



## AGENDA

### MILWAUKIE PLANNING COMMISSION Tuesday, January 26, 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 May 26, 2015
  - 2.2 June 9, 2015
- 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: Appeal of Code Interpretation CI-2015-002  
Applicant: Onsite Advertising Services, LLC  
Address: 2200 SE Mailwell Dr  
File: AP-2016-001  
Staff: Brett Kelper
- 6.0 Worksession Items**
  - 6.1 Summary: Recreational Marijuana Code Amendments  
Staff: Denny Egner
- 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:**
  - February 9, 2016
    - 1. Public Hearing: ZA-2015-003 Short-term Rentals
    - 2. Public Hearing: MLP-2015-004 10722 SE 55<sup>th</sup> Ave *tentative*
    - 3. Worksession: Housekeeping Amendments *tentative*
  - February 23, 2016
    - 1. Public Hearing: MLP-2015-006/VR-2015-007 Rockwood St Partition
    - 2. Public Hearing: CSU-2015-008 Northwest Housing Alternatives *tentative*

### 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  
Li Alligood, Senior Planner  
Brett Kelver, Associate Planner  
Vera Kolias, Associate Planner  
Alicia Martin, Administrative Specialist II

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, May 26, 2015  
6:30 PM**

**COMMISSIONERS PRESENT**

Sine Bone, Chair  
Shannah Anderson  
Scott Barbur  
Greg Hemer

**STAFF PRESENT**

Denny Egner, Planning Director  
Vera Kolas, Associate Planner  
Peter Watts, City Attorney

**COMMISSIONERS ABSENT**

Shaun Lowcock, Vice Chair

**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.ci.milwaukie.or.us/meetings>.*

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

**Denny Egner, Planning Director**, noted that the following Monday was the final open house for the Monroe Street Neighborhood Greenway Concept Plan.

The first open house for the Neighborhood Main Streets phase of the Moving Forward Milwaukie project was scheduled for the following Thursday.

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

**5.0 Public Hearings**

- 5.1 Summary: Moving Forward Milwaukie Central Milwaukie Plan and Code  
Amendments #3  
Applicant: City of Milwaukie  
File: CPA-2015-001  
Staff: Vera Kolas and Denny Egner

**Chair Bone** called the continued hearing to order and read the conduct of legislative hearing format into the record.

**Vera Kolas, Associate Planner**, presented the staff report via PowerPoint. She noted the project goals and that tonight's discussion would focus on key questions and direction from the Commission at the previous hearing.

**Ms. Kolias** reviewed the direction received at the previous meeting that included the Flex Space Overlay zone to be on the entire Murphy site; 3+ acre development would trigger the preliminary circulation plan review; Type I review for development with notification to Neighborhood District Associations, with Type II and III available for variances to design standards; and corner design standards should be limited to identified key corners.

Key questions for discussion:

- Should the proposed design and development standards apply to flex space development in the Flex Space Overlay?
- Which corners should be designated key corners?
- Which building facades should be subject to the exterior building materials design standards?
- What information should be included in the preliminary circulation plan?

**Flex Space:**

Feedback from the Commission was that development on a public street should meet high development standards, but that there should be some flexibility to those standards for flex space development. Ms. Kolias reviewed the options and compared the proposed design standards with the suggested standards from Daniel Heffernan, a representative for the Murphy site owners, and noted staff's response for each. She reviewed what would trigger a public street with development on the Murphy site, which focused on trip generation.

**Key Corners:**

**Ms. Kolias** reviewed the standards for corners and which corners the Commission had noted as potential key corners.

**Preliminary Circulation Plan:**

The purpose of the circulation plan was to review the proposed site's access and circulation plan to ensure that the policies of the Transportation System Plan (TSP) were considered and implemented, including multimodal access. The proposed contents of a circulation plan included land uses, structures, multimodal circulation, parking, open areas, trees to be preserved, and utility connections. The approved circulation plan could go through review again should it change through the development process.

**Chair Bone** called for public testimony.

**Bernie Stout, 4647 SE Ada Ln**, was concerned about general population growth in Milwaukie and asked how this project may expand it. He inquired if there were plans regarding improved connections between Central Milwaukie and the light rail station, particularly if the Murphy and McFarland sites were developed.

- **Chair Bone** responded that, regarding population growth, there were no proposals that increased or decreased residential density for Central Milwaukie or Downtown.
- **Mr. Egner** noted the maximum residential units allowed per site. He added that TriMet was developing its service enhancement plan that would increase bus service between central Milwaukie and downtown. The City was interested in increasing safe crossings throughout the city but funding was needed for those improvements.

**Sharon House, 4207 SE Aldercrest Rd**, inquired about code enforcement for window coverings in downtown Milwaukie.

- **Mr. Egner** noted that this issue did not apply to the Central Milwaukie public hearing. He acknowledged that there were many violations in downtown but the capacity to enforce on those was very limited.
- **Chair Bone** responded that she agreed with the concern but the Commission was not the correct venue. Perhaps addressing the concern to Council would be the correct path.
- **Mr. Watts** noted that Code Enforcement was an administrative function and so prioritization of time was up to City Council and City Manager. It was not under the purview of the Planning Commission.

**Daniel Heffernan**, represented the owners of the Murphy site, and generally supported the proposals but addressed a few issues. He felt rooftop equipment screening was not necessary due to the height and size of the buildings would be large enough to screen equipment. He was in support of adopting the base zone design standards but to revise them for flex space later on and allow for Type II review for flex space development. The FAR should be 0.3:1 rather than 0.5:1, which was more in line with other flex space industrial areas. Although a façade on a public street could be accomplished, access would need to be from the back of the building. Additionally, glazing requirements would result in entrances being pushed to the back or side of the building.

- **Chair Bone** noted that the community feedback supported higher design standards to ensure that development looked good, so it was difficult to reduce the standards.
- **Commissioner Lowcock** responded that it was the market that made the determination. There was enough code in place that standards could still be controlled.
- **Commissioner Hemer** noted that any development on 32<sup>nd</sup> Ave should meet the proposed design standards. However, even if a public street was triggered for the internal area of the Murphy site, those standards were not as critical to apply since the traffic would be local to the flex space.

**Ms. Kalias** noted that although staff recognized how typical flex space was developed and designed, the proposals were developed as a result of community input, to reflect the vision, and to reflect that the area was in close proximity to residential and commercial uses; it was not within an industrial park. The issues raised seem to focus on the development standards, such as how and where the building sat on the site, rather than with the design standards like exterior materials, etc.

**Mr. Egner** reminded the Commission that the proposed amendments for the Transportation System Plan (TSP) included bikeways through the Murphy site as opposed to along 32<sup>nd</sup> Ave. This was a result of community feedback that a bikeway along 32<sup>nd</sup> Ave was not desired due to its narrowness and safety concerns. Bikeways along with flex space on this site provided challenges and would require a unique design but the circulation should assist with forming the development.

**Chair Bone** closed public testimony.

**The Commission** entered into deliberation, beginning with key questions 2-4 and returning to key question 1.

**Key Corners – The Commission** agreed with the proposed key corners. **Commissioner Hemer** added that 37<sup>th</sup> Ave and Monroe St should be a key corner if it were to be developed.

**Building Facades – The Commission** agreed with the proposed amendments and that the standards should be consistent with the downtown standards.

**Circulation Plan – The Commission** agreed with the proposed required elements of the preliminary circulation plan.

**Flex Space –**

- **Commissioner Hemer** proposed that flex space use development should not be subject to public street design standards but for frontage along 32<sup>nd</sup> Ave.
- **Ms. Kolias** proposed to clarify the few specific standards that should be different for flex space development, rather than having no standards within the site.
- **Mr. Egner** noted that regardless of if the development was along a private accessway, quality development was important.
- **The Commission** agreed that the separate design and development standards should only apply to flex space uses beyond those uses allowed in the General Mixed Use zone.
- Regarding location of parking, staff would bring options back to the Commission to review.
- **The Commission** agreed to lower the Floor Area Ratio to 0.3:1.

