---

**BUILDING DEPARTMENT**

**Sam Vandagriff - Building Official - 503-786-7611**

**Bonnie Lanz - Permit Specialist - 503-786-7613**

**ENGINEERING DEPARTMENT**

**Chuck Eaton - Engineering Director - 503-786-7605**

**Vacant - Civil Engineer - 503 -786-7609**

**Chrissy Dawson - Engineering Tech II - 503-786-7610**

**Stacy Stubblefield - Civil Engineer - 503-786-7602**

**Alex Roller - Engineering Tech I - 503-786-7695**

**COMMUNITY DEVELOPMENT DEPARTMENT**

**Alma Flores - Com Dev Director - 503-786-7652**

**Marcia Hamley - Admin Specialist - 503-786-7656**

**Joyce B Stahly -Admin Specialist - 503-786-7600**

**Alicia Martin -Admin Specialist - 503-786-7600**

**PLANNING DEPARTMENT**

**Denny Egner - Planning Director - 503-786-7654**

**Li Alligood - Senior Planner - 503-786-7627**

**Brett Kelter - Associate Planner - 503-786-7657**

**Vera Koliass - Associate Planner - 503-786-7653**

**CLACKAMAS FIRE DISTRICT**

**Mike Boumann - Lieutenant Deputy Fire Marshal - 503-742-2673**

**Matt Amos - Fire Inspector - 503-742-2661**

# Clackamas County Fire District #1 Fire Prevention Office



## E-mail Memorandum

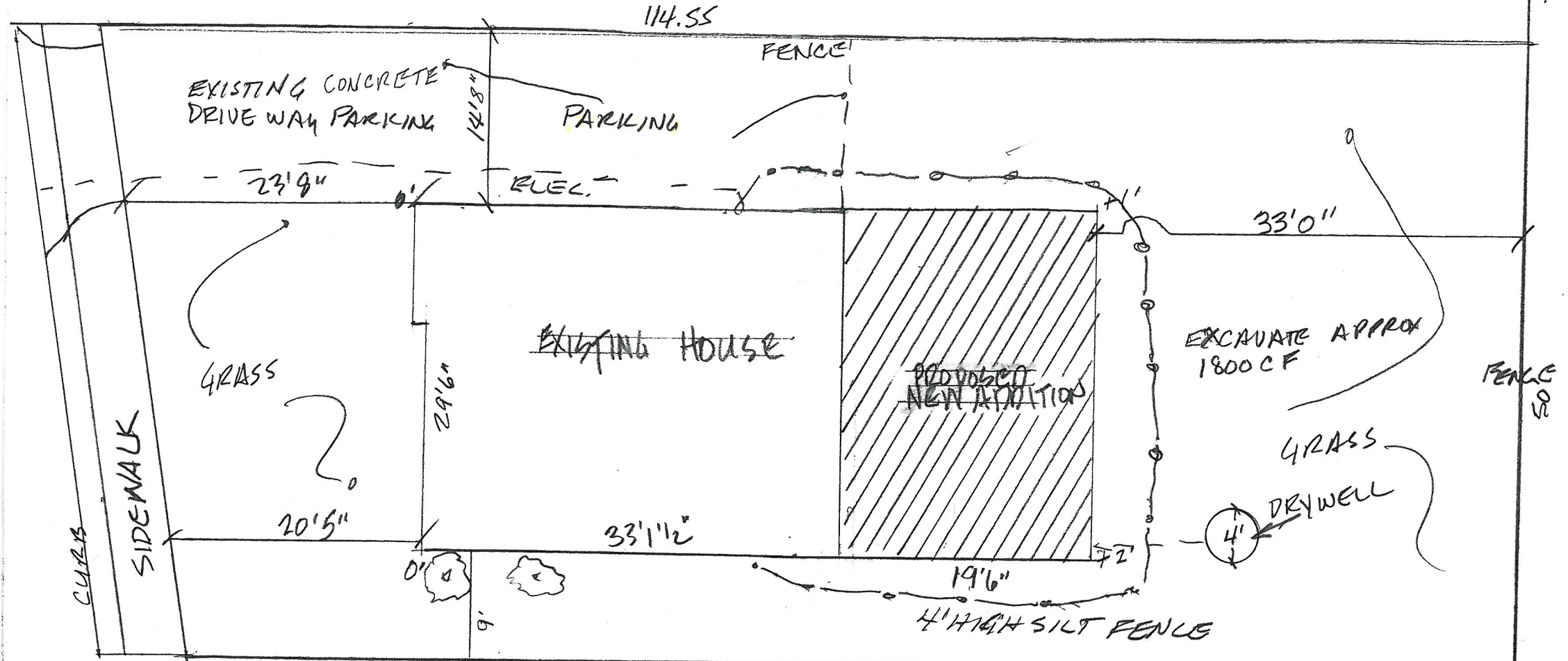
To: City of Milwaukie Planning Department  
From: Matt Amos, Fire Inspector, Clackamas Fire District #1  
Date: **2/12/2016**  
Re: Remodel and addition at 2926 SE Washington St 16-004 PA

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This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

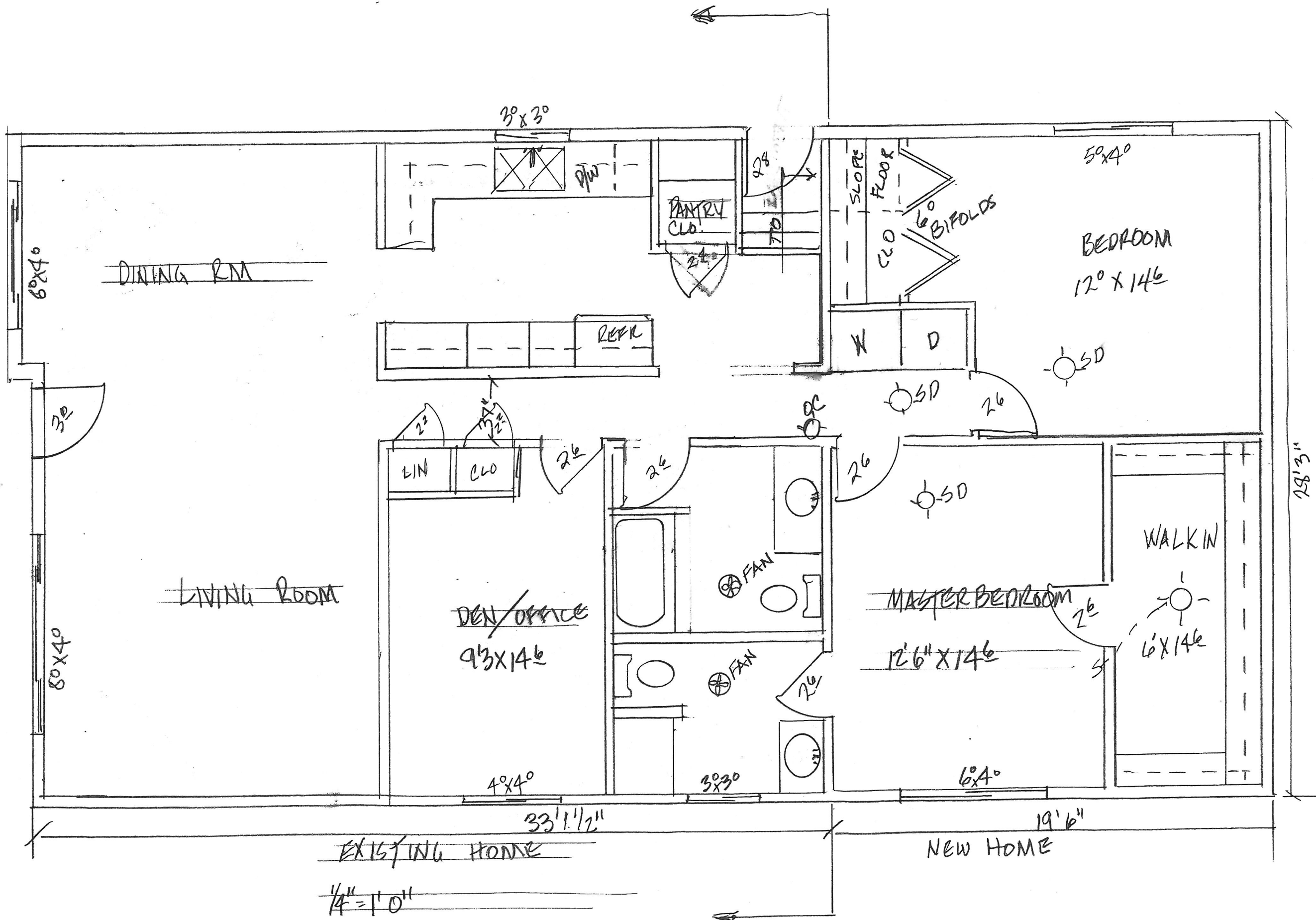
### COMMENTS:

1. The Fire District has no comments for this proposal.

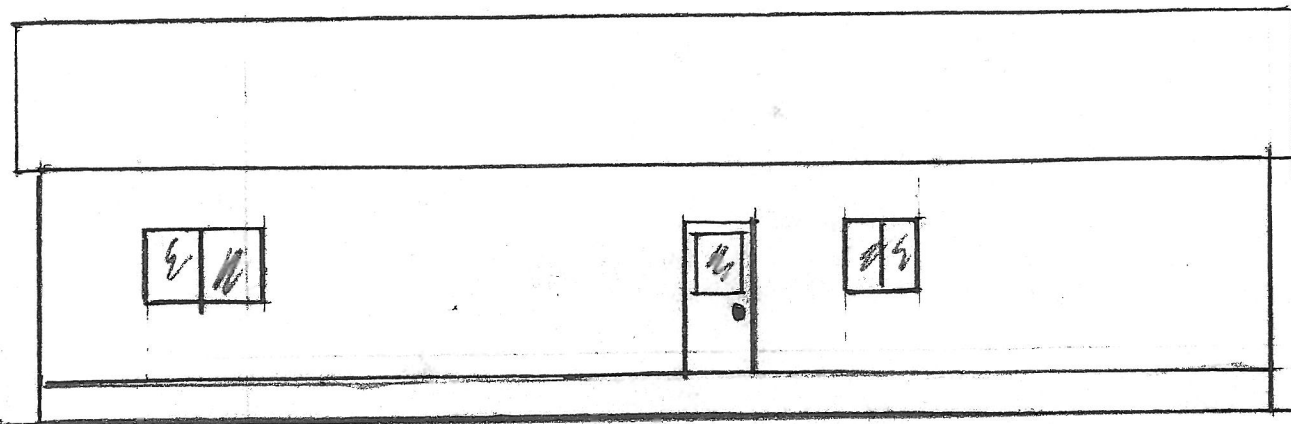


114.55  
 FENCE  
 EXISTING CONCRETE DRIVE WAY PARKING 14'8"  
 PARKING 23'9"  
 GRASS  
 EXISTING HOUSE 29'6"  
 PROPOSED NEW ADDITION 19'6"  
 EXCAVATE APPROX 1800 CF  
 GRASS  
 DRYWELL 4'  
 4' HIGH SILT FENCE  
 20'5"  
 33'11/2"  
 33'0"  
 106.63  
 FENCE  
 2926 SE. WASHINGTON ST LOT 1700 3/32 = 1'0"  
 VEGETATION 50% SAKAMOTO RESIDENCE  
 LOT APPROX 5450 HOME 40% ZONING CN  
 CONCRETE 10%

