



**COUNCIL ORDINANCE No. 2175**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19 ZONING TO MAKE MINOR CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF CLARIFICATION AND IMPROVED EFFECTIVENESS (FILE #ZA-2019-001).**

WHEREAS, the proposed amendments to Title 19 make changes and clarifications that will more effectively communicate and implement existing policy related to the Planned Development Zone; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on July 9, 2019, the Milwaukie Planning Commission conducted a public hearing as required by Milwaukie Municipal Code (MMC) 19.1008.5 and adopted a motion in support of the amendment; and

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

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

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

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

Section 3. Effective Date The amendments shall become effective 15 days from the date of adoption.

Read the first time on 8/6/19, and moved to second reading by 4:0 vote of the City Council.

Read the second time and adopted by the City Council on 8/6/19.

Signed by the Mayor on 8/6/19

Angel Falconer, Council President

APPROVED AS TO FORM:

ATTEST:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**Recommended Findings in Support of Approval  
File #ZA-2019-001, Planned Development Code Amendments**

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

1. The applicant, the City of Milwaukie, proposes to amend regulations that are contained in Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2019-001.
2. The purpose of the proposed code amendments is to amend code language related to the planned development zone. The proposed amendments are not intended to be a change of the intent of current policies. The amendments affect the following title of the municipal code:

Zoning Ordinance: MMC 19.311 – Planned Development Zone (PD)

3. The proposal is subject to the criteria and procedures outlined in the following sections of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.902 Amendments to Maps and Ordinances
  - MMC Chapter 19.1000 Review Procedures
4. Sections of the MMC or MCP not addressed in these findings are found to be not applicable to the decision on this land use application.
5. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on July 9, 2019 and August 6, 2019 as required by law.
6. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows:
  - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

*The amendments were initiated by the Planning Director on April 17, 2019.*
  - b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V review have been met as follows:
    - (1) Subsection 19.1008.3.A.1 requires opportunity for public comment.

*Opportunity for public comment and review has been provided. The current version of the draft amendments has been posted on the City's web site since June 7, 2019. On June 18, 2019, staff e-mailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments.*
    - (2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

*A notice of the Planning Commission's July 9, 2019 hearing was posted as required on June 7, 2019. A notice of the City Council's August 6, 2019 hearing was posted as required on July 3, 2019.*

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

*The Planning Director has determined that the proposal affects a large geographic area.*

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

*Notice of the proposed amendments was sent to DLCD on June 5, 2019.*

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

*Notice of the proposed amendments was sent to Metro on June 5, 2019.*

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

*The proposed amendments generally do not further restrict the use of property. In general, the proposed amendments add flexibility.*

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

*The Planning Commission held a duly advertised public hearing on July 9, 2019 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 6, 2019 and approved the amendments.*

7. MMC 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows:

- (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

*The Planning Commission held a duly advertised public hearing on July 9, 2019. A public hearing before City Council is tentatively scheduled for August 6, 2019. Public notice was provided in accordance with MMC Subsection 19.1008.3.*

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

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

*The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code. The amendments are not intended to affect policy.*

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

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

The Goal statement of the Residential Land Use and Housing Element reads as follows:

To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.

Objective #3 – Residential Land Use: Design states:

To encourage a desirable living environment by allowing flexibility in design, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided whenever feasible.

Policy #2 within Objective #3 states:

In all Planned Unit Developments, a density bonus up to twenty percent (20%) over the allowable density may be granted in exchange for exceptional design quality or special project amenities.

Policy #3 within Objective #3 states:

All Planned Unit Developments will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

*The proposed amendments do not change the intent of Planned Development (PD) Zone language, which is to encourage greater flexibility of design, promote variety in the physical development pattern of the city, and to encourage a mix of housing types. The amendments are confined to revisions that clarify the process for*



*reviewing a PD application and provide the ability to phase large scale developments. None of the language related to project design or density is proposed to change.*

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

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

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

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

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

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

## Underline/Strikeout Amendments

### Title 19 Zoning Ordinance

#### 19.311 PLANNED DEVELOPMENT ZONE PD

In a Planned Development Zone the following regulations shall apply:

##### 19.311.1 Purpose

The purpose of a PD Planned Development Zone is:

- A. To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements;
- B. To encourage greater flexibility of design and the application of new techniques in land development;
- C. To provide a more efficient, aesthetic, and desirable use of public and private common open space;
- D. To promote variety in the physical development pattern of the City; and
- E. To encourage a mix of housing types and to allow a mix of residential and other land uses.
- F. To provide an alternative discretionary review process for projects requiring more flexibility than what would be provided through the standard clear and objective development review or land division process.