**It was moved by Commissioner Hemer and seconded by Commissioner Anderson to continue the hearing for CPA-2015-001 for the Moving Forward Milwaukie Central Milwaukie Plan and Code Amendments to a date certain of June 9, 2015. The motion passed unanimously.**

**6.0 Worksession Items**

**7.0 Planning Department Other Business/Updates**

**8.0 Planning Commission Discussion Items**

**9.0 Forecast for Future Meetings:**

- |               |  |
|---------------|--|
| June 9, 2015  | 1. Public Hearing: NR-2015-001 Winsor Ct Addition  |
|               | 2. Public Hearing: CPA-2015-001 MFM Central Milwaukie Plan and Code Amendments #4 <i>tentative</i> |
|               | 3. Worksession: Planning Commission Ethics Training Session  |
| June 23, 2015 | 1. Public Hearing: CSU-2015-004 Spring Park Natural Area Restoration <i>tentative</i>              |

Meeting adjourned at approximately 8:23 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

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Sine Bone, Chair

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, June 9, 2015  
6:30 PM**

**COMMISSIONERS PRESENT**

Sine Bone, Chair  
Shaun Lowcock, Vice Chair  
Shannah Anderson  
Greg Hemer

**STAFF PRESENT**

Denny Egner, Planning Director  
Li Alligood, Senior Planner  
Vera Koliias, Associate Planner  
Peter Watts, City Attorney

**COMMISSIONERS ABSENT**

Scott Barbur

**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.ci.milwaukie.or.us/meetings>.*

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

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

**5.0 Public Hearings**

- 5.1 Summary: Winsor Ct Addition  
Applicant/Owner: Jeff and Shauna Walker  
Address: 5256 SE Winsor Ct  
File: NR-2015-001, VR-2015-002  
Staff: Li Alligood

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

**Li Alligood, Senior Planner**, presented the staff report via PowerPoint. She reviewed the proposal of the addition in a Water Quality Resource (WQR) area and the variance request for the street side yard setback. She noted the identified alternatives and staff agreed that the proposal was the most practicable. The function of the street side yard setback did not apply to this property. Staff recommended approval with the findings and conditions.

**Chair Bone** called for the applicant's testimony.

**Jeff Walker, 5256 SE Winsor Ct**, noted he also planned to add native plantings in the area between his property and his neighbor's property. He thanked staff.

**Chair Bone** closed public testimony.

**The Commission** agreed with staff recommendation and appreciated the application as it would add native plantings to the area.

**It was moved by Commissioner Hemer and seconded by Vice Chair Lowcock to approve NR-2015-001 and VR-2015-002 for 5256 SE Winsor Ct with the findings and conditions as presented. The motion passed unanimously.**

- 5.2 Summary: Moving Forward Milwaukie Central Milwaukie Plan and Code Amendments #4 (continued from 5/26/15)  
Applicant: City of Milwaukie  
File: CPA-2015-001/ZA-2015-001  
Staff: Vera Kalias and Denny Egner

**Chair Bone** called the continued hearing to order and read the conduct of legislative hearing format into the record.

**Vera Kalias, Associate Planner**, presented the staff report via PowerPoint. She reviewed the project background and goals. She noted the direction from the Commission received at the previous hearing regarding design standards for key corners, public street façade requirements, and preliminary circulation plan requirements.

**Ms. Kalias** noted the key question for review was regarding which design and development standards should apply to flex space development in the Flex Space Overlay area. She compared the differences between development standards for the General Mixed Use (GMU) zone and the Flex Space Overlay, including parking, floor area ratio, maximum setback, frontage and frontage occupancy, and review type.

In response to direction for flexibility for flex space, the proposal was that flex space development would be subject to the same design standards as in the GMU, except for the primary entrance requirement to be on the front property line, and development that abuts residential properties shall include a landscaped screening buffer. In addition, flex space development would be required to use landscaping to separate vehicle and bike/pedestrian accessways into and through the site. She displayed some examples of flex space development that would not meet the project's goals, and development in the Business Industrial (BI) zone that would meet the standards and goals.

**Chair Bone** called for public testimony.

**Daniel Heffernan**, 2525 NE Halsey, represented the Murphy site property owners. He was concerned about the maximum 50 ft setback requirement and how much landscaping would be required within that 50 ft.

- **Ms. Kalias** responded that, for the example displayed, the BI zone called for a perimeter of landscaping around parking with a minimum setback.
- **Commissioner Hemer** asked if Mr. Heffernan thought double-bay parking would be more desirable, and what his preferred setback would be.

**Mr. Heffernan** responded that the parking depended on the tenant, and if development was being built to spec rather than to suit, it would be built to the maximum allowed. He preferred that the measurement for the 50 ft setback exclude the landscaped strip.

**Commissioner Hemer** asked about green building bonuses for building height, and if there were industrial green building standards.

- **Ms. Kalias** replied that there would be a building height bonus for either a story of

residential or for green building certifications.

- **Commissioner Lowcock** noted that there were industrial green building standards; the certifications had been expanded to include more uses.

**Chair Bone** closed public testimony.

**The Commission agreed** that staff's recommendations for the key issues and that the proposal for flex space development met the goal for flexibility.

**It was moved by Commissioner Hemer and seconded by Commissioner Anderson to continue the public hearing for CPA-2015-001 and ZA-2015-001 for Central Milwaukie Plan and Code Amendments to a date certain of July 14, 2015. The motion passed unanimously.**

## 6.0 Worksession Items

## 7.0 Planning Department Other Business/Updates

**Denny Egner, Planning Director**, noted that staff was in the process of applying for a Transportation Growth Management (TGM) grant from the State for a study of intersections on Hwy 224 for improved pedestrian and bicycle safety crossings. This was a Transportation System Plan project and was reiterated through the Monroe Street Neighborhood Greenway project. He asked for a statement of support from the Commission to include in the grant application.

**The Commission** agreed to support the grant application.

## 8.0 Planning Commission Discussion Items

**Commissioner Hemer** invited the Commission, public, and City staff to attend a ceremony at the Milwaukie Pioneer Cemetery for new headstones for Yakima War and Civil War veterans.

## 9.0 Forecast for Future Meetings:

- |               |   |
|---------------|---|
| June 23, 2015 | 1. Public Hearing: CSU-2015-004 Spring Park Natural Area Restoration <i>tentative</i> |
|               | 2. Worksession: Land Use Training Agenda Review                                       |
| July 14, 2015 | 1. Public Hearing: MFM Central Milwaukie Plan and Code Amendments #5 <i>tentative</i> |

Meeting adjourned at approximately 7:35 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Dennis Egner, Planning Director

**From:** Brett Kolver, Associate Planner

**Date:** January 19, 2016, for January 26, 2016, Public Hearing

**Subject:** **File:** AP-2016-001  
**Applicant:** Onsite Advertising Services, LLC (Kirk Becker)  
**Owner:** Mailwell Investments, LLC  
**Address:** 2200 SE Mailwell Dr  
**Legal Description (Map & Tax Lot):** 1S1E25BC 00500  
**NDA:** McLoughlin Industrial (not active)

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## **ACTION REQUESTED**

Deny the requested appeal based on the recommended Findings found in Attachment 1. This action would affirm and uphold the code interpretation established in Land Use File #CI-2015-002, which held that, for properties with multiple street frontages in the City's manufacturing zones<sup>1</sup>, the standards established in Milwaukie Municipal Code (MMC) Section 14.16.050 require that the area of roof signs should be calculated in relation to the length of a single frontage and not by combining frontage lengths.

## **BACKGROUND INFORMATION**

### **A. Site and Vicinity**

The site that is the specific subject of the original code interpretation and subsequent appeal is located at 2200 SE Mailwell Drive. The site contains a large warehouse building at the southeast corner of Mailwell Drive and SE Main Street.

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<sup>1</sup> For purposes of the City's sign codes, "manufacturing zones" include the Manufacturing zone (M), Business Industrial zone (BI), and Tacoma Station Area Manufacturing zone (M-TSA). As established by the code interpretation from Land Use File #CI-14-01, the M-TSA is considered a manufacturing zone for purposes of determining which regulations in MMC Chapter 14.16 apply to signs proposed in the M-TSA zone.

The surrounding area consists of other warehouse and manufacturing buildings. McLoughlin Boulevard (Highway 99E) is adjacent and runs parallel to Main Street (see Figure 1).

**Figure 1.** Aerial view of site and surrounding area



## B. Zoning Designation

Tacoma Station Area Manufacturing Zone (M-TSA)

## C. Comprehensive Plan Designation

Industrial (I), with Tacoma Station Area Overlay

## D. Land Use History

- March 2013:** File #VR-13-01, Variance Request for 25% reduction of street-side yard (from 10 ft to 7.5 ft) for proposed raised concrete dock. The application was deemed incomplete and no additional action was taken by applicant; the application expired in September 2013.
- February 2015:** File #DD-14-03, Director's Determination that a medical marijuana testing and processing facility was allowable on the site. The approved use has not been developed to date and there are no active permit applications on file.

## E. Appeal Background

The appellant, Onsite Advertising Services, LLC, is appealing a decision regarding a Code Interpretation (file #CI-2015-002). See Attachment 2 for the appeal narrative and Attachment 3 for the Notice of Decision (with findings) for file #CI-2015-002.

