



CITY OF MILWAUKIE

Milwaukie Zoning Code Proposed Amendments for Planned Development PD Zone

**June 2019
ZA-2019-001**

Municipal Code - Title 19 Zoning Ordinance
Section 19.311 Planned Development Zone PD

Please contact Vera Kolas, Associate Planner with the City of Milwaukie Planning Department, at 503-786-7653 or koliasv@milwaukieoregon.gov with questions or comments about the proposed code amendments and/or the code adoption process

Reader Guide

Commentary

A commentary section precedes each section of code amendments. The commentary provides a non-technical summary of the proposed amendments and highlights proposed policy changes. The commentary section is labeled as commentary and presented in Comic Sans font (the same font of this sentence).

Amendments

Unless otherwise noted in the document, underlined text is proposed text, and ~~strike through~~ text is existing code language proposed for deletion. Standards shown in [brackets] are those that still require Planning Commission discussion and direction.

Context/Surrounding Code

The chapter, section, and subsection for the proposed code amendments are listed for reference in this document. Line breaks, like the one below, between subsequent amendments indicate that there is intervening text within the section or subsection that is not included in this document.

Please be advised that this document shows only sections of code for which amendments are proposed, along with limited surrounding sections for context. It does not include all sections of the Milwaukie Municipal Code.

Starter COMMENTARY page

The proposed amendments relate to MMC 19.311 Planned Development Zone (PD). 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.

Discussions and meetings about the proposed Hillside Master Plan project on 32nd Ave, which will be reviewed as a PD zone, have revealed gaps in the existing code that are a barrier to larger, phased developments.

The proposed amendments are intended to be surgical in nature, addressing specific issues related to process and future phasing. They are not intended to change the fundamental goals of a PD, which is to provide greater flexibility, variety, and a mix of housing types and a mix of other land uses. The proposed amendments are intended to address an immediate issue related to the review process, not the substance of the zone itself. A larger package of code amendments related to housing and development review procedures is being developed and will come before the Planning Commission and City Council for review following adoption of the comprehensive plan policies later this year.

The proposed revisions are not intended to change the existing code language as it relates to specific design elements, such as energy efficiency, landscaping, or other standards. The PD process is a discretionary review process that allows customized design standards specific to each project; any specific design elements would be identified during the PD review process for a proposed project.

The proposed code amendments clarify the review and approval process and allow for phasing of a development if required. The existing code language does not allow for a phased project to be developed over time, which is not unusual for larger projects. The existing code language does not include reference to extensions, which is also in the proposed language.

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.

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 community 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~~ surrounding area, and
 - ~~2. Limited to those nonresidential uses which do not exist in the vicinity, and~~
 - 23. 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 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 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 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 shall 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 shall 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 shall, within ~~6~~ 12 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 shall serve 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 contain information as required. ~~by resolution of the Planning Commission.~~

19.311.8 Subdivision 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 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 subdivision plat to be considered at the same time as the final development plan. The final subdivision plat shall 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 subdivision plat for the initial phase only to be considered at the same time as the final

development plan. The final subdivision plat for the initial phase shall be submitted within 1 year subsequent to approval of the PD Zone by the City Council. For subsequent phases, preliminary and final plat approval is required for each separate phase, in accordance with Subsection 19.311.17.

- C. For subdivisions, 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 shall 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, 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. 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 612 months of its effective date, substantial construction or development in the PD Zone has not 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 shall apply to the first phase of the development.

13.311.17 Phased Development

- A. The Planning Commission may approve a time schedule for developing a site in phases as follows:
 - 1. For subdivisions, 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 shall 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 facilities shall be constructed in conjunction with or prior to each phase; and
 - 2. The development and occupancy of any phase shall be dependent on the use of public facilities constructed to the applicable City or special district standards.
- C. If the planned development will involve the subdivision of land as defined in City land division regulations, the owner-applicant may prepare and submit a preliminary subdivision plat with each separate phase. The final subdivision plat shall 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 – Extensions to Expiring Approvals.