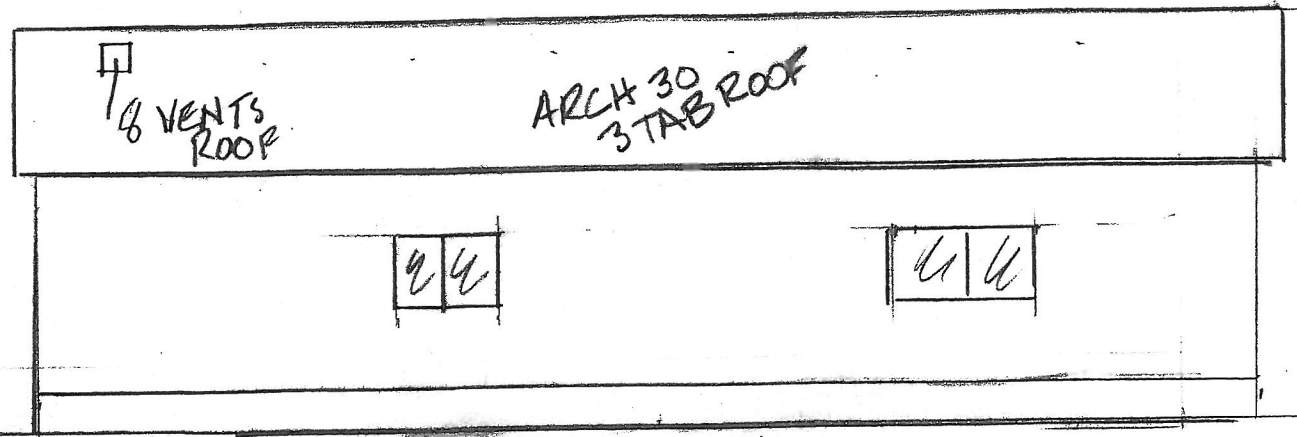
RECEIVED  
 APR 04 2016  
 CITY OF MILWAUKIE  
 PLANNING DEPARTMENT



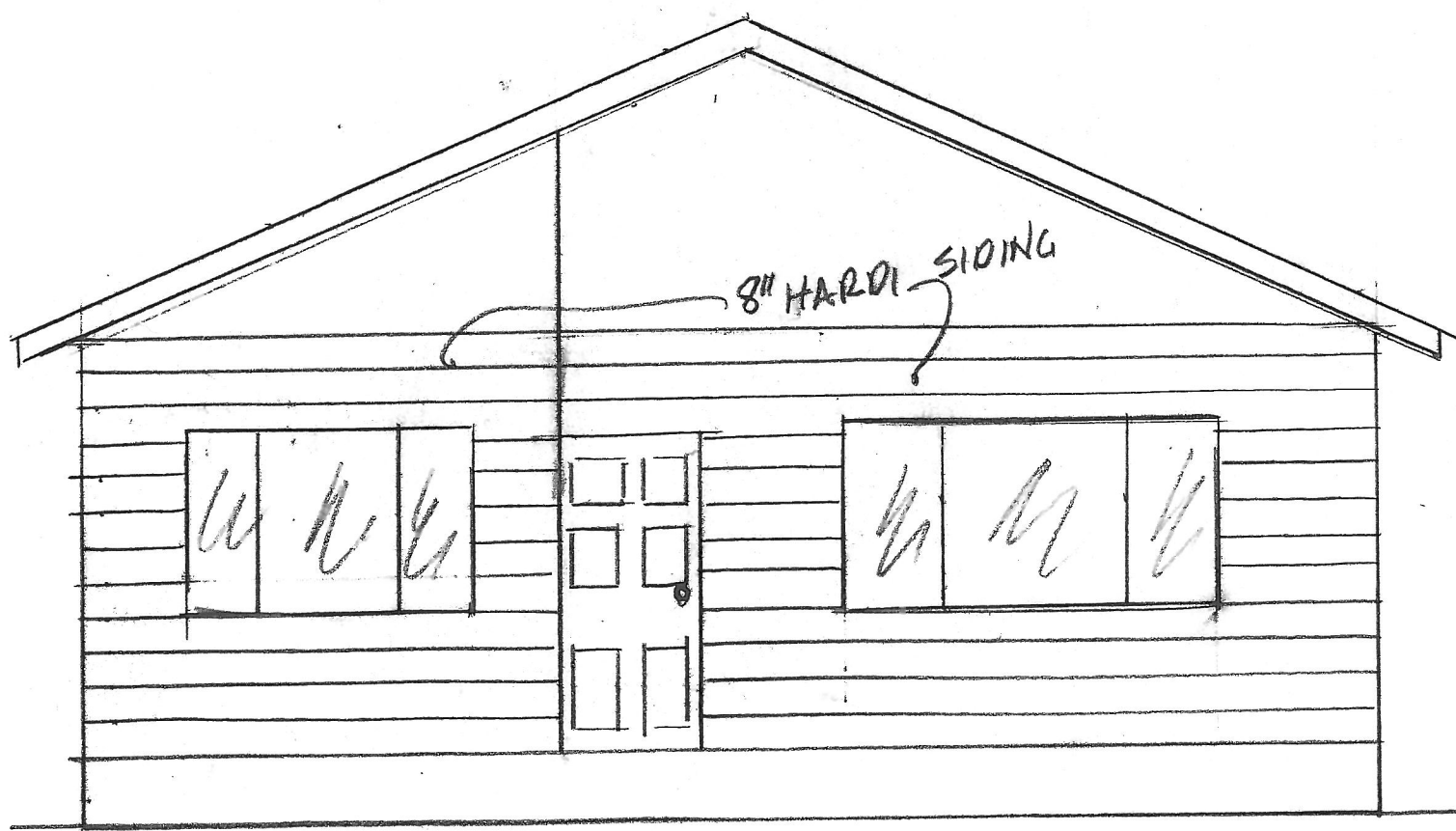
SAKAMOTO HOUSE 2906 SE. WASHINGTON ST.



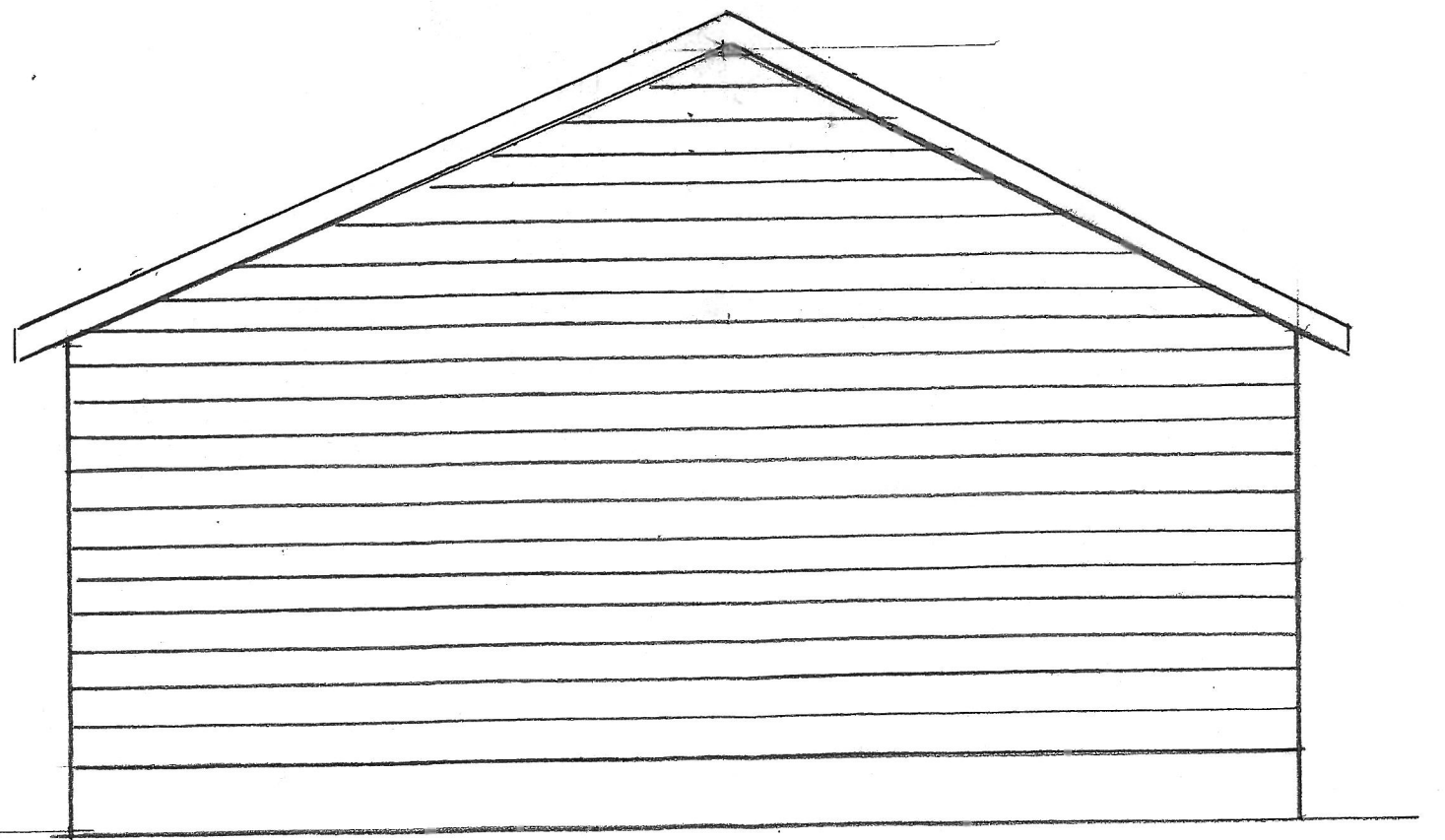
LEFT SIDE 1/8" = 1'0"



RIGHT SIDE 1/8" = 1'0"



FRONT 1/4" = 1'0"



BACK 1/4" = 1'0"



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**From:** Dennis Egner, Planning Director

**Date:** May 17, 2016, for May 24, 2016, Public Hearing

**Subject:** File: ZA-2016-001  
 Applicant: City of Milwaukie  
 Owners/Addresses/Taxlots: Citywide - multiple owners  
 NDA: Citywide – multiple NDAs

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## **ACTION REQUESTED**

Recommend approval of application ZA-2016-001 and recommended Findings of Approval found in Attachment 1 Exhibit A. This action would recommend City Council approval of zoning ordinance text amendments to regulate marijuana businesses.