In October 2015, the appellant submitted an application for a 480-sq-ft electronic reader board sign (12 ft tall by 40 ft wide) on the roof at 2200 SE Mailwell Drive. During the course of the permit review, the Planning Director concluded that the past practice of allowing multiple-frontage properties to use the cumulative frontage length to calculate the allowed area of roof signs in manufacturing zones was not consistent with a more careful reading of the applicable standards in the City's sign ordinance (MMC Title 14). The Director and staff met with the applicant to discuss this new perspective and, acknowledging that the language of the sign code is not perfectly clear, encouraged the appellant to request a formal Code Interpretation that could then be appealed to the Planning Commission for a final decision.

The code provisions at the center of the issue are the definition of "frontage" and the standards for signs in manufacturing zones. As established in MMC Section 14.04.030, the definition of "frontage" is as follows:

*"Frontage" means the length of the property line of any one premises along each public street it borders. Each portion of the premises abutting a separate street shall be considered as a separate frontage.*

The standards for signs in manufacturing zone are found in MMC Table 14.16.050, with the specific provisions most relevant to this discussion provided below:

<b>Table 14.16.050 Standards for Signs in Manufacturing Zones M or BI</b>					
<b>Sign Type</b>	<b>Area</b>	<b>Height</b>	<b>Location</b>	<b>Number</b>	<b>Illumination<sup>1</sup></b>
Freestanding signs	1.5 SF per lineal ft. of street frontage and 1 additional SF for each lineal ft. of frontage over 100 ft. <sup>2</sup>	Max. 25 ft. from ground level; min. clearance below lowest portion of a sign is 14 ft. in any driveway or parking area.	Not permitted on any portion of a street, sidewalk, or public right-of-way.	1 multifaced sign permitted. <sup>3</sup>	Permitted
Wall signs	Max. 10% of building face. <sup>4</sup>	Not above roofline or top of parapet wall, whichever is higher.	NA.	No limit.	Permitted
Roof signs	Max. 1 SF per lineal ft. of street frontage.	Max. 8 ft. above highest point of building. <sup>5</sup>	Pending approval by fire marshal <sup>6</sup> ; may not project over parapet wall.	Permitted instead of, not in addition to, projecting or freestanding signs.	Permitted

<sup>1</sup> When fluorescent tubes are used for interior illumination of a sign within 500 feet of any residentially zoned property, such illumination shall not exceed illumination equivalent to 425 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 7 inches apart, center to center. No exposed incandescent lamp which exceeds 15 watts shall be used on the exterior surface of any sign so as to expose the face of such bulb or lamp to any public street or public right-of-way. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets or other property. See Section 14.24.020.

<sup>2</sup> Not to exceed 250 square feet of sign area per display surface for each sign, or a total of 1,000 square feet for all display surfaces.

<sup>3</sup> Where a frontage exceeds 300 feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a roof sign.

<sup>4</sup> Includes signs painted directly on the building surface. In addition to the sign size limitations of this chapter, if an original art mural permitted under Title 20 occupies a wall where a wall sign has been proposed, the size of the wall sign shall be limited such that the total area of the original art mural plus the area of the wall sign does not exceed the maximum allowed.

<sup>5</sup> All roof signs shall be installed in such a manner that there shall be no visible angle iron or similar sign support structure.

<sup>6</sup> Only approved by the fire marshal after a finding that the site, type, and location of the sign will not substantially interfere with fire fighting.

In December 2015, the appellant proposed an alternative code interpretation for the method of calculating the allowed area of roof signs in manufacturing zones under MMC Section 14.16.050. The appellant proposed that the allowed roof sign area for properties with frontage on more than one public street should be based on the cumulative linear length of street frontage, rather than on only one of the separate street frontages. The effect of the proposed interpretation would be to allow roof signs on multiple-frontage lots in a manufacturing zone (M, BI, or M-TSA zone) to be larger than those on similarly sized interior lots with only one frontage.

The Planning Director did not agree with the appellant's proposed code interpretation and instead found that a different interpretation was more consistent with the letter and spirit of the code sections in question. The Planning Director's decision for file #CI-2015-002 established the following interpretation:

- Where a subject property in a manufacturing zone has multiple frontages, the allowed area of a proposed roof sign is based on and limited to the length of a single frontage of the subject property and not on the combined frontage length.
- The number of roof signs allowed on a subject property in a manufacturing zone is also related to and limited by the length of street frontage, with multiple roof signs allowed so long as the total area of roof signs that base their area allowance on a single frontage does not exceed the area allowed for that specific frontage.
- The term "frontage" is understood to be singular and specific to each particular street abutting a subject property.

The Notice of Decision was sent out on December 21, 2015, with a deadline of January 5, 2016, for appeal. The appellant submitted an appeal of the decision from file #CI-2015-002 on January 5, 2016.

## **F. Points of Appeal**

The appellant is seeking to overturn the code interpretation established in file #CI-2015-002 and to establish a modified interpretation. The appellant's proposed interpretation is that "frontage," as defined in MMC Section 14.04.030, is the combined length of all property lines adjacent to public streets, and that a property's total frontage length is what should be used to calculate the allowable size of a roof sign in any of the manufacturing zones, as per MMC Table 14.16.050. See Attachment 2 for the appellant's complete narrative.

## **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. For roof signs on multiple-frontage properties in manufacturing zones, should the maximum allowable area be calculated based on the cumulative length of the frontages or on the length of only one frontage?
- B. Should the number of roof signs in manufacturing zones be limited to one per property?

### **Analysis**

- A. For roof signs on multiple-frontage properties in manufacturing zones, should the maximum allowable area be calculated based on the cumulative length of the frontages or on the length of only one frontage?**

The definition of "frontage" provided in MMC Section 14.04.030 is composed of two sentences. If the definition stopped after the first sentence, it might be possible to argue that

the definition could be construed to mean that a property's frontage is the cumulative length of the property lines along each public street it borders. However, the second sentence provides the specificity that is at the heart of the issue, stating very clearly that, "Each portion of the premises abutting a separate street shall be considered as a separate frontage." That specificity is the basis for the Planning Director's interpretation that the reference to "street frontage" in the column for area of roof signs in MMC Table 14.16.050 is to a single frontage.

The fact that similar applications were reviewed differently in the recent past, where frontages were considered cumulatively to determine the maximum allowable area of roof signs, does not preclude a careful rereading of the code and a conclusion that past practices may not have been based on as accurate an interpretation of the relevant code language. Regarding the legislative history, it is important to note that, of the various zones in the City, the manufacturing zones (M, BI, and M-TSA) are areas that tend to have larger properties with longer frontages, including several greater than 400 ft. It is also worth noting that there are many signage options available for properties in the City's manufacturing zones. In addition to roof or freestanding signs, wall signs are also allowed at a size up to 10% of the building face where mounted.

The essential challenge for the Planning Commission is to develop an interpretation that balances the effort to reduce visual sign clutter with the property owner's right to a reasonable amount of signage.

**B. Should the number of roof signs in manufacturing zones be limited to one per property?**

In preparing the materials in response to the appeal, staff reevaluated the conclusion of file #CI-2015-002 with respect to the number of roof signs allowed in the manufacturing zones and concluded that it is not, in fact, consistent with the Comprehensive Plan policies and objectives cited for that decision to effectively allow an unlimited number of roof signs. As a parallel, there is a limit to the number of freestanding signs allowed on a specific property. Since there is an inverse relationship of freestanding signs to roof signs (i.e., one cannot be approved if the other is already in place on the site), it stands to reason that there should also be some limit to the number of roof signs.

Roof signs are not tied to a physical location along a particular frontage in the same way that freestanding signs are. They can be located anywhere on a roof and oriented in any direction to be visible to streets and other properties, regardless of the particular frontages upon which its areas are based. Without the benefit of a specific footnote related to roof signs that might otherwise help clarify the number, it seems reasonable to interpret simply that the number of roof signs allowed should be only one per site.