##### 19.311.2 Use

A planned development approved by the City Council and based on a final development plan and program shall constitute the Planned Development Zone. The PD Zone is a superimposed zone applied in combination with regular existing zones. A PD Zone shall be comprised of such combinations of types of dwellings and other structures and uses as shall be authorized by the City Council, but the City Council shall authorize only those types of dwellings and other structures and uses as will:

- A. Conform to the City's Comprehensive Plan;
- B. Form a compatible and harmonious group;
- C. Be suited to the capacity of existing and proposed public utilities and facilities;
- D. Be cohesively designed and consistent with the protection of public health, safety, and welfare in general; and
- E. Afford reasonable protection to the permissible uses of properties surrounding the site. In addition to residences and their accessory uses, the City Council may authorize commercial and nonresidential uses which it finds to be:
  - 1. Designed to serve primarily the residents of the planned development or surrounding area, and
  - ~~2. Limited to those nonresidential uses which do not exist in the vicinity, and~~
  - ~~3.~~ Fully compatible with, and incorporated into, the design of the planned development.

### 19.311.3 Development Standards

All standards and requirements of this chapter and other City ordinances shall apply in a PD Zone unless adjusted through the PD process, the Planning Commission grants a variance from said PD Zone standards in its approval of the PD Zone or accompanying subdivision plat. Approval of a PD Zone establishes a modified set of development standards specific to the development.

A. Minimum Size of a PD Zone

A PD Zone may be established only on land which is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone. ~~A PD Zone shall not be established on less than 2 acres of contiguous land unless the Planning Commission finds that a smaller site is suitable because of unique character, topography, landscaping features, or constitutes an isolated problem area.~~

B. Special Improvements

In its approval of the final plan or ~~subdivision~~ land division plat within a PD Zone, the City may require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities. Such approval shall not obligate the City to expend funds for additional construction equipment or for special road, sewer, lighting, water, fire, or police service.

C. Density Increase and Control

The City Council may permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning. In no case shall such density increase be more than 20% greater than the density range prescribed for the primary land use designation indicated in the Comprehensive Plan.

D. Peripheral Yards

Along the periphery of any PD Zone, additional yard depth, buffering, or screening may be required. Peripheral yards shall be at least as deep as that required by the front yard regulations of underlying zones. Open space may serve as peripheral yard and/or buffer strips to separate one planned area from another, if such dual use of the land is deemed to comply with this section.

E. Open Space

Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the City Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.

The development plan and program shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required. Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner

specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.

All planned unit developments will have at least one-third of the gross site area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

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#### 19.311.4 Subject to Design Review

Any development within a PD Zone shall be subject to the provisions of design review as outlined in a separate ordinance.

#### 19.311.5 Preliminary Development Plan and Program

##### A. Applicant

For the purpose of this section, “owner” or “owner-applicant” means and includes any individual(s), partnership(s), corporation(s), public body(ies), legal entity(ies), or holder(s) of a written option to purchase said property. An owner of land located outside, but contiguous to, the City may submit a preliminary development plan for consideration by the City providing that an application for annexation to the City has been filed.

##### B. Preliminary Development Plan

A preliminary development plan and program ~~shall~~ must be submitted by the applicant with the information on the forms and checklists as required with information as required by resolution of the Planning Commission and shall include a phasing plan if applicable. If the proposed project is to be constructed in phases, the project as a whole must be portrayed in the application materials and shall require preliminary approval.

#### 19.311.6 Planning Commission Review of Preliminary Development Plan and Program

##### A. Conditional approval by Planning Commission

Following the meeting, or any continuance thereof, the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies.

##### B. Upon approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant must shall, within 6 18 months, file with the City a final development plan and program, including a phasing plan if applicable, and an application for a change of zone classification which serves as an application for a PD Zone change.