## **SUMMARY OF THE PROPOSAL**

The proposed code amendments make the following code changes:

- Recreational marijuana retail stores – Allow retail stores in most commercial and industrial zones subject to the same locational and operational standards that exist for medical marijuana dispensaries (1000 ft from schools or other dispensaries; no products visible from outside; limit colocation with other businesses; and hours limited from 8:00 am to 10:00 pm).
- Processing facilities and wholesale facilities (both medical and recreational) – Allow the uses in industrial zones subject to standards to address security and noxious odors.
- Laboratories and research facilities – Allows the uses in zones currently allowing office use (both commercial and industrial) subject to standards to address security and noxious odors.
- Home occupations - Prohibit processing facilities, laboratories, and wholesale uses as home occupations.
- Production - grow sites (both recreational and medical):
  - Prohibit outdoor grow sites in industrial areas.
  - Prohibit commercial and home occupation recreational grow sites in residential districts.
  - Allow small, indoor medical grow sites as home occupations in residential districts.
  - Allow indoor grow sites as permitted uses in the M zone along Johnson Creek Blvd.
  - Allow indoor grow sites as conditional uses in the BI zone (International Way area).
  - Prohibit grow sites in the North Milwaukie Industrial Area (NMIA), north of Hwy 224.

The City Council indicated their intent to consider allowing grow sites in the NMA following completion of the Metro-funded study to develop a plan for that area. Additional options are addressed in the Key Issues section of this report.

## HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

**January 26 and April 26, 2016:** The Milwaukie Planning Commission held work sessions on proposed regulations and code amendments for marijuana businesses. The Commission's suggestions to address odor control for warehouse uses and research and testing facilities were incorporated into the current draft.

**January 5 and 19, 2016:** The Milwaukie City Council discussed code concepts and provided general direction for development of a set of regulations for marijuana businesses.

**April 7, 2015:** The Council adopted zoning amendments to regulate medical marijuana dispensaries. The regulations allow dispensaries in any zone where a pharmacy is permitted and impose the following additional regulations: 1) a 1000 ft buffer is required from schools and from other dispensaries; 2) colocation with another business is prohibited; 3) products are prohibited from being visible from outside the dispensary; and 4) the hours of operation are limited to the hours between 8:00 a.m. and 10:00 p.m.

**February 3, 2015:** The Council confirmed a staff code determination that marijuana grow operations are not permitted in the City's industrial zones given that agricultural use is not listed as an allowed use in the zones.

## BACKGROUND

### A. State Law

In the 2015 legislative session, the Oregon State Legislature passed a series of bills addressing marijuana businesses, including House Bill 3400, which expands upon the framework of Measure 91 (the voter-approved act legalizing recreational marijuana) and the previous state regulations affecting medical marijuana. In October 2015, the Oregon Liquor Control Commission (OLCC) adopted temporary rules to regulate the recreational marijuana industry in Oregon. The OLCC is in the process of adopting final rules.

The OLCC has established an application process for marijuana business licenses and began taking applications in January 2016. The OLCC estimates that first recreational retail facilities will be open in the third quarter of 2016 with grow sites and processing facilities opening earlier in the year. Recreational facilities authorized under the new legislation include retail outlets, grow sites, processing, warehousing, and laboratory/testing. Additional background information is provided in the attached background paper - Attachment 2.

### B. Proposal

The proposed text amendments are intended to regulate retail sales, testing labs, processing facilities, warehousing, and production/growing. Each is addressed in detail below:

Retail Sales – In 2015, the City of Milwaukie adopted local regulations for medical marijuana dispensaries. The local regulations essentially allowed dispensaries anywhere that pharmacies were permitted consistent with state mandated buffering requirements for 1000-ft buffers around schools and other dispensaries. Milwaukie added 1000-ft buffers around two former schools

where many youth related activities are held. The proposal resulted in dispensaries being allowed in all of the commercial and mixed use zones except for the C-N Neighborhood Commercial Zone and the B-I Business Industrial Zone. In the M-Manufacturing Zone and the Tacoma Station Overlay, dispensaries generally need to be located in a building with a permitted manufacturing use. The northern sub area of the Tacoma Station Overlay does allow the opportunity for stand-alone retail use.

The proposed changes merge recreational sales with medical dispensaries and make zoning requirements the same for both types of retail marijuana businesses including the 1000-ft separation between retail stores.

Testing Labs/Research Facilities – Testing labs and research facilities are considered types of production office use similar to a medical or dental lab. They are allowed in any zone where an office use or an industrial processing use is allowed. Limitations specific to the zone apply. A code standard is proposed to address potential odor problems resulting from these uses.

Processing Facilities – Processing facilities generally involve the transformation of plant materials into oils or resins or into other products such as edibles. Processing under state rules does not include packaging, but Milwaukie zoning regulations would consider packaging and processing to both be industrial/manufacturing uses. Processing facilities are allowed in all industrial and manufacturing zones and to a limited extent in some commercial zones. No changes are proposed as to where these uses may be permitted except that in the BI zone a conditional use permit would be required. A code standard is proposed to address potential odor problems resulting from these uses.

Warehousing – Warehousing for marijuana businesses is allowed in the following zones: Manufacturing – M, Tacoma Station Area Manufacturing - M-TSA, and the Business Industrial B-I zones. A code standard is proposed to address potential odor problems resulting from these uses.

Production/Growing – Under current standards, Milwaukie considers production or growing of marijuana plants an agricultural use. Agriculture is only listed as a permitted use in the following zones:

- Low Density Residential: R-10, R-7, and R-5
- Medium and High Density Residential: R-3, R-2.5, R-2, R-1, and R1-B
- Commercial Zones: C-G and C-L

Agricultural use is not an allowed use in any other zones. The code places limitations on livestock and chickens and in residential zones, restricts agricultural sales only to those that occur as part of a home occupation.

The proposed code changes include the following:

- Residential Zones – Proposed code changes require medical marijuana grow operations to occur only as home occupations and indoor with ventilation and odor control equipment.



Recreational marijuana growing is limited to that which is for personal use only and may occur outdoors subject to state regulations.

- Commercial Zones – Commercial recreational or medical grow operations are not allowed. Growing for personal use is allowed.
- Industrial Zones – Regulations are proposed to vary by area. Each area is addressed below:
  - M-Zone along Johnson Creek Boulevard in northeast Milwaukie – Recreational and medical marijuana grow operations are allowed as permitted uses provided that the operations are fully indoors and utilize required ventilation and odor control equipment.
  - BI-Zone– Recreational and medical marijuana grow operations are allowed as conditional uses provided that the operations are fully indoors and utilize required ventilation and odor control equipment.
  - M-Zone and M-TSA Zones within the North Milwaukie Industrial Area –Recreational and medical marijuana grow operations are not allowed in this area. Following completion of the NMIA plan project consideration will be given to allowing grow operations within the area.

## KEY ISSUES

### Summary

Staff has identified three key issues for the Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1 – Exhibit A) and generally require less analysis and discretion by the Commission.

#### **A. Are the proposed development standards adequate?**

Proposed development standards for recreational marijuana stores are proposed to be the same as those developed for medical marijuana dispensaries. It is assumed that the potential impacts from recreational stores will be similar and will be adequately managed by the standards.

The larger question is whether standards associated with security and odor control are adequate. As written, security and odor control standards apply to production, processing, warehousing, testing, and research facilities. All uses are required to be located indoors and all uses are required to have an activated carbon filter ventilation system. This type of system is known to do a good job of managing off-site odor problems.

#### **B. Are the Energy Use standards appropriate?**

The proposed standards require production and processing facilities to demonstrate that their electrical energy source is from 100% renewable energy sources. It is generally recognized that lighting systems for indoor growing facilities require a high amount of electrical energy. Requiring that the producers utilize renewable energy sources will help to minimize environmental impacts associated with energy use.

#### **C. Should production (grow sites) be allowed in the North Milwaukie Industrial Area?**

The City has taken the position that growing marijuana is an agricultural use and the zoning ordinance does not currently allow agricultural use in the City's industrial zones. The proposed amendments would allow production facilities outright in the Johnson Creek

industrial area and by conditional use in the Business Industrial zone along International Way. The proposal, as written, prohibits production in the North Milwaukie Industrial Area (NMIA). A few key issues to consider include:

- The intent is to reconsider the allowance of production in the NMIA when the City and Clackamas County complete their work on the NMIA plan that is just about to get underway. The NMIA plan is a grant funded project intended to result in a development and implementation plan for the area. The project is expected to take over a year to complete. It is unclear how marijuana businesses will fit the overall vision for redevelopment of this area.
- One of the reasons that agricultural use is not listed as a permitted use in the City's industrial zones is that agricultural uses are typically not very employee intensive. An argument can be made that marijuana production is a more intensive form of agricultural that on average has a higher number of employees per acre than many of the uses that are currently permitted in the City's industrial zones.
- There are numerous underutilized warehouse buildings in the NMIA. Staff has fielded many questions from individuals who have wanted to start grow operations within these buildings.
- State law provides for two tiers of growing operations for recreational marijuana: Tier 1 – allows 5,000 sq ft of mature plant canopy; Tier 2 – allows for 10,000 sq ft of mature plant canopy. A grow operation would have at least an equal amount of square footage dedicated to growing immature plants.

The Commission may wish to consider whether it would be appropriate to allow some level of production within the NMIA prior to completion of the NMIA plan. Options might include any of the following:

- Size limitations (e.g. 5,000 sq ft maximum);
- Buffers (e.g. 1,000 ft between grow sites);
- Limitations on how many grow operations can occur within a building or on a property (e.g. one grow site per property); or
- Require a conditional use permit process.

## CONCLUSIONS

### A. Staff recommendation to the Planning Commission is as follows:

1. Recommend approval of the proposed Zoning Ordinance text amendments to regulate marijuana businesses in Milwaukie.
2. Recommend adoption of the attached recommended Findings of Approval.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

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

This application is subject to Type V review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above and forward a recommendation to City Council.

The Commission has four decision-making options as follows:

- A. Recommend that City Council approve the proposed text amendment as presented in Attachment 1.
- B. Recommend that City Council approve the proposed text amendment with modifications to the materials in Attachment 1.
- C. Recommend that City Council not approve the proposed text amendments.
- D. Continue the hearing.

The application is a legislative action and is not subject to the 120-day clock.

## COMMENTS

Notice of the proposed changes was given to the following agencies and persons: Milwaukie's Neighborhood District Associations, Metro, the Department of Land Conservation and Development, and the following City of Milwaukie departments: Engineering, Finance, and Police. Notice was also posted at City Hall, Ledding Library, the Public Safety Building, and the Johnson Creek Facility. No comments have been received.

## 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. Draft Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit A. Recommended Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit B. Proposed Zoning Text Amendments (Underline/Strikeout Version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit C. Proposed Zoning Text Amendments (Clean Version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Background Paper	<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 hearing.