## CONCLUSIONS

**Staff recommendation to the Planning Commission is as follows:**

1. Deny the requested appeal but modify the findings to clarify the number of roof signs allowed in the City's manufacturing zones. Denial will confirm that the maximum size of roof signs in manufacturing zones is linked to only one specific frontage for properties with multiple frontages. It will also limit the number of roof signs allowed per site to one.
2. Adopt the attached Findings in Support of Denial.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

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

- MMC Section 19.1010 Appeals
- MMC Section 19.903 Code Interpretations and Director Determinations
- MMC Title 14 Signs

This appeal is of a Type I decision, with a ruling provided by the Planning Commission as part of an unrestricted de novo hearing. As per the procedures provided in MMC Subsection 19.1010.3.A, the Planning Commission shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

The Commission has 4 decision-making options as follows:

- A. Deny the appeal and uphold the initial decision regarding the methodology for calculating frontage (the code interpretation established by file #CI-2015-002), with one modification of the decision to limit the number of roof signs to one. Adopt the Recommended Findings in Support of Denial, which are based on the original findings for file #CI-2015-002, with minor adjustments addressing the number of roof signs permitted.
- B. Deny the appeal and uphold the initial decision of file #CI-2015-002, including the absence of a number-based limit for roof signs, upon finding that the initial decision is not in error as a matter of fact or law. Slight modifications to the Recommended Findings in Support of Denial would need to be read into the record.
- C. Approve the appeal upon finding that the initial decision was in error as a matter of fact or law, with Findings in Support of Approval sufficient to essentially reverse the code interpretation established in file #CI-2015-002. Such Findings in Support of Approval would need to be read into the record.
- D. Continue the hearing. The 120-day limit by which time the City must make a decision is April 14, 2016.

As per MMC Subsection 19.1010.4.D, the decision of the Planning Commission is the final local decision.

## COMMENTS

Notice of the appeal hearing was provided to the appellant as required by MMC Subsection 19.1010.4.B, as well as to the property owner as a courtesy. The appellant will have an opportunity to present its position to Planning Commission at the public hearing. No other comments have been received.

## 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 Denial	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Appellant's Narrative for file #AP-2016-001, dated January 5, 2016	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Notice of Decision for file #CI-2015-002 (including Findings in Support of Denial)	<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-141>.

**Recommended Findings in Support of Denial  
File #AP-2016-001, Appeal of File #CI-2015-002**

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

1. The appellant, Kirk Becker of Onsite Advertising Services, LLC, has appealed a decision issued by the City of Milwaukie Planning Director in Land Use File #CI-2015-002. File #CI-2015-002 is a Code Interpretation regarding the method for calculating the area of roof signs in Manufacturing and Business Industrial zones. The Code Interpretation was initially requested in the context of a specific sign permit application for a roof sign proposed at 2200 SE Mailwell Drive, which is in the Tacoma Station Area Manufacturing Zone (M-TSA). The land use application file number for the appeal is AP-2016-001.
2. The interpretation rendered in file #CI-2015-002 was that the area of roof signs for properties in Manufacturing and Business Industrial zones<sup>1</sup> is calculated in relation to the length of a single street frontage. For multiple-frontage properties, the effect of this interpretation is to limit the maximum size of roof signs, since they are based on the length of only one frontage. The notice of decision for file #CI-2015-002 was issued on December 21, 2015. The interpretation was based in large part on the definition of “frontage” provided in MMC Section 14.04.030, which specifies that, “Each portion of the premises abutting a separate street shall be considered as a separate frontage.”
3. The appeal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1010 Appeals
  - MMC Section 19.903 Code Interpretations and Director Determinations
  - MMC Title 14 Signs
4. The application has been processed and public notice provided in accordance with MMC Section 19.1010 Appeals. A public hearing was held on January 26, 2016, as required by law.
5. MMC Section 19.1010 Appeals
  - a. MMC Subsection 19.1010.1 establishes standards for filing an appeal.
    - (1) MMC 19.1010.1.A. describes the information required for an appeal, including the date and case file number of the decision being appealed, documentation that the appellant has standing to appeal per MMC Subsection 19.1010.4.A, and a detailed statement describing the basis of the appeal.  
  
The appellant was the original applicant for the decision being appealed (file #CI-2015-002). The appellant’s submittal materials provide all of the required information, including a discussion of the code language that the appellant believes was incorrectly interpreted in the original decision.
    - (2) MMC 19.1010.1.B requires payment of an application fee at the time of filing, which was submitted by the appellant at the time the appeal was filed.
    - (3) MMC 19.1010.1.C requires the appeal materials to be filed within the 15-day appeal period for the decision being appealed. File #CI-2015-002 was issued on

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<sup>1</sup> As established by the code interpretation from Land Use File #CI-14-01, the Tacoma Station Area Manufacturing Zone (M-TSA) is considered a manufacturing zone for purposes of determining which regulations in MMC Chapter 14.16 apply to signs proposed in the M-TSA zone.

December 21, 2015, and its appeal period ended at 5:00 p.m. on January 5, 2016. The appellant submitted the information necessary for an appeal on January 5, 2016.

The Planning Commission finds that the appellant has satisfied the standards for filing an appeal of File #CI-2015-002.

- b. MMC Subsection 19.1010.2 establishes the procedures for an appeal hearing.

The Planning Commission is the appeal authority for File #CI-2015-002, which was a Type I decision. On January 26, 2016, the Planning Commission held a hearing per the public hearing procedures provided in MMC Section 19.1009.

The Planning Commission finds that the requirements of this section have been satisfied.

- c. MMC Subsection 19.1010.3 establishes the types of hearing for appeals.

As specified in MMC Subsection 19.1010.4.C, the appeal hearing for a Type I decision is an unrestricted de novo hearing. As required by MMC Subsection 19.1010.3.A, the public hearing allowed presentation of new evidence, testimony, and argument by any party. The Planning Commission considered all relevant evidence, testimony, and argument that were provided at the hearing, and did not limit the scope of the hearing to the issues that were raised on appeal. The Planning Commission's standard of review is whether the initial decision in File #CI-2015-002 has findings and/or conditions that are in error as a matter of fact or law.

The requirements of this section have been satisfied.

- d. MMC Subsection 19.1010.4 establishes specific provisions for appeal of a Type I decision.

In accordance with the standards established by MMC 19.1010.4, the original applicant for file #CI-2015-002 filed the appeal. The City mailed notice of the appeal hearing to the applicant on January 6, 2016, 20 days prior to the hearing date. The hearing was conducted as an unrestricted de novo hearing, and the decision of the Planning Commission is the final local decision.

The requirements of this section have been satisfied.

6. MMC Section 19.903 Code Interpretations and Director Determinations

- a. MMC Subsection 19.903.2 Applicability

MMC Subsection 19.903.2.A provides that a code interpretation may be made where the language of Titles 14, 17, or 19 is unclear in its terms, meaning, or intent. Interpretations are prohibited in situations that may affect the evaluation of approval criteria for any quasi-judicial land use application under review by the City, as well as where the interpretation is being sought to remedy a code violation.

The interpretation provided in file #CI-2015-002 focused on language in MMC Table 14.16.050 related to calculating the area of roof signs in the Manufacturing and Business Industrial zones. The language was unclear with respect to whether or not frontage lengths could be combined to determine the maximum allowable area of a roof sign. A sign permit to establish a new roof sign, which does not require a quasi-judicial application, was under review at the time.

The Planning Commission finds that the original interpretation request met the situation described in MMC 19.903.2.A and was not a prohibited request.

## b. MMC Subsection 19.903.3 Review Process

MMC 19.903.3 establishes the review process for code interpretations, which can be initiated by any member of the public, the Planning Director, Planning Commission, or City Council; and which are evaluated through a Type I process.

The appellant was the applicant for file #CI-2015-002. The appellant's proposed interpretation was reviewed by the Planning Director using the Type I process, with the result being a denial of the proposed interpretation and establishment by the Planning Director of a different interpretation.

The Planning Commission finds that the process for review of file #CI-2015-002 met the process described in this subsection.

## c. MMC Subsection 19.903.4 Approval Criteria

MMC Subsection 19.903.4.A establishes five approval criteria for code interpretations. The subsection notes that a code interpretation shall be as consistent as possible with the criteria listed and that not all of the criteria need to be met for a code interpretation to be issued.

(1) *The proposed interpretation is consistent with the common meaning of the words or phrases at issue.*

The appellant (the original applicant for file #CI-2015-002) is challenging the City's interpretation of the word "frontage" as defined in the sign code. In cases where the municipal code does not explicitly define certain words or phrases, it is useful and important to consider their common meaning; but where the code provides a specific definition of the key term itself (as in this case), the common meaning(s) of that term is not relevant. MMC Section 14.04.030 defines "frontage" as follows:

"Frontage" means the length of the property line of any one premises along each public street it borders. Each portion of the premises abutting a separate street shall be considered as a separate frontage.

(2) *The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.*

The Economic Base and Industrial/Commercial land use element of the City's Comprehensive Plan includes objectives and policies related to industrial land use and industrial impacts. In particular, the plan includes a policy of preventing industrial development from placing visual or physical burdens on surrounding areas.