#### 19.311.7 Final Development Plan and Program

The final development plan and program and applicable phasing plan shall must contain the information on the forms and checklists information as required.

#### 19.311.8 ~~Subdivision~~ Land Division Plat

A.——If the planned development will involve the ~~subdivision~~ of land as defined in City land division regulations, ~~the owner-applicant shall prepare and submit a preliminary subdivision plat~~

## Proposed Code Amendment

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~~along with information required by said ordinance to be considered at the same time as the final development plan and program. then the review process is as follows:~~

- ~~A. The owner-applicant may prepare and submit a preliminary plat to be considered at the same time as the final development plan. The final plat must be submitted within 1 year subsequent to approval of the preliminary plat.~~
- ~~B. For phased development, the owner-applicant may prepare and submit a preliminary plat for the initial phase only to be considered at the same time as the final development plan. The final plat for the initial phase must be submitted within 1 year subsequent to approval of the preliminary plat. For subsequent phases, preliminary and final plat approval is required for each separate phase, in accordance with Subsection 19.311.17.~~
- ~~C. For land divisions, final plat approval for the last phase must be obtained within 7 years of the date of approval of the final development plan. For all other projects, in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.~~
- ~~B. The final subdivision plat shall be submitted within 1 year subsequent to approval of the planned development zone by Council.~~

### **19.311.9 Approval Criteria ~~Application for Zone Change~~**

~~Together with submittal of the final plan and development program, the owner applicant shall submit an application for a zone change to apply the PD Zone to the subject property. The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:~~

- ~~A. Substantial consistency with the proposal approved with Subsection 19.311.6;~~
- ~~B. Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;~~
- ~~C. The proposed amendment is compatible with the surrounding area based on the following factors:
  - ~~1. Site location and character of the area.~~
  - ~~2. Predominant land use pattern and density of the area.~~
  - ~~3. Expected changes in the development pattern for the area.~~~~
- ~~D. The need is demonstrated for uses allowed by the proposed amendment.~~
- ~~E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.~~
- ~~F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.~~
- ~~G. Compliance with all applicable standards in Title 17 Land Division.~~
- ~~H. Compliance with all applicable development standards and requirements; and~~
- ~~I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.~~



**19.311.10 Planning Commission Action on Final Development Plan and Program**

- A. Upon receipt of the final development plan and program, ~~phasing plan, zone change application,~~ and preliminary ~~subdivision~~ plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing per Section 19.1007 ~~Type IV Review~~. If the final development plan and program is found to be consistent in compliance with previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.
- B. It shall at the same time recommend the change to PD Zone in accordance with the provisions of Section 19.902. The approved final development plan and program shall be the basis upon which the change in zone is made. It shall at the same time approve the preliminary ~~subdivision~~ plat in accordance with the Milwaukie land division regulations unless the proposal is a phased development in accordance with the provisions of Subsection 19.311.17.
- C. If the land upon which the change to PD Zone is sought is not within the boundaries of the City, the Planning Commission may approve the zone change and recommend it to the City Council to become effective when the land becomes annexed to the City; or continue the public hearing for the purpose of suitably amending the proposal; or disapprove the proposed developments and abandon hearings and proceedings thereon.

**19.311.11 City Council Action on Final Development Plan and Program**

- A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and applicable phasing plan and zone change application shall be considered by the City Council per Section 19.1007 ~~Type IV Review~~.
- B. Following the ~~consideration, review and finding of compliance with the approval criteria in Subsection 19.311.9,~~ the City Council may adopt an ordinance applying the PD Zone to the subject property and, in so doing, shall adopt the approved final development plan and program as the standards and requirements for said zone. The City Council, by said ordinance, shall also accept or reject all or part of the dedications of public facilities, land, and open space consistent with the approved phasing plan.
- C. If the proposed PD Zone is contiguous to, but not within, the City boundaries, the City Council shall delay final action until the land is officially annexed to the City.
- D. The City Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment thereof, or reject the proposals and abandon further hearings and proceedings thereon.

**19.311.12 Filing of Approved Final Plan and Program**

Following action to amend the Zoning ~~Map Ordinance~~ and prior to its effective date, the owner-applicant shall file with the City a conformed and approved final development plan and program, together with all pertinent documents approved as to form by the City Attorney.