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

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-113>.



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Ordinance No.

**An ordinance of the City Council of the City of Milwaukie, Oregon to amend Title 19 Zoning to regulate marijuana businesses. (File #ZA-2016-001).**

**WHEREAS**, during the 2015 legislative session, the Oregon State Legislature passed a series of bills addressing marijuana businesses, including House Bill 3400, which expands upon the framework of Measure 91 (the voter-approved act legalizing recreational marijuana);

**WHEREAS**, the Oregon State Legislature has charged the Oregon Liquor Control Commission with regulating the recreational marijuana industry in Oregon and the OLCC is currently in the process of issuing licenses for marijuana businesses;

**WHEREAS**, the City of Milwaukie adopted regulations for medical marijuana dispensaries on April 7, 2015 but is in need of additional regulations to address recreational marijuana businesses and businesses supplying medical marijuana to dispensaries;

**WHEREAS**, on January 5, 2016 and January 19, 2016, the City Council discussed code concepts and provided general direction for development of a set of regulations for marijuana businesses;

**WHEREAS**, on January 26, 2016, the Planning Commission held a work session regarding code concepts and on April 26, 2016, the Planning Commission reviewed an initial set of draft zoning text amendments and provided suggested refinements;

**WHEREAS**, the Planning Commission held a duly-advertised public hearing on the zoning text amendments on May 24, 2016, with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes, and recommended approval; and

**WHEREAS**, the City Council held a duly-advertised public hearing with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes.

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

Section 1. Findings. Findings of fact in support of the proposed amendments to Title 19 are attached as Exhibit A.

Section 2. Amendments. Title 19 Zoning is amended as described in Exhibit B (strikeout/underline version) and Exhibit C (clean version).

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote

of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

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Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney

**Findings in Support of Approval**  
**File ZA-2016-001, Zone Text Amendments to Regulate Marijuana Businesses**

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

1. The applicant, the Milwaukie Planning Director, has applied for a zoning ordinance text amendment (File ZA-2016-001) to regulate marijuana businesses in the following zones:
  - Low Density Residential Zones: R-10, R-7, and R-5
  - Medium and High Density Residential Zones: R-3, R-2.5, R-2, R-1, and R-1-B
  - Limited and General Commercial Zones: C-L and C-G
  - Community Shopping Commercial Zone: C-CS
  - Mixed Use Zones: GMU, NMU, and DMU
  - Manufacturing Zone: M
  - Tacoma Station Area Manufacturing Zone: M-TSA
  - Business Industrial Zone: B-I
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 19.1000 Review Procedures
3. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing before the Planning Commission was held on May 24, 2016 as required by law.
4. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City finds that these requirements have been met as follows.
  - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendment is proposed by the City of Milwaukie and was initiated by the City Planning Director on April 19, 2016.
  - b. MMC Section 19.1008 establishes requirements for Type V review.
    - (1) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment and review. Opportunity for public comment and review has been provided. Public notice in the form of email to the Neighborhood District Associations, posted notices, and information on the City website have publicized the Planning Commission's hearing on the proposed amendment to encourage comment by any interested party. In addition, an article was placed in the Pilot providing notice of the hearing.
    - (2) 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. A notice of the Planning Commission's May 24, 2016, hearing was posted at City Hall, the Ledding Library, the Public Service Building, and the City's Johnson Creek Building Offices.
    - (3) MMC Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The Planning Director

has determined that the proposal affects a large geographic area. Notice to individual property owners was not provided.

- (4) MMC Subsection 19.1008.3.B and C require notice of a Type V application to be sent to Metro and to the Department of Land Conservation and Development prior to the first evidentiary hearing. This notice was sent April 19, 2016.
- (5) MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the application would affect the permissible uses of land for those property owners. Given that the proposal will expand the range of uses permitted within each of the zones rather than place limits on existing permitted uses, no Measure 56 notices were sent.
- (6) MMC Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held a public hearing on May 24, 2016, and passed a motion recommending that the City Council approve the zoning ordinance text amendment. The City Council held a public hearing on \_\_\_\_\_, 2016, and approved the text amendment.

5. MMC Section 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5.A establishes the review process for zoning text amendments.

The code states that changes to Title 19 shall be subject to Type V review per MMC 19.1008.

- b. MMC 19.902.5.B establishes five criteria (listed below) for approval of changes to the zoning ordinance text. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.

- (1) The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.

*The proposed code amendments allow recreational marijuana stores to locate under the same standards that currently apply to medical marijuana dispensaries. The amendments allow marijuana warehousing and processing uses to locate in industrial areas and be subject to the same standards as other similar industrial uses except that these marijuana-related businesses must also meet additional security and odor control standards. The amendments allow marijuana testing and research facilities in commercial and industrial zones that currently allow offices uses. The testing and research uses will be required to provide a higher level of security and odor control than other general use offices. The amendments allow medical grow sites indoors in residential areas provided security and odor control standards are met. The amendments allow medical and recreational grow sites in the M-Manufacturing zone along Johnson Creek Blvd and by conditional use in the B-I zone. These uses will be subject to specific security and odor control standards to manage impacts.*

*No conflicts with other City code provisions are anticipated. All other code provisions can operate and be enforced with these amendments.*

- (2) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

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

Relevant goals, objectives, and policies include:

- The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:
 

*To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.*
- Objective #2 - Employment Opportunity states:
 

*To continue to support a wide range of employment opportunities for Milwaukie citizens.*
- Policy 4 of Objective #2 - Employment Opportunity states:
 

*The City will support home occupations (income-producing activities in the home) as long as these activities do not detract from the residential character of the area.*
- Objective #4 – Industrial Land Use states:
 

*To encourage new industries to locate within the three major industrial areas of the City, in order to take maximum advantage of existing access and public facilities serving industry.*
- Policy 3 of Objective #4 – Industrial Land Use states:
 

*Lands designated for industrial use as shown on Map 7, Land Use, should be reserved for industrial, manufacturing, distribution, and supporting land uses, except where otherwise indicated in the Tacoma Station Area Plan.*
- Objective #5 – Industrial Impacts states:
 

*To minimize the adverse impacts of industrial and employment center development and operation on surrounding areas.*
- Objective #6 – Commercial Land Use states:
 

*To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.*
- Objective #8 – Commercial Land Use – Community Center states:
 

*To provide the weekly and comparison goods shopping needs of the City's and surrounding areas' residents.*
- Policy 4 under Objective #8 Commercial Land Use – Community Center reads:
 

*The Center will increase comparative and one-stop shopping services, thereby reducing vehicle trips outside the City, and providing better shopping services to the area.*
- Objective #10 – Commercial Land Use – Convenience Centers states:
 

*To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.*
- Policy 3 under Objective #10 Commercial Land Use – Convenience Centers reads:
 

*Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.*



- Policy 1 under Objective #12 Town Center reads:

*Downtown Milwaukie, and specifically those lands designated as Town Center on Map 7, will be considered a Town Center, serving area-wide needs as well as the needs of local residents.*

The relevant goals, objectives, and policies are satisfied for the following reasons:

There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether the list of permitted uses for a given zone should be expanded to include a use that is not listed elsewhere in the code. Rather, the policies and objectives speak generally about broad objectives for economic development and the protection of zone districts for their intended uses.

The proposed text amendments provides a community benefit by allowing marijuana businesses to locate in commercial and industrial zones within the City, thereby increasing economic activity and enhancing convenience and accessibility for Milwaukie residents. For this reason, the following goals, policies, and objectives are satisfied by the proposal:

- Goal Statement of the Economic Base and Industrial/Commercial Land Use Element
- Objective #2 – Employment Opportunity
- Objective #4 – Industrial Land Use
- Objective #6 – Commercial Land Use
- Objective #8 – Commercial Land Use – Community Center
- Policy 4 of Objective #8 Commercial Land Use – Community Center
- Objective #10 – Commercial Land Use – Convenience Centers
- Policy 1 of Objective #12 Town Center

Policy 4 of Objective#2 – The amendments allow medical grow operations as home occupations within residential districts. The proposal limits impacts by placing a limitation on the number of mature plants that can be grown and by requiring that grow operations be indoors and utilize odor control equipment.

Policy 3 of Objective #4 – Industrial Land Use appears to present a conflict with the proposal that marijuana retail facilities be allowed in the M-Zone given that the policy states “industrial lands should be reserved for industrial purposes.” The M-zone currently allows a wide range of retail uses provided that at least 25% of the development site is developed for manufacturing or industrial purposes. Because a portion of any development site is reserved for manufacturing or industrial use and because similar pharmacy/drug store uses are currently allowed in the zone, the proposed amendment does not conflict with Policy 3.

Policy 3 under Objective #10 Commercial Land Use – Convenience Centers addresses neighborhood compatibility. The proposed amendments manage impacts on neighborhoods by limiting the hours of operation and by regulating the display of products for retail marijuana sales.

Objective #5 – Industrial Impacts – The amendments satisfy the objective through the incorporation of new development standards that require processing, production, warehousing, research and testing facilities to utilize odor control equipment.

*In conclusion, all relevant goals, objectives and policies are satisfied by the proposed amendments for the reasons stated above.*

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

*The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.*

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

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

*The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed by other similar uses in each respective zone: i.e., retail stores and offices in commercial zones and warehousing, processing, offices, and production facilities in industrial zones.*

- (5) The proposed amendment is consistent with relevant federal regulations.

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

## Underline/Strikeout Amendments

### Zoning Ordinance

#### CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

##### 19.201 DEFINITIONS

“Agriculture” means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

“Production-related office” means offices that are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products. Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers; and medical and dental labs.

“Medical marijuana facility” means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475B and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are instead classified as "marijuana production" for purposed of this Code not permitted under the City of Milwaukie's medical marijuana facility regulations.

"Marijuana business" means a state-licensed business involved in the production, processing, warehousing, testing, research, or sale of marijuana or marijuana-derived products.

"Marijuana processor" means a state-licensed business that processes, compounds, transforms, or converts marijuana into other marijuana products including concentrates, extracts, or edible products.

"Marijuana production" means planting, cultivating, growing, or harvesting of marijuana for sale or processing as a legal, state-licensed business.

"Marijuana retailer" means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.

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#### CHAPTER 19.300 BASE ZONES

##### 19.301 LOW DENSITY RESIDENTIAL ZONES

###### 19.301.2 Allowed Uses in Low Density Residential Zones

Uses allowed, either outright or conditionally, in the low density residential zones are listed in Table 19.301.2 below. Similar uses not listed in the table may be allowed through a Director's Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the "Standards/Additional Provisions" column.

## Proposed Code Amendment

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

<b>Table 19.301.2</b>				
<b>Low Density Residential Uses Allowed</b>				
Use	R-10	R-7	R-5	Standards/Additional Provisions
<b>Accessory and Other Uses</b>				
Agricultural or horticultural use	P	P	P	<b>Subsection 19.301.3</b> Use Limitations and Restrictions
Home occupation	P	P	P	<b>Section 19.507</b> Home Occupation Standards

P = Permitted.