The result of appellant's proposed interpretation would be to allow roof signs on multiple-frontage lots in the City's manufacturing zones to be larger than they would otherwise be on similarly sized interior lots (those with only one street frontage). The appellant's proposed interpretation would encourage larger signage installations on corner lots, which could have more of a visual impact on surrounding areas.

The Planning Commission finds that an outcome more consistent with the relevant policies of the Comprehensive Plan is provided by the interpretation presented in Finding 6-c(4), below.

- (3) *The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The interpretation is based on the legislative record for the ordinance that adopted or amended the regulations at issue.*

In the legislative history of amendments to the City's sign code, there is no specific discussion about the meaning of the word "frontage" or the intent of the specific regulations for roof signs. However, it is useful to consider the history of amendments to both over time.

The adoption of Ordinance 1310 in 1975 established the City's first sign code. For roof signs in manufacturing zones, the ordinance allowed a sign-area of "one (1) square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located," up to a maximum of 400 sq ft. The 400-sq-ft limitation was removed in the 1979 update to the sign code (Ord. 1441) and was not reestablished in subsequent versions of the code.

The 1975 sign code provided the following definition of "frontage": "Frontage is the length of the property line of any one premises along each public right of way it borders. Each portion of the premises abutting a separate right of way shall be considered as a separate frontage." That definition has remained essentially unchanged through subsequent amendments, except to replace the phrase "right of way" with "street" (Ord. 1733 in 1993). Further discussion of an interpretation of the definition of "frontage" is provided in Finding 6-c(4), below.

- (4) *The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.*

The appellant's proposed interpretation is that the allowable area of roof signs in the City's manufacturing zones should be based on the total length of all frontage segments of the subject property and should not be restricted to the length of a single frontage (for multiple-frontage properties).

The Planning Commission finds that the second sentence in the definition of "frontage" provided in the current sign code is critical to this issue: "Each portion of the premises abutting a separate street shall be considered as a separate frontage." That sentence establishes a singular context to the word by clarifying that a frontage is specific to the street it abuts. Where MMC Table 14.16.050 establishes that the allowable area of a roof sign is based on the length of "street frontage," it does not pluralize the term or provide any requirement to combine the lengths of multiple frontages. The Planning Commission finds that it is therefore reasonable to interpret that only one of the street frontages of a multiple-frontage property should be used to determine the area of a single roof sign.

The appellant's proposed interpretation asserts that MMC Table 14.16.050 effectively sets the number of roof signs allowed in the City's manufacturing zones as equal to the number of freestanding signs allowed. However, the only specific standard provided in the code for the allowed number of roof signs is that roof signs are an option in place of freestanding or projecting signs. MMC Table 14.16.050 establishes that only one multi-faced freestanding sign is

permitted per site, with the possibility of a second freestanding sign if a frontage is greater than 300 ft in length.<sup>2</sup>

The Planning Director's interpretation as established with file #CI-2015-002 was that the number of roof signs allowed per site was limited only by the length of each specific frontage (assuming there were no freestanding or projecting signs on the same site). However, the Planning Commission finds that, because one of the purposes of the sign code is to "Prevent proliferation of sign clutter," (MMC 14.04.020.H), it is not reasonable to allow an unlimited number of roof signs at one location, regardless of their size. The Planning Commission finds that, because MMC Table 14.16.050 establishes a relationship of roof signs to freestanding or projecting signs in the "Number" column and because freestanding signs are limited in number, it is reasonable to conclude that there should also be a limit to the number of roof signs. However, because freestanding signs are limited to only one per site unless the corresponding frontage is more than 300 ft (as per Footnote 3 to MMC Table 14.16.050), and because the table does not provide similarly specific guidance for the number of roof signs, the Planning Commission finds that there is sufficient basis to interpret that roof signs are limited to only one per site.

The appellant has noted two specific cases in the recent past where the City approved roof sign permits where the allowable sign area was calculated based on a site's combined length of street frontage: 9304 SE Main St (permit #110085 from 2011) and 2300 SE Beta St (permit #601-13-001580 from 2013). In the interpretation established with file #CI-2015-002, the Planning Director acknowledged these past approvals (which occurred before the current Director's tenure). However, the Planning Commission finds that, for the reasons outlined above, it is consistent with the interpretation of other portions of the code to deny the appellant's proposed interpretation and to uphold the interpretation established with file #CI-2015-002, with one exception—that the number of roof signs allowed in manufacturing zones is limited to one per site.

- (5) *The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.*

The word at issue in this interpretation ("frontage") does not entail discussion about consistency with regional, State, or federal laws and court rulings.

The Planning Commission finds that there was no error with respect to the term "frontage" as a matter of fact or law concerning the interpretation established in file #CI-2015-002, with one minor correction related to the number of roof signs allowed. The Planning Commission denies the appellant's appeal and affirms the following interpretation established in file #CI-2015-002:

- Where a subject property in any of the City's manufacturing zones has multiple frontages, the allowed area of a single roof sign proposed is based on and limited to the length of a single frontage of the subject property and not on the combined frontage length.

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<sup>2</sup> "Where a frontage exceeds 300 feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a roof sign." (Footnote 3 in MMC Table 14.16.050)

- The Planning Commission modifies the original interpretation in file #CI-2015-002 to clarify that the number of roof signs allowed on a subject property in any of the City's manufacturing zones is limited to one per site.
- The term "frontage" is understood to be singular and specific to each particular street abutting a subject property.

**APPEAL OF PLANNING DIRECTOR'S CODE INTERPRETATION DECISION****A. MCC 19.1010.1.A - Appeal application information.**

MCC 19.1010.1.A requires the following information for an appeal application.

1. *Date and case file number of the decision being appealed.*

**Response:** The decision being appealed is the City Planning Director's code interpretation, dated December 21, 2015, denying the Applicant Onsite Advertising Services, LLC's (the "Applicant") proposed interpretation of MCC 14.16.050, Table 14.16.050 and 14.04.030 (the "Planning Director's Decision"). The case file number is CI-2015-002.

2. *Documentation that the person filing the application has standing to appeal per Subsections 19.1010.4.A, 5.A, and 6.A.*

**Response:** MCC 19.1010.4 sets forth the standing requirements for an appeal of a Type I decision. MCC 19.1010.4.A provides that a Type I decision may only be appealed by the applicant or the applicant's representative. The Applicant filed the Type I application requesting a code interpretation that resulted in the Planning Director's Decision being appealed. Therefore, the Applicant has standing to appeal pursuant to MCC 19.1010.4.A.

3. *Detailed statement describing the basis of the appeal.*
  - a. *For appeal of a Type I or III decision, the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.*

**Response:** The Applicant identified in Section D below the criterion and standards it believes the Planning Director overlooked or incorrectly interpreted or applied.

**B. Background and Nature of the Code Interpretation Request.**

The Applicant is proposing a LED rooftop sign on property located at 2200 SE Mailwell Drive, Milwaukie, OR (the "Property"). The Property has frontage along both SE Mailwell Drive and SE Main Street. The sign is proposed in the southwestern corner of the building and will be oriented to the southwest so it is visible to northbound traffic on SE McLoughlin Blvd.

The size of the rooftop sign is dictated by the length of the street frontage for the subject property. Milwaukie Municipal Code ("MCC") 14.16.050 and Table 14.16.050 provide that the maximum area of a roof sign in Manufacturing ("M") and Business Industrial ("BI") zones is "1 SF per lineal ft. of street frontage." "Frontage" is defined as: "the length of the property line of any one premises along each public street it borders. Each portion of the premises abutting a separate street shall be considered as a separate frontage." MCC 14.04.030.

Given that there are 270 feet of frontage along SE Mailwell Drive and 260 feet of frontage along SE Main Street, the total street frontage for this property is 530 feet. Although the Applicant

would be entitled to a rooftop sign at this location that is 530 square feet, the Applicant is only requesting approval of a 480 square foot sign (12 ft. x 40 ft.).

Where there are multiple street frontages along the property, the City has historically determined that the rooftop sign size is based on the total length of the street frontages. The Applicant identified at least two instances in the recent past in which the City approved the Applicant's proposed rooftop sign based on the total length of the street frontages for the properties located at 9304 SE Main St and 2300 Beta St.<sup>1</sup>

The City Planning Director advised the Applicant that he disagrees with the code interpretation the City has historically adopted and now believes the size of the rooftop sign is limited to the length of a single street frontage where there are multiple street frontages. As suggested by the City Planning Director, the Applicant filed an application for a code interpretation so this issue can be formally resolved before the sign application for the Property is processed. The Applicant filed an application for a code interpretation requesting that the City interpret MCC 14.04.030, 14.16.050 and Table 14.16.050 consistent with the historical interpretation and concluded that the size of the rooftop sign is based on the total street frontage lengths.