**19.311.13 Recording of Notice of Final Development Plan**

Each owner of property so rezoned shall execute a notice prepared by the City which acknowledges that the final development plan and program approved by the City Council constitutes zoning for the property. Such notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. Said notices shall be recorded in the office of the County Recorder of Clackamas County.

**19.311.14 Development Improvement Prohibited Pending Compliance**

No excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, within the PD Zone until all provisions of this article including execution and filing of required documents, all requirements of the City Land Division Ordinance and Building Code, and all requirements of the final development plan and program have been complied with, unless approved by the Planning Commission.

**19.311.15 Variations from Final Development Plan and Program**

- A. The City Manager or designee will determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
- B. If the City Manager or designee determines that a modified proposal no longer substantially conforms to the original approval, the City Manager or designee will determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.
  - 1. Major modifications are modifications that alter a condition of approval, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
  - 2. Minor modifications are all modifications not otherwise identified as major modifications.
- C. Minor modifications will be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The City Manager or designee will determine the review type after considering the nature and scope of the modification. The City Manager or designee's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications will be evaluated through a Type III review per Section 19.1006.
- ~~A. Proposed changes which do not meet these criteria shall be processed in the same manner as for a new planned development.~~
- ~~B. The development may vary from the approved final plan and program so long as it is consistent with any subsequent subdivision plat approved by the Planning Commission and does not alter total density, ratio of dwelling unit types, boundaries of the planned development, or location or area of public spaces.~~
- ~~C. Where changes in a subdivision plat are not required, an application for approval of variations to the recorded final plan and program may be submitted in writing. Such variations may be approved by the City staff provided they do not alter dwelling unit densities, alter dwelling unit type ratios, increase or change the type or location of commercial or residential structures, change the boundaries of the planned development, or change the location and area of public open spaces and recreational areas.~~

**19.311.16 Expiration of Planned Development Zone**

If, within ~~6~~12 months of its effective date, substantial construction or development in the PD Zone has not ~~commenced~~~~occurred~~ in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with Section 19.1007

Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Map Ordinance and property changed back to original zoning.

In the case of phased development, as governed by Subsection 19.311.17, this provision applies to the first phase of the development.

**19.311.17 Phased Development**

- A. The Planning Commission may approve a time schedule for developing a site in phases as follows:
  - 1. For land divisions, final plat approval for the last phase must be obtained within 7 years of the date of approval of the final development plan.
  - 2. For all other projects, in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.
- B. The criteria for approving a phased detail development plan proposal are that:
  - 1. The public infrastructure must be constructed in conjunction with or prior to each phase; and
  - 2. The development and occupancy of any phase is dependent on the use of public facilities constructed to the applicable City or special district standards.
- C. If the planned development will involve the division of land as defined in City land division regulations, the owner-applicant may prepare and submit a preliminary plat with each separate phase. The final plat must be submitted within 1 year subsequent to approval of the preliminary plat.
- D. Extensions to the approved time schedule are permitted subject to Subsection 19.908.

## Clean Amendments

### Title 19 Zoning Ordinance

#### 19.311 PLANNED DEVELOPMENT ZONE PD

In a Planned Development Zone the following regulations shall apply:

##### 19.311.1 Purpose

The purpose of a PD Planned Development Zone is:

- A. To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements;
- B. To encourage greater flexibility of design and the application of new techniques in land development;
- C. To provide a more efficient, aesthetic, and desirable use of public and private common open space;
- D. To promote variety in the physical development pattern of the City; and
- E. To encourage a mix of housing types and to allow a mix of residential and other land uses.
- F. To provide an alternative discretionary review process for projects requiring more flexibility than what would be provided through the standard clear and objective development review or land division process.