### 19.301.3 Use Limitations and Restrictions

A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.

- A1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
- B2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than one acre, nor having less than 10,000 sq ft per head of livestock.
- C3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.

B. Marijuana production is not permitted in low density residential zones except as follows:

1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the following standards:
  - a. The security and odor control standards set forth in Subsection 19.509.2.
  - b. No more than 12 mature medical marijuana plants may be grown on a lot or parcel of land.

Note: the City Attorney has noted that someone may be able to argue for preemption since state law allows growers that had more than 12 plants prior to 1/01/15 to have up to 24 plants.

2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

## 19.302 MEDIUM AND HIGH DENSITY RESIDENTIAL ZONES

### 19.302.2 Allowed Uses in Medium and High Density Residential Zones

Uses allowed, either outright or conditionally, in the medium and high density residential zones are listed in Table 19.302.2 below. Similar uses not listed in the table may be allowed through a Director's Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the "Standards/Additional Provisions" column.

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

## Proposed Code Amendment

Table 19.302.2 Medium and High Density Residential Uses Allowed						
Use	R-3	R-2.5	R-2	R-1	R-1-B	Standards/ Additional Provisions
<b>Accessory and Other Uses</b>						
Agricultural or horticultural use	P	P	P	P	P	<b>Subsection 19.302.3</b> Use Limitations and Restrictions
Home occupation	P	P	P	P	P	<b>Section 19.507</b> Home Occupation Standards

P = Permitted.

### 19.302.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
  2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock.
  3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Office uses allowed in the medium and high density zones are offices, studios, clinics, and others similar professional offices. Corporate offices for marijuana businesses are permitted provided that no marijuana or marijuana products associated with the business are onsite.
- C. Marijuana production is not permitted in medium and high density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the following standards:
    - a. The security and odor control standards set for in Subsection 19.509.2.
    - b. No more than 12 mature medical marijuana plants may be grown on a lot or parcel of land.

**Note: the City Attorney has noted that someone may be able to argue for preemption since state law allows growers that had more than 12 plants prior to 1/01/15 to have up to 24 plants**
  2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

**Proposed Code Amendment**

**19.303 COMMERCIAL MIXED-USE ZONES**

**19.303.2 Uses**

<b>Table 19.303.2 Uses Allowed in Commercial Mixed-Use Zones</b>			
<b>Uses and Use Categories</b>	<b>GMU</b>	<b>NMU</b>	<b>Standards/Additional Provisions</b>
<b>Commercial<sup>3, 4</sup></b>			
<p>General Office</p> <p>General office means professional, executive, management, or administrative or administrative offices of firms or organizations.</p> <p>Examples include professional services such as lawyers, architects, or accountants; financial businesses such as lenders, credit unions, or real estate agents; sales offices; <u>offices for testing and research-related businesses</u>, and medical and dental <del>clinics</del><u>clinics</u>.</p>	P	P	<p><u>Subsection 19.303.6.C Marijuana testing and research facilities</u></p>
<p>Retail-oriented sales</p> <p>Sales-oriented retail firms are involved in the sale, leasing, and rental of new or used products to the general public. Examples include stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.</p>	P	P	
<p><del>Marijuana retailer</del> <u>Medical marijuana facility</u></p> <p><u>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</u></p> <p><del>Medical marijuana facility means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana facility regulations.</del></p>	P	P	<p><u>Subsection 19.303.6.A Standards for Marijuana retailers</u><del>Medical Marijuana Facilities</del></p>

## Proposed Code Amendment

<b>Manufacturing and Production</b>			
<p>Manufacturing and production.<sup>8</sup></p> <p>Manufacturing and production uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; <u>marijuana processors</u>; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p> <p><u>Marijuana production is prohibited.</u></p>	P	P	<p><u><b>Subsection 19.509.2</b> Security and odor control for certain marijuana businesses</u></p> <p><u><b>Subsection 19.509.3</b> Energy use for certain marijuana business</u></p>

P = Permitted.

3. In the NMU Zone, unless otherwise specified in this section, all nonresidential uses listed in Table 19.303.2 shall be no greater than 10,000 sq ft in area per use. A nonresidential use greater than 10,000 sq ft in area may be approved through a conditional use review pursuant to Section 19.905.
4. The 10,000 sq ft size limitation in Footnote 3 of Table 19.303.2 does not apply to "retail-oriented sales" uses established within the existing lot and building situated at 4320 SE King Rd, within the lot's boundaries that exist on February 13, 2016, the effective date of Ordinance #2112. Redevelopment of the site is subject to all standards of Table 19.303.2.
8. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on the site would not be considered manufacturing or production.

### **19.303.6 Standards for Medical Marijuana Facilities**

~~In the commercial mixed-use zones, medical marijuana facilities shall meet the following standards:~~

- ~~A. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- ~~B. A medical marijuana facility shall not be colocated with another business.~~
- ~~C. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- ~~D. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

## Proposed Code Amendment

### 19.303.76 Additional Provision

Depending on the type and use of development proposed, the following sections of the Milwaukie Municipal Code may apply. These sections are references for convenience, and do not limit or determine the applicability of other sections within the Milwaukie Municipal Code.

### 19.304 DOWNTOWN ZONES

#### 19.304.2 Uses

<b>Table 19.304.2 Downtown Zones—Uses</b>			
<b>Uses and Use Categories</b>	<b>DMU</b>	<b>OS</b>	<b>Standards/ Additional Provisions</b>
<b>Commercial</b>			
<p>Production-related office</p> <p>Production-related office uses are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, <u>research, production, processing, packaging, or assembly of goods and products.</u></p> <p>Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers, and medical and dental labs.</p>	P/CU	N	<p><b>Subsection 19.304.3.A.2</b> Main St limitations</p> <p><b>Subsection 19.304.3.A.3</b> Commercial use limitations</p> <p><b>Subsection 19.509.2</b> <u>Security and odor control for certain marijuana business</u></p> <p><b>Section 19.905</b> Conditional Uses</p> <p><u>Note: Production, processing, packaging, and assembly uses must meet the standards listed below under Manufacturing.</u></p>
<p><u>Marijuana retailer</u></p> <p><u>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</u></p> <p><del>Medical marijuana facility</del></p> <p><del>Medical marijuana facility means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana</del></p>	P/CU	N	<p><b>Subsection 19.509.1</b> <b>19.304.3.A.7</b> Standards for <u>Marijuana Retailers Medical Marijuana Facilities</u></p>



## Proposed Code Amendment

facility regulations-			
<b>Manufacturing</b>			
<p>Manufacturing and production</p> <p>Uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; <u>marijuana processors</u>; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments (including musical instruments), vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p>	P	N	<p><b>Subsection 19.304.3.A.87</b> Manufacturing and production limitations</p> <p><b>Subsection 19.509.2</b> <u>Security and odor control for certain marijuana businesses</u></p> <p><b>Subsection 19.509.3</b> <u>Energy use for certain marijuana businesses</u></p>

P = Permitted.

N = Not permitted.

CSU = Permitted with community service use approval subject to provisions of Section 19.904. Type III review required to establish a new CSU or for major modification of an existing CSU. Type I review required for a minor modification of an existing CSU.

CU = Permitted with conditional use approval subject to the provisions of Section 19.905. Type III review required to establish a new CU or for major modification of an existing CU. Type I review required for a minor modification of an existing CU.

### 19.304.3 Use Limitations, Restrictions, and Provisions

#### A. Use Limitations and Restrictions

The following provisions describe the limitations for uses listed in Table 19.304.2.

~~7. Medical marijuana facilities shall meet the following standards:~~

- ~~a. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility.~~
- ~~b. A medical marijuana facility shall not be colocated with another business.~~
- ~~c. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.~~
- ~~d. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

87. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail

## Proposed Code Amendment

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trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on-site would not be considered manufacturing or production. Marijuana production is prohibited.

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### 19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

#### 19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- B. ~~Offices of~~ for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- F. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection ~~19.306.3.L509.1.~~

#### 19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

#### 19.306.3 Standards

In a C-L Zone the following standards shall apply:

- L. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. ~~Medical marijuana facilities shall meet the following standards:~~
    1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
    2. ~~A medical marijuana facility shall not be colocated with another business.~~
    3. ~~Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
    4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~
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**Proposed Code Amendment**
**19.307 GENERAL COMMERCIAL ZONE C-G**

In a C-G Zone the following regulations shall apply:

**19.307.1 Uses Permitted Outright**

In a C-G Zone the following uses and their accessory uses are permitted outright:

- B. ~~Offices of~~ for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;
- Y. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection 19.307.3.M509.1;

**19.307.2 Conditional Uses Permitted**

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

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**19.307.3 Standards**

In a C-G Zone the following standards shall apply:

- M. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. ~~Medical marijuana facilities shall meet the following standards:~~
  1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
  2. ~~A medical marijuana facility shall not be colocated with another business.~~
  3. ~~Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.~~
  4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

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**19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS**

In a C-CS Zone the following regulations shall apply:

**19.308.1 Uses**

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:

## Proposed Code Amendment

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1. Department store uses;
  2. Drug and/or variety store uses;
  3. Food supermarket;
  4. Retail specialty shops.
- B. Such center may include the following additional uses:
7. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection 19.308.5.K 509.1;

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### 19.308.5 Development Standards

- ~~K. Medical marijuana facilities shall meet the following standards:~~
- ~~1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
  - ~~2. A medical marijuana facility shall not be colocated with another business.~~
  - ~~3. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
  - ~~4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

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## 19.309 MANUFACTURING ZONE M

### 19.309.2 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.

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**Proposed Code Amendment**


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- G. ~~Marijuana retailers~~ Medical marijuana facilities are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection ~~19.309.7.A~~ 509.1.

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**19.309.7 Special Development Standards**

The following development standards apply to specified uses in the M Zone.

A. Marijuana Businesses ~~Medical Marijuana Facilities~~

1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1 ~~Medical marijuana facilities shall meet the following standards:~~

- ~~1—As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- ~~2—A medical marijuana facility shall not be colocated with another business.~~
- ~~3—Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- ~~4—The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

2. Marijuana production facilities are permitted only on properties zoned for M-Manufacturing use that are located to the east of 43rd Ave and within 1,000 feet of Johnson Creek Blvd. The use is prohibited in other locations.

3. Marijuana producers and processors shall be subject to the security and odor control standards of Subsection 19.509.2 and the energy use standards of Subsection 19.509.3.

4. Marijuana testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.

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**19.310 BUSINESS INDUSTRIAL ZONE BI**
**19.310.2 Uses Permitted Outright**

- A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.310.6.
1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site (marijuana testing or research shall also be subject to the security and odor control standards of Subsection 19.509.2);
  2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;

**Proposed Code Amendment**

- C. Warehousing and distribution (marijuana warehousing shall be subject to the security and odor control standards of Subsection 19.509.2).