The Planning Director's Decision denied this code interpretation and concluded that the size of rooftop signs in the M and BI zones are limited to the length of a single street frontage where there are multiple street frontages. The Applicant is appealing the Planning Director's decision.

**C. The Applicant's proposed code interpretation.**

The Applicant requests a code interpretation of MCC 14.16.050 and Table 14.16.050 that bases the size of a rooftop sign on a property with multiple street frontages on the total length of the street frontages as the City has historically interpreted these code provisions.

MCC 19.903.4 sets forth the criteria for code interpretations and provides as follows:

*"Code interpretations are different from other land use applications in that they are an interpretation of language, policy, and legal matters, as opposed to an evaluation of a use or development. A code interpretation shall be as consistent as possible with the criteria listed below. Not all of the criteria need to be met for a code interpretation to be issued.*

- 1. The proposed interpretation is consistent with the common meaning of the words or phrases at issue.*
- 2. The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.*
- 3. The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.*

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<sup>1</sup> The rooftop sign at 9304 SE Main St. currently exists. The rooftop sign at 2300 Beta St. was approved by the City at the end of 2011, but it was never constructed.

4. *The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.*

5. *The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.”*

The Applicant’s code interpretation satisfies MCC 19.903.4 for several reasons. The Applicant’s interpretation is consistent with the common meaning or plain language of the applicable code provisions. MCC Table 14.16.050 provides that the maximum area or size of a rooftop sign is one square foot “per lineal ft. of street frontage.” MCC Table 14.16.050 does not limit the size to a single street frontage or preclude the use of multiple street frontages. If the City Council intended to limit the size of a rooftop sign to the length of a single street frontage even when there are multiple street frontages, it would have expressly stated so in these code provisions.

The Applicant’s code interpretation is consistent with the plain language definition of frontage. “Frontage” is defined as “the length of the property line of any one premises *along each public street* it borders.” MCC 14.04.030. (Emphasis added). If the “frontage” includes the length of the property line along each public street it borders, that means the frontage for a property that abuts multiple public streets is the combined length of the property lines that border the public streets.

The Applicant’s code interpretation is consistent with other sections of MCC Table 14.16.050. MCC Table 14.16.050 provides that the number of rooftop signs allowed on a property is the same as the number of freestanding signs allowed.<sup>2</sup> Under footnote 3 of MCC Table 14.16.050, a freestanding sign is allowed for every 300 feet of frontage. If a property has more than one frontage, the applicant would be entitled to a rooftop sign for every frontage.<sup>3</sup> If any of the frontages exceeded 300 feet, two rooftop signs would be allowed for that frontage. In either case, multiple rooftop signs would be allowed and combined would allow a size equal to the total length of the frontages. It does not make sense to prohibit the Applicant from proposing a single rooftop sign using the total frontage length of the public streets when the Applicant could instead propose multiple rooftop signs whose total square footage would exceed the square footage of the proposed sign.

Other sections in MCC Chapter 14.16 addressing different zoning districts similarly support the Applicant’s code interpretation. For example, in the commercial zones one multi-faced freestanding sign is allowed “per street frontage.” MCC Table 14.16.040. Similar to the manufacturing zones, the number of rooftop signs allowed on a property is the same as the number of freestanding signs allowed. If applied to a property with multiple frontages, multiple rooftop signs with square footages equal to each street frontage would be allowed. It does not make sense to prohibit an applicant from proposing a single rooftop sign using the total frontage length of the public streets when the applicant could instead propose multiple rooftop signs that combined equal this same size.

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<sup>2</sup> Under the section of the Table addressing the number of signs allowed, it provides that that rooftop signs are permitted “instead of, not in addition to, projecting or freestanding signs.”

<sup>3</sup> As an example, the Portland Mechanical building located at 2100 Hanna Harvester Drive has three rooftop signs because it has three street frontages.

Indeed, such a result would be inconsistent with one of the purposes of the sign code. One of the purposes of the sign code is minimizing the proliferation of signs. MCC 14.04.020(H). By adopting an interpretation that limits the size of a rooftop sign to the length of a single street frontage, the City would only encourage applicants to use multiple signs to obtain the same total square footage.

The Applicant's code interpretation is consistent with the City's historical interpretation of these code provisions. As previously noted, the City approved the Applicant's rooftop sign size located at 9304 SE Main St and 2300 Beta St. based on the total street frontage lengths. The Planning Director's Decision also acknowledges that the City has relied on this interpretation for the past 5 years. The Applicant invested significant time, money and resources pursuing the proposed sign in reliance on this historical City interpretation. It would not be fair or equitable for the City to suddenly change its interpretation solely for purposes of this rooftop sign application.

**D. Response to the Planning Director's code interpretation.**

The Planning Director interpreted MCC 14.16.050 and Table 14.16.050 to allow "only one of the street frontages of a multi-frontage property [to] be used to determine the area of a single roof sign." Planning Director's Decision, p.3. The Applicant respectfully disagrees with the Planning Director's interpretation and believes the Planning Director overlooked or incorrectly interpreted or applied the applicable criteria and standards for several reasons.

The Planning Director overlooked the fact that neither MCC 14.16.050 nor Table 14.16.050, the code provisions that specifically address the size of rooftop signs, expressly restrict or limit the size of a rooftop sign to the length of a single frontage when there are multiple frontages. The Planning Director's interpretation attempts to insert a limitation or restriction in these provisions that is not actually included in the express language. *See* ORS 174.010 (interpretation should not "insert what has been omitted").

The Planning Director failed to appreciate the significance of the first sentence of the definition of "frontage". It provides that the "frontage" includes "the length of the property line of any one premises *along each public street* it borders." MCC 14.04.030. (Emphasis added). The emphasized language demonstrates that if the property abuts multiple public streets, the frontage includes the length of the property "along each public street." This language clearly supports the Applicant's interpretation.

The Planning Director misinterpreted the second sentence of the definition of "frontage". The second sentence provides that "Each portion of the premises abutting a separate street shall be considered as a separate frontage." This language does not support the Planning Director's more restrictive interpretation. This sentence merely provides that each portion of the property abutting a public street is a separate frontage. It does not, however, state that the size of a rooftop sign is limited to the length of a single street frontage.

The Planning Director erred in assuming the Comprehensive Plan objectives and policies cited in the decision support his interpretation. To the contrary, these objectives and policies support the Applicant's interpretation. The Planning Director's interpretation will only encourage applicants

to use multiple rooftop signs to obtain the same total square footage they could otherwise obtain under the Applicant's interpretation. Multiple rooftop signs would create much greater visual and physical burdens on surrounding areas than a single larger rooftop sign.

The Planning Director's interpretation is inconsistent with the legislative history of the City's sign code for two reasons. The legislative history shows that in 1975 the City's sign code imposed a 400 square foot size limitation on rooftop signs. Since most street frontages do not exceed 400 square feet, it would not have been necessary for the City to adopt this separate 400 square feet if rooftop signs were in fact limited to a single frontage. Additionally, the City Council specifically chose to remove the 400 square foot size limitation when it amended the sign code in 1979, which indicated that the City Council no longer desired to limit rooftop signs to this size. Since most street frontages do not exceed 400 square feet, the Planning Director's interpretation imposes a smaller size limitation than the City Council specifically elected to remove via the 1979 amendments.

Finally, the Planning Director's interpretation would impose an unfair or inequitable restriction on the Applicant. As the Planning Director acknowledges, the City has consistently interpreted the sign code to allow a rooftop sign based on the total length of the street frontages for at least the past 5 years and likely longer. The Planning Director failed to provide a compelling reason for suddenly changing that historical interpretation solely for purposes of this particular rooftop sign application. Given that the Applicant invested significant time, money and resources pursuing the proposed sign in reliance on this historical City interpretation, it would not be fair or equitable for the City to suddenly change its interpretation solely for purposes of this rooftop sign application.



December 21, 2015

Land Use File: CI-2015-002  
Permit: 601-15-000837

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on December 21, 2015.

**Applicant:** Onsite Advertising Services, LLC  
**Location:** 2200 SE Mailwell Drive  
**Tax Lot:** 1S1E25BC 00500  
**Application Type:** Code Interpretation: Calculating roof sign area in M and BI zones  
**Decision:** Denied (applicant's proposed interpretation)  
**Review Criteria:** Milwaukie Zoning Ordinance:

- Section 19.903 Code Interpretations and Director Determinations
- Section 19.1004 Type I Review

**Appeal period closes: 5:00 p.m., January 5, 2016**

### Findings in Support of Denial

The Findings for this application are included as Exhibit 1.