##### 19.311.2 Use

A planned development approved by the City Council and based on a final development plan and program shall constitute the Planned Development Zone. The PD Zone is a superimposed zone applied in combination with regular existing zones. A PD Zone shall be comprised of such combinations of types of dwellings and other structures and uses as shall be authorized by the City Council, but the City Council shall authorize only those types of dwellings and other structures and uses as will:

- A. Conform to the City's Comprehensive Plan;
- B. Form a compatible and harmonious group;
- C. Be suited to the capacity of existing and proposed public utilities and facilities;
- D. Be cohesively designed and consistent with the protection of public health, safety, and welfare in general; and
- E. Afford reasonable protection to the permissible uses of properties surrounding the site. In addition to residences and their accessory uses, the City Council may authorize commercial and nonresidential uses which it finds to be:
  - 1. Designed to serve primarily the residents of the planned development or surrounding area, and
  - 2. Fully compatible with, and incorporated into, the design of the planned development.

**19.311.3 Development Standards**

All standards and requirements of this chapter and other City ordinances shall apply in a PD Zone unless adjusted through the PD process. Approval of a PD Zone establishes a modified set of development standards specific to the development.

A. Minimum Size of a PD Zone

A PD Zone may be established only on land which is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone.

B. Special Improvements

In its approval of the final plan or land division plat within a PD Zone, the City may require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities. Such approval shall not obligate the City to expend funds for additional construction equipment or for special road, sewer, lighting, water, fire, or police service.

C. Density Increase and Control

The City Council may permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning. In no case shall such density increase be more than 20% greater than the density range prescribed for the primary land use designation indicated in the Comprehensive Plan.

D. Peripheral Yards

Along the periphery of any PD Zone, additional yard depth, buffering, or screening may be required. Peripheral yards shall be at least as deep as that required by the front yard regulations of underlying zones. Open space may serve as peripheral yard and/or buffer strips to separate one planned area from another, if such dual use of the land is deemed to comply with this section.

E. Open Space

Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the City Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.

The development plan and program shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required. Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.



All planned unit developments will have at least one-third of the gross site area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

**19.311.4 Subject to Design Review**

Any development within a PD Zone shall be subject to the provisions of design review as outlined in a separate ordinance.

**19.311.5 Preliminary Development Plan and Program**

A. Applicant

For the purpose of this section, “owner” or “owner-applicant” means and includes any individual(s), partnership(s), corporation(s), public body(ies), legal entity(ies), or holder(s) of a written option to purchase said property. An owner of land located outside, but contiguous to, the City may submit a preliminary development plan for consideration by the City providing that an application for annexation to the City has been filed.

B. Preliminary Development Plan

A preliminary development plan and program must be submitted by the applicant with the information on the forms and checklists as required and shall include a phasing plan if applicable. If the proposed project is to be constructed in phases, the project as a whole must be portrayed in the application materials and shall require preliminary approval.

**19.311.6 Planning Commission Review of Preliminary Development Plan and Program**

A. Conditional approval by Planning Commission

Following the meeting, or any continuance thereof, the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies.

B. Upon approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant must, within 18 months, file with the City a final development plan and program, including a phasing plan if applicable, which serves as an application for a PD Zone change.

**19.311.7 Final Development Plan and Program**

The final development plan and program and applicable phasing plan must contain the information on the forms and checklists as required.

**19.311.8 Land Division**

If the planned development will involve the division of land as defined in City land division regulations, then the review process is as follows:

- A. The owner-applicant may prepare and submit a preliminary plat to be considered at the same time as the final development plan. The final plat must be submitted within 1 year subsequent to approval of the preliminary plat.
- B. For phased development, the owner-applicant may prepare and submit a preliminary plat for the initial phase only to be considered at the same time as the final development plan. The final plat for the initial phase must be submitted within 1 year subsequent to approval of

## Proposed Code Amendment

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the preliminary plat. For subsequent phases, preliminary and final plat approval is required for each separate phase, in accordance with Subsection 19.311.17.

- C. For land divisions, final plat approval for the last phase must be obtained within 7 years of the date of approval of the final development plan. For all other projects, in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.