**19.310.5 Conditional Uses**

- B. Uses allowed subject to the above conditions are:

- 4. Marijuana producers and processors. Marijuana producers and processors shall also be subject to the security and odor control standards of Subsection 19.509.2 and the energy use standards of Subsection 19.509.3.

**19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA**

**19.312.2 Use Categories**

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a “P.” A “C” in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An “L” indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director determination application per Subsection 19.903 to resolve the issue.

<b>Table 19.312.2 M-TSA Zone Uses</b>	
<b>Use Category</b>	<b>Status</b>
<b>G. Limited Uses</b>	
<p>This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.</p> <p>3. <u>Marijuana Businesses</u> <del>Medical Marijuana Facilities</del></p> <p>This subcategory applies <del>only to processing, warehousing, testing, research, and retail sales of medical-marijuana at State-licensed facilities.</del> <u>Marijuana producers are prohibited.</u></p>	L

- P = Permitted.
- L = Limited.
- C = Conditional use.

**19.312.6 Standards for Limited Uses**

The following standards apply to those uses listed as limited (L) in Table 19.312.2.

- B. Marijuana Businesses ~~Medical Marijuana Facilities~~

- 1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1 ~~Medical marijuana facilities shall meet the following standards:~~

- 1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private~~

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**Proposed Code Amendment**


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~~elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~

~~2. A medical marijuana facility shall not be colocated with another business.~~

~~3. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~

~~4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

2. Marijuana processors shall be subject to the security and odor control standards of Subsection 19.509.2 and the energy use standards of Subsection 19.509.3.

3. Marijuana testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.

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## **CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS**

### **19.507 HOME OCCUPATION STANDARDS**

It is the intent of these regulations to support and encourage home occupations but at the same time protect the residential character of the City's residential neighborhoods. A home occupation shall be allowed as an accessory use to all residential uses permitted by right, subject to the following restrictions. Home occupation businesses, which are not clearly accessory and incidental to the residential use, are prohibited. All activities permitted under this section must be consistent with this section.

#### **19.507.1 Home Occupation Use Standards**

Home occupation uses are allowed by right; however, they are subject to limitations to ensure compatibility with residential uses. A home occupation shall:

- A. Be incidental and accessory to the residential use of the property.
- B. Maintain the residential character of the building and premises.
- C. Not have the outward appearance of a business.
- D. Not detract from the residential character of the neighborhood.
- E. Be owned and operated by an occupant of the dwelling.

#### **19.507.2 Prohibitions and Use Restrictions**

- A. Outside display or storage of merchandise, materials, or equipment on the premises or any adjacent right-of-way is prohibited.

## **Proposed Code Amendment**

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- B. Noise, odor, smoke, gases, vibration, heat, or glare that is detectable beyond the limits of the property is prohibited.
- C. In the case of on-premises instruction, no more than 5 enrollees shall be present at the same time.
- D. Motor vehicle, boat, or trailer repair is prohibited as a home occupation.
- E. Only 1 home occupation is allowed per residence, except that 2 may be permitted provided no employees not residing in the home are engaged in the conduct of any business activity on the premises.
- F. Except as set forth below, all marijuana-related businesses (production, processing, testing, warehousing, and sales) are prohibited as home occupations. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards of Subsection 19.509.2.

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### **19.509 MARIJUANA BUSINESS STANDARDS**

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

#### **19.509.1 Standards for Marijuana Retailers**

- A. A marijuana retailer shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. In addition, a marijuana retailer shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites nor within 1,000 ft of another marijuana retailer.
- B. A marijuana retailer shall not be collocated with another business except when collocated with another state-licensed marijuana business as permitted by state laws.
- C. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.
- D. The hours of operation for marijuana retailer shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
- E. No drive-through sales are permitted.

#### **19.509.2 Security and Odor Control for Certain Marijuana Businesses**

- A. The operation shall be entirely indoors, within a fully-enclosed, secure building meeting building codes adopted by the City of Milwaukie and all other applicable state regulations.
- B. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for production, processing, testing, research, and warehousing. Negative air pressure shall be maintained within the rooms. Exhaust outlets shall be a minimum of 25 feet from a property line.



**Proposed Code Amendment**

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C. An alternative odor control system may be approved by the building official based on a report by a mechanical engineer licensed by the state of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

**19.509.3 Energy Use for Certain Marijuana Businesses**

Marijuana production facilities and marijuana processors shall demonstrate during the business registration process that their electrical energy source is from 100% renewable energy.

Note: The City Attorney has concerns about applying this standard to marijuana processors and in placing it in the development code as opposed to the business license section of the Municipal Code.

## Clean Amendments

### Zoning Ordinance

#### CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

##### 19.201 DEFINITIONS

“Agriculture” means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

“Production-related office” means offices that are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products. Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers; and medical and dental labs.

“Medical marijuana facility” means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475B and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are instead classified as "marijuana production" for purposed of this Code . "Marijuana business" means a state-licensed business involved in the production, processing, warehousing, testing, research, or sale of marijuana or marijuana-derived products.

"Marijuana processor" means a state-licensed business that processes, compounds, transforms, or converts marijuana into other marijuana products including concentrates, extracts, or edible products.

"Marijuana production" means planting, cultivating, growing, or harvesting of marijuana for sale or processing as a legal, state-licensed business.

"Marijuana retailer" means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.

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#### CHAPTER 19.300 BASE ZONES

##### 19.301 LOW DENSITY RESIDENTIAL ZONES

###### 19.301.2 Allowed Uses in Low Density Residential Zones

Uses allowed, either outright or conditionally, in the low density residential zones are listed in Table 19.301.2 below. Similar uses not listed in the table may be allowed through a Director's Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column.

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

## Proposed Code Amendment

<b>Table 19.301.2 Low Density Residential Uses Allowed</b>				
Use	R-10	R-7	R-5	Standards/Additional Provisions
<b>Accessory and Other Uses</b>				
Agricultural or horticultural use	P	P	P	<b>Subsection 19.301.3</b> Use Limitations and Restrictions
Home occupation	P	P	P	<b>Section 19.507</b> Home Occupation Standards

P = Permitted.

### 19.301.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
  2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than one acre, nor having less than 10,000 sq ft per head of livestock.
  3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Marijuana production is not permitted in low density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the following standards:
    - a. The security and odor control standards set forth in Subsection 19.509.2.
    - b. No more than 12 mature medical marijuana plants may be grown on a lot or parcel of land.
 

**Note: the City Attorney has noted that someone may be able to argue for preemption since state law allows growers that had more than 12 plants prior to 1/01/15 to have up to 24 plants.**
  2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

## 19.302 MEDIUM AND HIGH DENSITY RESIDENTIAL ZONES

### 19.302.2 Allowed Uses in Medium and High Density Residential Zones

Uses allowed, either outright or conditionally, in the medium and high density residential zones are listed in Table 19.302.2 below. Similar uses not listed in the table may be allowed through a Director's Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the "Standards/Additional Provisions" column.

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

## Proposed Code Amendment

Table 19.302.2 Medium and High Density Residential Uses Allowed						
Use	R-3	R-2.5	R-2	R-1	R-1-B	Standards/ Additional Provisions
<b>Accessory and Other Uses</b>						
Agricultural or horticultural use	P	P	P	P	P	<b>Subsection 19.302.3</b> Use Limitations and Restrictions
Home occupation	P	P	P	P	P	<b>Section 19.507</b> Home Occupation Standards

P = Permitted.

### 19.302.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
  2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock.
  3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Office uses allowed in the medium and high density zones are offices, studios, clinics, and other similar professional offices. Corporate offices for marijuana businesses are permitted provided that no marijuana or marijuana products associated with the business are onsite.
- C. Marijuana production is not permitted in medium and high density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the following standards:
    - a. The security and odor control standards set for in Subsection 19.509.2.
    - b. No more than 12 mature medical marijuana plants may be grown on a lot or parcel of land.

**Note: the City Attorney has noted that someone may be able to argue for preemption since state law allows growers that had more than 12 plants prior to 1/01/15 to have up to 24 plants**
  2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

## Proposed Code Amendment

### 19.303 COMMERCIAL MIXED-USE ZONES

#### 19.303.2 Uses

Table 19.303.2 Uses Allowed in Commercial Mixed-Use Zones			
Uses and Use Categories	GMU	NMU	Standards/Additional Provisions
<b>Commercial<sup>3, 4</sup></b>			
<p>General Office</p> <p>General office means professional, executive, management, or administrative or administrative offices of firms or organizations.</p> <p>Examples include professional services such as lawyers, architects, or accountants; financial businesses such as lenders, credit unions, or real estate agents; sales offices; offices for testing and research-related businesses, and medical and dental clinics.</p>	P	P	<b>Subsection 19.303.6.C</b> Marijuana testing and research facilities
<p>Retail-oriented sales</p> <p>Sales-oriented retail firms are involved in the sale, leasing, and rental of new or used products to the general public. Examples include stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.</p>	P	P	
<p>Marijuana retailer</p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p>	P	P	<b>Subsection 19.303.6.A</b> Marijuana retailers

## Proposed Code Amendment

Manufacturing and Production			
<p>Manufacturing and production.<sup>8</sup></p> <p>Manufacturing and production uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; marijuana processors; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p> <p>Marijuana production is prohibited.</p>	P	P	<p><b>Subsection 19.509.2</b> Security and odor control for certain marijuana businesses</p> <p><b>Subsection 19.509.3</b> Energy use for certain marijuana business</p>

P = Permitted.

3. In the NMU Zone, unless otherwise specified in this section, all nonresidential uses listed in Table 19.303.2 shall be no greater than 10,000 sq ft in area per use. A nonresidential use greater than 10,000 sq ft in area may be approved through a conditional use review pursuant to Section 19.905.
4. The 10,000 sq ft size limitation in Footnote 3 of Table 19.303.2 does not apply to "retail-oriented sales" uses established within the existing lot and building situated at 4320 SE King Rd, within the lot's boundaries that exist on February 13, 2016, the effective date of Ordinance #2112. Redevelopment of the site is subject to all standards of Table 19.303.2.
8. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on the site would not be considered manufacturing or production.

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### 19.303.6 Additional Provision

Depending on the type and use of development proposed, the following sections of the Milwaukie Municipal Code may apply. These sections are references for convenience, and do not limit or determine the applicability of other sections within the Milwaukie Municipal Code.