### Case File

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1004 Type I Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Associate Planner, at 503-786-7657 or [kelterb@milwaukieoregon.gov](mailto:kelterb@milwaukieoregon.gov), if you wish to view this case file.

### Appeal

**This decision may be appealed by 5:00 p.m. on January 5, 2016, which is 15 days from the date of this decision.** An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

### Exhibits

1. Findings in Support of Denial

COMMUNITY DEVELOPMENT  
 BUILDING • ECONOMIC DEVELOPMENT • ENGINEERING • PLANNING  
 6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206  
 P) 503-786-7600 / F) 503-774-8236  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)



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Dennis Egner, AICP  
Planning Director

cc: Kirk Becker for Onsite Advertising Services, LLC, applicant (1949 Willamette Falls Dr,  
West Linn, OR 97068)  
City Council (*via e-mail*)  
Planning Commission (*via e-mail*)  
Alma Flores, Community Development Director (*via e-mail*)  
Chuck Eaton, Engineering Director (*via e-mail*)  
Chrissy Dawson, Engineering Technician II (*via e-mail*)  
Samantha Vandagriff, Building Official (*via e-mail*)  
Bonnie Lanz, Permit Specialist (*via e-mail*)  
Land Use File: CI-2015-002

**EXHIBIT 1**  
**Findings in Support of Denial**  
**File #CI-2015-002, Calculating Roof Sign Area in M and BI Zones**

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

1. The applicant, Onsite Advertising Services, LLC, has initiated a Code Interpretation, as allowed per MMC Subsection 19.903.3.A.1.
2. The requested Code Interpretation is that the allowed area of a roof sign proposed for a property in the Manufacturing (M) or Business Industrial (BI) zones with frontage on more than one public street be based on the cumulative linear length of street frontage, rather than on the frontage of each of the abutting streets separately. The effect of this interpretation would be to allow a roof sign on a multi-frontage lot in the M or BI zone to potentially be larger than one on a similarly sized interior lot with only one frontage.  
 As established in Finding 5 below, the Planning Director does not agree with the proposed code interpretation and instead finds that a different interpretation is more consistent with the letter and spirit of the code sections in question. The interpretation that is supported by the Planning Director for determining the area of roof signs in the M and BI zones, as established in MMC Table 14.16.050, is as follows:
  - Where a subject property in the M or BI zone has multiple frontages, the allowed area of a single roof sign proposed is based on and limited to the length of a single frontage of the subject property and not on the combined frontage length.
  - The number of roof signs allowed on a subject property in the M or BI zone is also related to and limited by the length of street frontage, with multiple roof signs allowed so long as the total area of roof signs that base their area allowance on a single frontage does not exceed the area allowed for that specific frontage.
  - The term “frontage” is understood to be singular and specific to each particular street abutting a subject property.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Subsection 19.903.4.A Code Interpretations
4. The application has been processed and public notice provided in accordance with MMC Section 19.1004 Type I Review.
5. MMC Subsection 19.903.4.A Code Interpretations

MMC 19.903.4.A establishes five approval criteria for code interpretations. The subsection notes that a code interpretation shall be as consistent as possible with the criteria listed and that not all of the criteria need to be met for a code interpretation to be issued.

- a. *The proposed interpretation is consistent with the common meaning of the words or phrases at issue.*

The applicant is challenging the City’s interpretation of the word “frontage” as defined in the sign code. In cases where the municipal code does not explicitly define certain words or phrases, it is useful and important to consider their common meaning; but where the code provides a specific definition of the key term itself (as in this case), the common meaning(s) of that term is not relevant. MMC Section 14.04.030 defines “frontage” as follows:

“Frontage” means the length of the property line of any one premises along each public street it borders. Each portion of the premises abutting a separate street shall be considered as a separate frontage.

- b. *The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.*

The Economic Base and Industrial/Commercial land use element of the City’s Comprehensive Plan includes objectives and policies related to industrial land use and industrial impacts. In particular, the plan includes a policy of preventing industrial development from placing visual or physical burdens on surrounding areas.

The result of applicant’s proposed interpretation would be to allow roof signs on multi-frontage lots in the M and BI zones to be larger than they would otherwise be on similarly sized interior lots (those with only one street frontage). The applicant’s proposed interpretation would encourage larger signage installations on corner lots, which could have more of a visual impact on surrounding areas.

The Planning Director finds that an outcome more consistent with the relevant policies of the Comprehensive Plan is provided by the interpretation presented in Finding 5-d, below.

- c. *The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The interpretation is based on the legislative record for the ordinance that adopted or amended the regulations at issue.*

In the legislative history of amendments to the City’s sign code, there is no specific discussion about the meaning of the word “frontage” or the intent of the specific regulations for roof signs. However, it is useful to consider the history of amendments to both over time.

The adoption of Ordinance 1310 in 1975 established the City’s first sign code. For roof signs in manufacturing zones, the ordinance allowed a sign-area of “one (1) square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located,” up to a maximum of 400 sq ft. The 400-sq-ft limitation was removed in the 1979 update to the sign code (Ord. 1441) and was not reestablished in subsequent versions of the code.

The 1975 sign code provided the following definition of “frontage”: “Frontage is the length of the property line of any one premises along each public right of way it borders. Each portion of the premises abutting a separate right of way shall be considered as a separate frontage.” That definition has remained essentially unchanged through subsequent amendments, except to replace the phrase “right of way” with “street” (Ord. 1733 in 1993). Further discussion of an interpretation of the definition of “frontage” is provided in Finding 5-d, below.

- d. *The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.*

The applicant’s proposed interpretation is that the allowable area of roof signs in the M and BI zones should be based on the total length of all frontage segments of the subject property and should not be restricted to the length of a single frontage (for multi-frontage properties). The applicant’s argument for the requested code interpretation includes the following points:

- o The definition provided in MMC Section 14.04.030 states that “frontage means the length of the property line of any one premises along each public street it

borders,” establishing that the total frontage of a property is the total length of all frontage segments.

- MMC Table 14.16.050 does not explicitly state that, for sites with multiple street frontages, multiple frontage lengths cannot be combined to calculate the area of a single roof sign.
- Within the past 5 years, permits issued by the City for roof signs in the M and/or BI zones have calculated the allowable sign area based on the cumulative frontage length for multi-frontage properties. Therefore, it is reasonable for the City to formalize that interpretation with this decision and therefore continue to use that methodology.

The Planning Director finds that the second sentence in the definition of “frontage” provided in the current sign code is critical to this issue: “Each portion of the premises abutting a separate street shall be considered as a separate frontage.” That sentence establishes a singular context to the word by clarifying that a frontage is specific to the street it abuts. Where MMC Table 14.16.050 establishes that the allowable area of a roof sign is based on the length of “street frontage,” it does not pluralize the term or provide any requirement to combine the lengths of multiple frontages. The Planning Director finds that it is therefore reasonable to interpret that only one of the street frontages of a multi-frontage property should be used to determine the area of a single roof sign.

The applicant’s proposed interpretation asserts that MMC Table 14.16.050 sets the number of roof signs allowed in the M and BI zones as equal to the number of freestanding signs allowed.<sup>1</sup> In fact, however, the only specific standard provided in the code for the allowed number of roof signs is that roof signs are an option in place of freestanding or projecting signs. Freestanding signs are more directly linked to a particular street frontage than roof signs, by virtue of being located at ground level and visible only along one frontage or another. The cited footnote serves to clarify the allowed number and location of freestanding signs and does not set a standard for the number of roof signs. The footnote makes this clear by stating that more than 1 freestanding sign is allowed “for such frontage” only when that particular frontage exceeds 300 ft in length.

In contrast, the number of roof signs allowed is limited only by the length of street frontage and whether or not there is already a freestanding or projecting sign. Additionally, the sign code does not require that a roof sign be oriented toward one particular frontage or another. An applicant could receive permits for multiple roof signs as long as the combined area of signs does not exceed the lineal length of one frontage or another. Those signs could be oriented to face any direction, whether toward a street frontage or an adjacent property.

The applicant has noted two specific cases in the recent past where the City approved roof sign permits where the allowable sign area was calculated based on a site’s combined length of street frontage: 9304 SE Main St (permit #110085 from 2011) and 2300 SE Beta St (permit #601-13-001580 from 2013). The Planning Director acknowledges these past approvals (which occurred before the current Director’s tenure) but finds that, for the reasons outlined above, it is consistent with the interpretation of other portions of the code to deny the proposed interpretation.