### **19.311.9 Approval Criteria**

The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:

- A. Substantial consistency with the proposal approved with Subsection 19.311.6;
- B. Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;
- C. The proposed amendment is compatible with the surrounding area based on the following factors:
  - 1. Site location and character of the area.
  - 2. Predominant land use pattern and density of the area.
  - 3. Expected changes in the development pattern for the area.
- D. The need is demonstrated for uses allowed by the proposed amendment.
- E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
- F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
- G. Compliance with all applicable standards in Title 17 Land Division.
- H. Compliance with all applicable development standards and requirements; and
- I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

### **19.311.10 Planning Commission Action on Final Development Plan and Program**

- A. Upon receipt of the final development plan and program, phasing plan, and preliminary plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing per Section 19.1007. If the final development plan and program is found to be consistent with previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.
- B. It shall at the same time recommend the change to PD Zone in accordance with the provisions of Section 19.902. The approved final development plan and program shall be the basis upon which the change in zone is made. It shall at the same time approve the preliminary plat in accordance with the Milwaukie land division regulations unless the proposal is a phased development in accordance with the provisions of Subsection 19.311.17.

- C. If the land upon which the change to PD Zone is sought is not within the boundaries of the City, the Planning Commission may approve the zone change and recommend it to the City Council to become effective when the land becomes annexed to the City; or continue the public hearing for the purpose of suitably amending the proposal; or disapprove the proposed developments and abandon hearings and proceedings thereon.

**19.311.11 City Council Action on Final Development Plan and Program**

- A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and applicable phasing plan shall be considered by the City Council per Section 19.1007.
- B. Following the review and finding of compliance with the approval criteria in Subsection 19.311.9, the City Council may adopt an ordinance applying the PD Zone to the subject property and, in so doing, shall adopt the approved final development plan and program as the standards and requirements for said zone. The City Council, by said ordinance, shall also accept or reject all or part of the dedications of public facilities, land, and open space consistent with the approved phasing plan.
- C. If the proposed PD Zone is contiguous to, but not within, the City boundaries, the City Council shall delay final action until the land is officially annexed to the City.
- D. The City Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment thereof, or reject the proposals and abandon further hearings and proceedings thereon.

**19.311.12 Filing of Approved Final Plan and Program**

Following action to amend the Zoning Map and prior to its effective date, the owner-applicant shall file with the City a conformed and approved final development plan and program, together with all pertinent documents approved as to form by the City Attorney.

**19.311.13 Recording of Notice of Final Development Plan**

Each owner of property so rezoned shall execute a notice prepared by the City which acknowledges that the final development plan and program approved by the City Council constitutes zoning for the property. Such notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. Said notices shall be recorded in the office of the County Recorder of Clackamas County.

**19.311.14 Development Improvement Prohibited Pending Compliance**

No excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, within the PD Zone until all provisions of this article including execution and filing of required documents, all requirements of the City Land Division Ordinance and Building Code, and all requirements of the final development plan and program have been complied with, unless approved by the Planning Commission.

**19.311.15 Variations from Final Development Plan and Program**

- A. The City Manager or designee will determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
- B. If the City Manager or designee determines that a modified proposal no longer substantially conforms to the original approval, the City Manager or designee will determine whether the

## Proposed Code Amendment

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modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.

1. Major modifications are modifications that alter a condition of approval, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
  2. Minor modifications are all modifications not otherwise identified as major modifications.
- C. Minor modifications will be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The City Manager or designee will determine the review type after considering the nature and scope of the modification. The City Manager or designee's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications will be evaluated through a Type III review per Section 19.1006.

### **19.311.16 Expiration of Planned Development Zone**

If, within 12 months of its effective date, substantial construction or development in the PD Zone has not commenced in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Map and property changed back to original zoning.

In the case of phased development, as governed by Subsection 19.311.17, this provision applies to the first phase of the development.

### **19.311.17 Phased Development**

- A. The Planning Commission may approve a time schedule for developing a site in phases as follows:
  1. For land divisions, final plat approval for the last phase must be obtained within 7 years of the date of approval of the final development plan.
  2. For all other projects, in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.
- B. The criteria for approving a phased detail development plan proposal are that:
  1. The public infrastructure must be constructed in conjunction with or prior to each phase; and
  2. The development and occupancy of any phase is dependent on the use of public facilities constructed to the applicable City or special district standards.
- C. If the planned development will involve the division of land as defined in City land division regulations, the owner-applicant may prepare and submit a preliminary plat with each separate phase. The final plat must be submitted within 1 year subsequent to approval of the preliminary plat.
- D. Extensions to the approved time schedule are permitted subject to Subsection 19.908.