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## 19.304 DOWNTOWN ZONES

### 19.304.2 Uses

Table 19.304.2 Downtown Zones—Uses			
Uses and Use Categories	DMU	OS	Standards/ Additional Provisions
<b>Commercial</b>			
Production-related office	P/CU	N	<b>Subsection 19.304.3.A.2</b>

## Proposed Code Amendment

<p>Production-related office uses are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products.</p> <p>Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers, and medical and dental labs.</p>			<p>Main St limitations  <b>Subsection 19.304.3.A.3</b>  Commercial use limitations  <b>Subsection 19.509.2</b>  Security and odor control for certain marijuana business  <b>Section 19.905</b> Conditional Uses  Note: Production, processing, packaging, and assembly uses must meet the standards listed below under Manufacturing.</p>
<p>Marijuana retailer</p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p>	P/CU	N	<p><b>Subsection 19.509.1</b>  Standards for Marijuana Retailers</p>
<b>Manufacturing</b>			
<p>Manufacturing and production</p> <p>Uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; marijuana processors; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments (including musical instruments), vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p>	P	N	<p><b>Subsection 19.304.3.A.7</b>  Manufacturing and production limitations  <b>Subsection 19.509.2</b>  Security and odor control for certain marijuana businesses  <b>Subsection 19.509.3</b> Energy use for certain marijuana businesses</p>

P = Permitted.

N = Not permitted.

CSU = Permitted with community service use approval subject to provisions of Section 19.904. Type III review required to establish a new CSU or for major modification of an existing CSU. Type I review required for a minor modification of an existing CSU.

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**Proposed Code Amendment**

CU = Permitted with conditional use approval subject to the provisions of Section 19.905. Type III review required to establish a new CU or for major modification of an existing CU. Type I review required for a minor modification of an existing CU.

**19.304.3 Use Limitations, Restrictions, and Provisions**
**A. Use Limitations and Restrictions**

The following provisions describe the limitations for uses listed in Table 19.304.2.

7. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on-site would not be considered manufacturing or production. Marijuana production is prohibited.

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**19.306 LIMITED COMMERCIAL ZONE C-L**

In a C-L Zone the following regulations shall apply:

**19.306.1 Uses Permitted Outright**

In a C-L Zone the following uses and their accessory uses are permitted outright:

- B. Offices for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- F. Marijuana retailer subject to the standards of Subsection 19.509.1.

**19.306.2 Conditional Uses Permitted**

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

**19.306.3 Standards**

In a C-L Zone the following standards shall apply:

- L. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. :

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**19.307 GENERAL COMMERCIAL ZONE C-G**

In a C-G Zone the following regulations shall apply:



## Proposed Code Amendment

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### 19.307.1 Uses Permitted Outright

In a C-G Zone the following uses and their accessory uses are permitted outright:

- B. Offices for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;
- Y. Marijuana retailer subject to the standards of Subsection 19.509.1;

### 19.307.2 Conditional Uses Permitted

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

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### 19.307.3 Standards

In a C-G Zone the following standards shall apply:

- M. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2.

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## 19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS

In a C-CS Zone the following regulations shall apply:

### 19.308.1 Uses

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:
  1. Department store uses;
  2. Drug and/or variety store uses;
  3. Food supermarket;
  4. Retail specialty shops.
- B. Such center may include the following additional uses:
  7. Marijuana retailer subject to the standards of Subsection 19. 509.1;

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## 19.309 MANUFACTURING ZONE M

### 19.309.2 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

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**Proposed Code Amendment**

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.
- G. Marijuana retailers are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection 19.509.1.

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**19.309.7 Special Development Standards**

The following development standards apply to specified uses in the M Zone.

- A. Marijuana Businesses
  - 1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1
  - 2. Marijuana production facilities are permitted only on properties zoned for M-Manufacturing use that are located to the east of 43rd Ave and within 1,000 feet of Johnson Creek Blvd. The use is prohibited in other locations.
  - 3. Marijuana producers and processors shall be subject to the security and odor control standards of Subsection 19.509.2 and the energy use standards of Subsection 19.509.3.
  - 4. Marijuana testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.

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**19.310 BUSINESS INDUSTRIAL ZONE BI**
**19.310.2 Uses Permitted Outright**

- A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.310.6.
  - 1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site (marijuana testing or research shall also be subject to the security and odor control standards of Subsection 19.509.2);

## Proposed Code Amendment

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2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;
- C. Warehousing and distribution (marijuana warehousing shall be subject to the security and odor control standards of Subsection 19.509.2).

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### 19.310.5 Conditional Uses

- B. Uses allowed subject to the above conditions are:
4. Marijuana producers and processors. Marijuana producers and processors shall also be subject to the security and odor control standards of Subsection 19.509.2 and the energy use standards of Subsection 19.509.3.
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## 19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA

### 19.312.2 Use Categories

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a "P." A "C" in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An "L" indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director determination application per Subsection 19.903 to resolve the issue.

<b>Table 19.312.2 M-TSA Zone Uses</b>	
Use Category	Status
<b>G. Limited Uses</b>	
<p>This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.</p> <p>3. Marijuana Businesses</p> <p style="padding-left: 20px;">This subcategory applies to processing, warehousing, testing, research, and retail sales of marijuana at State-licensed facilities. Marijuana producers are prohibited.</p>	L

P = Permitted.

L = Limited.

C = Conditional use.

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### 19.312.6 Standards for Limited Uses

The following standards apply to those uses listed as limited (L) in Table 19.312.2.

- B. Marijuana Businesses
1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1

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**Proposed Code Amendment**


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2. Marijuana processors shall be subject to the security and odor control standards of Subsection 19.509.2 and the energy use standards of Subsection 19.509.3.
  3. Marijuana testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.
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## **CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS**

### **19.507 HOME OCCUPATION STANDARDS**

It is the intent of these regulations to support and encourage home occupations but at the same time protect the residential character of the City's residential neighborhoods. A home occupation shall be allowed as an accessory use to all residential uses permitted by right, subject to the following restrictions. Home occupation businesses, which are not clearly accessory and incidental to the residential use, are prohibited. All activities permitted under this section must be consistent with this section.

#### **19.507.2 Prohibitions and Use Restrictions**

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

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

#### **19.509.1 Standards for Marijuana Retailers**

- A. A marijuana retailer shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. In addition, a marijuana retailer shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites nor within 1,000 ft of another marijuana retailer.
- B. A marijuana retailer shall not be collocated with another business except when collocated with another state-licensed marijuana business as permitted by state laws.
- C. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.
- D. The hours of operation for marijuana retailer shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
- E. No drive-through sales are permitted.

## Proposed Code Amendment

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### 19.509.2 Security and Odor Control for Certain Marijuana Businesses

- A. The operation shall be entirely indoors, within a fully-enclosed, secure building meeting building codes adopted by the City of Milwaukie and all other applicable state regulations.
- B. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for production, processing, testing, research, and warehousing. Negative air pressure shall be maintained within the rooms. Exhaust outlets shall be a minimum of 25 feet from a property line.
- C. An alternative odor control system may be approved by the building official based on a report by a mechanical engineer licensed by the state of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

### 19.509.3 Energy Use for Certain Marijuana Businesses

Marijuana production facilities and marijuana processors shall demonstrate during the business registration process that their electrical energy source is from 100% renewable energy.

Note: The City Attorney has concerns about applying this standard to marijuana processors and in placing it in the development code as opposed to the business license section of the Municipal Code.

## **Regulating Recreational Marijuana Background Paper**

Prepared by Drew DeVitis, City of Milwaukie Planning Intern  
December 2015

### **I. Legislative Background**

In November 2014, Oregon voters approved Ballot Measure 91, Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act which “allows possession, manufacture, sale of marijuana by/to adults, subject to state licensing, regulation, taxation.”

In the 2015 legislative session, the Oregon State Legislature passed a series of bills regarding recreational and medical marijuana, clarifying Measure 91 and previous medical marijuana legislation. The most significant piece of legislation, House Bill 3400 (the Omnibus Bill), expands upon the framework of Measure 91 and Oregon Medical Marijuana Act (codified at ORS 475.300 through 475.346).

In October 2015, the Oregon Liquor Control Commission (OLCC) adopted temporary rules to regulate the recreational marijuana industry in Oregon. The application process for recreational marijuana business licenses will begin January 4, 2016, and the OLCC estimates that first recreational retail facilities will be open in the third quarter of 2016. Recreational facilities authorized under the new legislation include retail outlets, grow sites, processing, warehousing, and laboratory/testing.

This memo provides an overview of legislative measures and state rules adopted in 2015, and the options these provide the City of Milwaukie to regulate recreational marijuana. Specifically, this memo examines the types of recreational marijuana activities authorized by State statute, the restrictions State law places on each type of activity, and the options the City of Milwaukie has to regulate marijuana facilities.

### **II. Overview of HB 3400**

#### **A. Primary Objectives**

1. Sets guidelines for the OLCC to regulate the production, processing, and sale of retail marijuana products.
2. Clarifies the categories of commercial marijuana activity (producer/grower, processor, wholesaler, and retailer) and rules that govern them.
3. Establishes additional rules and processes under the jurisdiction of the Oregon Health Authority (OHA) to regulate the production, processing, and sale of medical marijuana.
4. Does not preempt cities from adopting further regulations on recreational marijuana commercial activity related to taxation, business licensing, and land use.

#### **B. Categories of Recreational Marijuana Establishments**

- **Production/Growing** – manufacturing, planting, cultivation, growing or harvesting of marijuana in Oregon.

- **Processing** – processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts; excluding packaging or labeling.
- **Wholesaling** – purchasing and distribution of marijuana items in Oregon for resale to a person other than a consumer in Oregon.
- **Retail Store/Dispensary** – selling marijuana items to a consumer in Oregon.
- **Laboratory** – testing marijuana items for pesticides, solvents or residual solvents, cannabidiol concentration, and for microbiological or other contaminants.

#### C. Local Opt Out Provision

HB 3400 contains a local "opt out" provision whereby a city may adopt an ordinance to prohibit the establishment of medical marijuana dispensaries, recreational retail sites, producers, processors, and/or wholesalers.

- A city in which at least 55 % of the voters cast a ballot in opposition to Measure 91 can adopt such ordinances at any time, but no later than 180 days after the effective date of the Act, January 1, 2016.
- Cities with less than 55 % of the votes cast in opposition to measure 91 must refer any ordinance the prohibiting commercial marijuana activity to the November 2016 ballot.
- In Milwaukie, only 35.4 % of voters cast a ballot in opposition to Measure 91. This percentage means a city-wide vote would be required in order to prohibit any of the types of marijuana businesses within the city limits.

#### D. Retail Taxation

House Bill 2041 imposes a 17 % point of sale state tax on recreational marijuana products, which will yield estimated revenue of \$10.7 million in the 2015-17 biennium. Cities will receive 10% of the tax proceeds. The full distribution formula provides 40% to the Common School Fund, 25% to substance abuse treatment and prevention, 15% to the Oregon State Police, and 10% each to cities and counties to help enforce Measure 91.

#### E. Local Option Tax

Under HB 3400, cities may adopt an ordinance imposing a tax or fee on the sale of marijuana items that are sold in the area subject to the jurisdiction of the city. Such an ordinance must first be referred to the electors of the city on the November 2016 ballot, and the ordinance may not impose a tax or fee in excess of 3%. HB 3400 states that if a city prohibits any type of marijuana business it is not eligible to receive marijuana tax revenues.