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<sup>1</sup> “Where a frontage exceeds 300 feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a roof sign.” (Footnote 3 in MMC Table 14.16.050)

- e. *The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.*

The word at issue in this interpretation (“frontage”) does not entail discussion about consistency with regional, State, or federal laws and court rulings.

6. In conclusion, the Planning Director denies the applicant's proposed interpretation and instead establishes the following formal interpretation of the code sections in question:
- Where a subject property in the M or BI zone has multiple frontages, the allowed area of a single roof sign proposed is based on and limited to the length of a single frontage of the subject property and not on the combined frontage length.
  - The number of roof signs allowed on a subject property in the M or BI zone is also related to and limited by the length of street frontage, with multiple roof signs allowed so long as the total area of roof signs that base their area allowance on a single frontage does not exceed the area allowed for that specific frontage.
  - The term “frontage” is understood to be singular and specific to each particular street abutting a subject property.



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**From:** Dennis Egner, Planning Director

**Date:** January 15, 2016, for January 26, 2016, Work Session

**Subject:** Recreational Marijuana Regulation

**File Types:** Zoning Ordinance Text Amendment

**Applicant:** Dennis Egner, Planning Director, City of Milwaukie

**NDA:** All with residentially or commercially zoned land

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## **ACTION REQUESTED**

No formal action requested. This worksession is intended to introduce the topic and discuss code concepts for regulating recreational marijuana businesses.

## **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

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

**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 8:00a.m. and 10:00p.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.

**September 2, 2014:** In advance of the vote on state Measure 91 to legalize recreational marijuana, the Council imposed a 10% local tax on the sale of recreational marijuana products.

**April 15 and February 25, 2014:** The Council enacted a temporary ban on the opening of medical marijuana dispensaries. The ban was lifted in 2015 with adoption of the zoning provisions for medical marijuana dispensaries.

## BACKGROUND

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 has established an application process for marijuana business licenses and will begin taking applications as of January 4, 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.

Given that the OLCC is now taking in applications for new recreational marijuana businesses, it is important and timely for the City to determine how it may wish to regulate these businesses. Staff is seeking general direction on the types of code amendments to develop.

At the January 19 study session, the City Council provided direction regarding the following concepts:

Council members discussed the following general code concepts:

- Recreational marijuana retail outlets:
  - Except as noted below, apply the same locational and operational standards that exist for medical marijuana dispensaries (1000 ft from schools or other dispensaries; no products visible from outside; no colocation with other businesses; and hours limited from 8:00 am to 10:00 pm).
  - Separate recreational marijuana retail outlets from other recreational outlets and medical marijuana dispensaries by a 1000-ft buffer (state laws do not require any separation between recreational outlets).
  - Consideration should be given to separating recreational marijuana retail outlets from public parks. This buffer could be the same as the buffer from schools – 1000 ft (see the attached map).
  - To some degree, allow collocation with other recreational marijuana businesses to allow vertical integration.
- Processing facilities, laboratories, and wholesale facilities (both medical and recreational):
  - Except as noted below, treat these facilities in a manner similar to standard industrial, office, and warehouse uses.
  - Ensure that nearby uses and residential areas are not impacted by noxious odors.
  - Consider buffers from residential areas for processing facilities.
  - Allow some collocation of marijuana businesses; e.g. grow sites and processing facilities; processing facilities and retail outlets; labs with other facilities.
  - Prohibit processing facilities; laboratories; and wholesale uses as home occupations.
- Grow sites (both recreational and medical):
  - Prohibit outdoor grow sites in industrial areas.
  - Prohibit indoor or outdoor commercial and home occupation grow sites 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 (reconsider following the completion of the NMIA plan).

**DISCUSSION**

Staff is seeking direction from Commission on the following question:

- Does the Commission generally agree that the concepts identified above will provide a starting point for draft code amendments for the initial public hearing?

**RECOMMENDATION**

There is no formal staff recommendation. Staff is seeking direction from the Commission regarding development of a proposal to take to the public hearing.

**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. Attachment 1 – Map with buffers around schools and parks	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Attachment 2 - Regulating Recreational Marijuana Background Paper	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

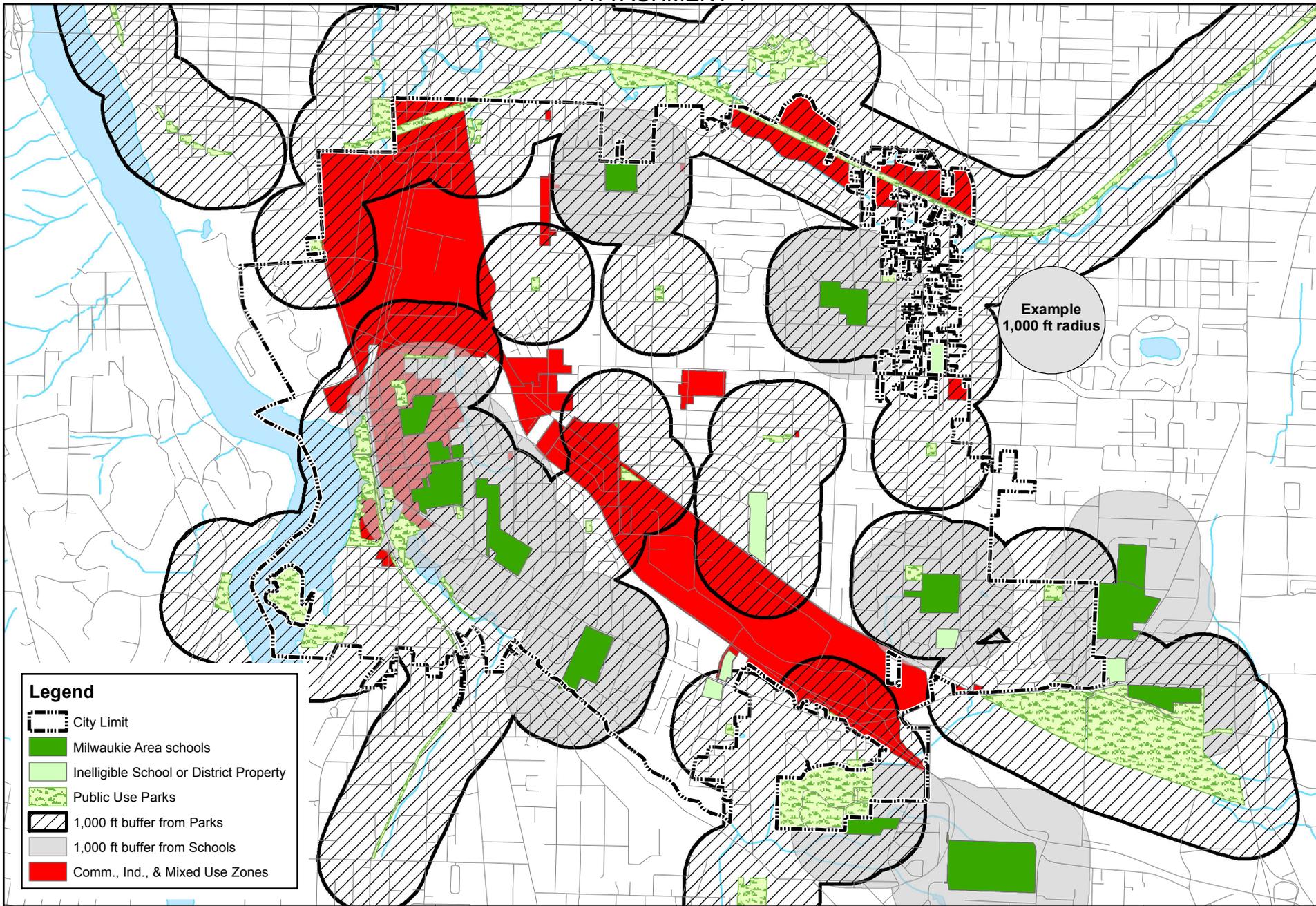
Key:

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-140>.



**Legend**

-  City Limit
-  Milwaukie Area schools
-  Ineligible School or District Property
-  Public Use Parks
-  1,000 ft buffer from Parks
-  1,000 ft buffer from Schools
-  Comm., Ind., & Mixed Use Zones



# Recreational Marijuana Potential Eligible Areas

Milwaukie Planning Dept.  
 Data: City of Milwaukie GIS;  
 Metro RLIS  
 Date: 1/8/2016

1 inch = 2,457 feet

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



The information depicted on this map is for general reference only. The City of Milwaukie does not accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.

## **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.