### IV. OLCC Rules – OAR 845-025

#### A. Approach

In October 2015, the OLCC adopted temporary administrative rules that establish the state permitting process for businesses involved in the retail sale, production, processing, transportation and delivery of marijuana and marijuana products. The administrative rules place limits on the ability of cities and counties to regulate recreational marijuana facilities and outline "reasonable regulations." These include time, manner, and place requirements such as the hours of operation and where the facilities may locate.

The OLCC is scheduled to begin the application process for the production, processing, wholesale and retail of recreational marijuana on January 4, 2016. OLCC estimates that recreational marijuana retailers will be open to the public sometime late summer/early fall of 2016.

Prior to acting on an application, the OLCC must receive a land use compatibility statement (LUCS) from a city or county that authorizes land use in the city or county in which the applicant's proposed facility is located. A proposed use must be compatible with the local jurisdiction's comprehensive plan and land use regulations.

## **B. Land Use and Zoning Provisions for Retail Marijuana**

OAR 845-025 details land use requirements regarding each recreational marijuana business category, which are compiled below. These rules do not preempt the City of Milwaukie's ability to place additional land use restrictions on retailers, producers, processors, wholesalers, and/or testing laboratories if it may wish to do so. HB 3400 stipulates that "cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur."

As a general rule, a licensed premise may not be located at the same physical location or address as medical marijuana grow site, medical marijuana processing, medical marijuana dispensary or liquor licensee licensed by OLCC. Two recreational marijuana licensees may co-locate, however. The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

### **Producer:**

- Marijuana is a crop for the purposes of "farm use" as defined in ORS 215.203; "farm" and "farming practice," both as defined in ORS 30.930; a product of farm use as described in ORS 308A.062; and product of an agricultural activity for purposes of ORS 568.909.

### **Retailer:**

- Retailers may not be located within 1,000 ft of: a public elementary or secondary school for which attendance is compulsory under ORS 339.020; or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030.
- The OLCC rules do not require a 1,000 ft buffer between recreational marijuana retailers. This is unlike the rules governing medical marijuana under ORS 475, which require a 1,000 ft separation between dispensaries.
- Retailers may not be located in an area that is zoned exclusively for residential use. It is assumed this means that retailers are allowed in mixed-use districts.
- Retailers may only sell to consumers between the hours of 7:00 a.m. and 10 p.m. local time.

### **Processor:**

- The proposed licensed premises of a processor who has applied for an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.



**Wholesaler:**

- The proposed licensed premises of a wholesaler applicant may not be located in an area zoned exclusively for residential use.

**V. Existing City Zoning Requirements**

With adoption of the new GMU (General Mixed Use) and NMU (Neighborhood Mixed Use) zones, the City has 9 zones where marijuana businesses are permitted in some form. The table below outlines where each of the different types of marijuana businesses are allowed in the City.

**Where Marijuana Businesses are Permitted Based on Existing Milwaukie Zoning**

<b>Zone</b>	<b>Retail<sup>1</sup></b>	<b>Processing</b>	<b>Wholesale</b>	<b>Grow Sites</b>	<b>Laboratory</b>
<b>DMU</b>	P/CU <sup>5</sup>	P	N	N	P <sup>4</sup> /CU <sup>5</sup>
<b>C-G</b>	P	N	N	CU	P
<b>C-CS</b>	P	N	N	N	P
<b>C-L</b>	P	N	N	CU	P
<b>C-N</b>	CU	N	N	N	N
<b>M</b>	P <sup>2</sup>	P	P <sup>2</sup>	N	P <sup>2</sup>
<b>M-TSA</b>	P <sup>2</sup>	P	P	N	P
<b>BI</b>	N	P	P	N	P
<b>GMU</b>	P	P <sup>3</sup>	N	N	P <sup>4</sup>
<b>NMU</b>	P	P <sup>3</sup>	N	N	P <sup>4</sup>

<sup>1</sup> 1,000 ft buffer from schools must be met, and 1,000 ft buffer from medical marijuana dispensaries

<sup>2</sup> Provided the use is accessory to the primary industrial use

<sup>3</sup> Provided the use is accessory to the primary retail use

<sup>4</sup> Provided the use operates as production-related office use

<sup>5</sup> Size limitations apply – conditional use over 20,000 sq ft in size

**P - Permitted    P – Not Permitted    CU – Conditional Use**

**VI. Other Research**

While Tigard and Tualatin passed an ordinance regulating recreational marijuana before HB 3400 was signed into law, other cities in Oregon have just begun the process of drafting zoning code amendments that specify regulations for recreational production, retail, wholesale, processing, and laboratory activities. In the appendix are summaries of zoning code amendments to regulate recreational marijuana activities that have either been adopted or proposed by Oregon municipalities.

**VI. Issues for Discussion****A. Taxation**

If the Milwaukie City Council chooses to levy a tax on recreational marijuana sales, it will have to refer the measure to electors on the November 2016 ballot. If the tax is approved by voters, Milwaukie Municipal Code (MMC) Subsection 5.55 will need to be amended. As detailed in H.B.

3400, a local options tax on recreational marijuana can be no more than 3%. MMC 5.55.025 currently states “every seller engaged in the sale of marijuana and marijuana-infused products shall pay a tax of 10% of the gross sale amount paid to the seller of marijuana and marijuana-infused products”.

Additional analysis may be necessary to determine the cost implementing and administering a 3% tax on recreational marijuana sales. There may be opportunities available for the state to collect the tax on the City’s behalf, since it will already be levying a 17% tax on recreational sales.

## **B. Recreational Ban**

If the City Council chooses to place a temporary ban on any or all recreational marijuana activities, it must do so within 180 days of the effective date of HB 3400 (January 1, 2016), and refer the question to electors on the November 2016 ballot.

## **C. Regulations**

Under HB 3400, OLCC rules, and home rule authority, the city has a number of options for regulating marijuana. The City Council has substantial discretion to choose the best course of action for Milwaukie. Regarding land use, the City Council may adopt restrictions for recreational marijuana activities based on land use compatibility and regulate nuisance aspects of establishments that sell marijuana to consumers. As the land use restrictions outlined by OLCC are not very prescriptive, the Council may consider further action to restrict recreational marijuana activities in certain zones and/or impose additional buffers.

Current MMC regulations for medical marijuana stipulate that a facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector-Campbell school sites. Also, a medical marijuana facility shall not be co-located with another business.

Regarding hours of operation, the MMC sets the hours of operation for medical marijuana facilities to be limited to the hours between 8:00 a.m. and 10:00 p.m. OLCC rules permit recreational marijuana facilities to be open as early as 7:00 a.m. and close as late as 10:00 p.m. Some municipalities in Oregon have restricted retail sales to between 10:00 a.m. and 8:00 p.m.

Regarding store design, the MMC states that the display of marijuana or marijuana products that are visible from outside of the facility is prohibited. This requirement to obscure activity into marijuana facilities does not match the City's storefront window requirements, however, particularly for retail facilities in the DMU and GMU Zones.

## **D. Business Licenses**

The City may also require a special business license for recreational marijuana facilities. Such a course of action is a useful tool for identifying certain types of businesses that are operating within the community. Research has found that some communities in Colorado that allow recreational marijuana activity require local business licenses in addition to state licenses. On a local level, Beaverton requires a medical marijuana facility license application, which has a \$100 fee for the initial application, and \$75 for a renewal.



## **Appendix – Oregon Regulation Case Studies**

### **Tigard, OR**

In May 2015, the City of Tigard preemptively passed an ordinance amending its Development Code to accommodate recreational marijuana for both retail and non-retail uses. The code implemented:

- Prohibits marijuana facilities within the MU-CBD Zone.
- Limits commercial retail activity to the hours between 10:00 am and 8:00 pm.
- Sets a buffer of 2,000 feet between licensed retail or wholesale marijuana facilities within or outside of city limits.
- Sets a buffer of 500 feet from for public libraries, park and recreation for retail facilities.
- Sets a buffer of 500 feet from residential zones, park and recreation zones, and public libraries for all non-retail and wholesale facilities.

### **Tualatin, OR**

In March 2015, the City of Tualatin preemptively passed an ordinance amending its Development Code to accommodate recreational marijuana for both retail and non-retail uses. The code sets the following standards:

- Marijuana facilities cannot be located within 3,000 feet of residential areas, parks, schools, and libraries
- Marijuana facilities cannot be located within 2,000 feet of another marijuana facility
- Marijuana facilities must be located in a permanent building that cannot exceed 3,000 square feet in size
- Retail sales and medical dispensary marijuana facilities cannot co-locate with any other marijuana facility
- Retail sales and medical dispensary marijuana facilities are restricted to operating between of 10:00 a.m. and 8:00 p.m

### **Bend, OR**

The Bend City Council established a Marijuana Technical Advisory Committee, which has recommended adoption of a marijuana ordinance to amend the Bend Development Code. Key provisions of the ordinance include:

- The addition of definitions related to marijuana, including cannabinoid product, marijuana grow sites, marijuana processing, marijuana recreational retailer, etc.
- Designates permitted and conditional uses for recreational marijuana for Commercial, Mixed-Use and Industrial zones. Aside from size square footage requirements, all categories are generally permitted in these zones.
- Prohibits marijuana businesses in residential and neighborhood commercial zones.
- Creates a new section under nonresidential uses which details marijuana businesses. This includes the applicability and procedure for establishing marijuana businesses within the jurisdiction, and the standards that apply to retail sale, production, processing, wholesaling and testing of medical and recreational marijuana.
- For recreational marijuana facilities, the only additional buffer the City of Bend applies is that facilities cannot be within 150 feet of a licensed child care facility.

### **Hillsboro, OR**

The City of Hillsboro Planning Commission is considering the following regulations as part of its development code amendments for recreational marijuana facilities:

- Prohibits producers, processors, wholesalers, and testing laboratories to locate in any Commercial Zone, restricting these activities to Industrial General, Industrial Park, and Industrial Sanctuary.
- Allows retailers in Commercial General, Station Community Commercial, and Industrial General.
- Proposes 1,000 foot buffers from public plazas and active use parks for retail marijuana facilities.
- Proposes 100 foot buffers from Residential, Mixed-Use, Urban Center, and Institutional Zones for production, processing, and wholesale facilities.

### **Ashland, OR**

On December 1, 2015, the City of Ashland adopted a zoning code amendment that regulates recreational retail, growing, processing, testing, and wholesale marijuana facilities. It restricts facilities to a few zones within the city and places moderate buffer requirements on facilities. Specifically, the ordinance:

- Allows marijuana retail sales as a special and conditional use in the Retail Commercial (C-1) and Employment (E-1) zones and allows growing, processing, testing, and wholesale operations as special permitted uses in the E-1, Industrial (M-1), and Croman Mill (CM) zones.

- Sets spacing standard of 1,000 feet between marijuana retail sales establishments and 1,000 feet from a school.
- Requires growing, processing, and laboratory operations to locate 200 feet or more from residential zones.
- Sets a square footage limitation of 5,000 square feet of gross floor area for indoor commercial growing.