

COUNCIL ORDINANCE No. 2198

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE (MMC) CHAPTER 11.05.010 TEMPORARY USES, PERMITS, AND REGULATIONS FOR THE PURPOSE OF CLARIFICATION OF, AND ALLOWING COOLING AND WARMING SHELTERS (FILE #ZA-2020-001).

WHEREAS, the proposed amendments to MMC Title 11 creates a section that allows for review of temporary permits for shelters for warming, cooling, and hazardous air quality with specific requirements; and

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

WHEREAS, on December 8, the Milwaukie Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the amendments; 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 face in support of the amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit B (Title 11 underline/strikeout version), and Exhibit C (Title 11 clean version).

Section 3. Effective Date. The amendments shall become effective immediately.

Read the first time on 1/19/21 and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 1/19/21 .

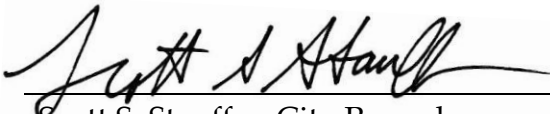
Signed by the Mayor on 1/19/21 .



Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Cericke, City Attorney

**Recommended Findings in Support of Approval
File #ZA-2020-001, Temporary Use 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 11 of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2020-001.
2. The purpose of the proposed code amendments is to amend code language related to temporary use permits to allow shelters for warming, cooling, and hazardous air quality as temporary uses. The amendments affect the following title of the municipal code:

Milwaukie Municipal Code

- MMC 11.05 – Temporary Uses, Permits, and Regulations
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 Milwaukie Comprehensive Plan (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. A public hearing was held on December 8, 2020 and January 19, 2021 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 Manager on October 14, 2020.
 - 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 draft amendments have been posted on the City's web site since November 6, 2020. On November 6, 2020 staff e-mailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments. The Planning Commission held a worksession on November 10, 2020 to discuss the 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 December 8, 2020, hearing was posted as required on November 6, 2020. A notice of the City Council's January 19, 2021 hearing was posted as required on December 18, 2020.

- (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 Manager 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 October 30, 2020.

- (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 October 30, 2020.

- (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 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 December 8, 2020 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on January 19, 2021 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 December 8, 2020. A public hearing before City Council is tentatively scheduled for January 19, 2021. 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.

- (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 overarching Goal statement of the Housing section reads as follows:

Provide safe, affordable, stable housing for Milwaukie residents of every socioeconomic status and physical ability within dwellings and neighborhoods that are entirely equitable, delightfully livable, and completely sustainable.

Goal 7.1 – Equity states:

Enable and encourage housing options that meet the needs of all residents, with a specific focus on uplifting historically disenfranchised communities and eliminating disparities for populations with special needs or lower incomes.

Policy 7.1.8 states that the city should collaborate with community partners to provide a continuum of programs that address the needs of unhoused persons and families, including temporary shelters, alternative shelter models, long-term housing, and supportive services.

Policy 7.2.8 states that the city should implement development code provisions to permit shelters and transitional housing for people without housing.

The proposed amendments provide a permit process to allow temporary shelters for warming, cooling, and hazardous air quality for unhoused people during periods of extreme heat and cold and hazardous air quality (as defined by the Environmental Protection Agencies (EPA) US Air Quality Index.

- (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.

Oregon Statewide Planning Goal 10: Housing

Goal 10 refers to the provision of housing to meet the needs of Oregon citizens. The proposed amendments relate to temporary permits to allow cooling and warming shelters to help unhoused people during times of extreme heat and cold weather conditions.

- (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 11 Miscellaneous Permits

11.05 TEMPORARY USES, PERMITS, AND REGULATIONS

11.05.010 USES

Approval may be granted for structures or uses which are temporary or seasonal in nature, such as:

- A. Seasonal sales uses on private property and on land owned by the City of Milwaukie. These activities include, but are not limited to, the sale of produce, rental of recreational equipment, provision of recreational lessons, or sale of products at a park owned by the City of Milwaukie.
- B. Temporary real estate offices;
- C. Construction parking;
- D. Construction trailers;
- E. Construction offices;
- F. Shelters for warming, cooling, or hazardous air quality, subject to the Milwaukie and Clackamas Fire District Joint Policy for Temporary Emergency Shelters.
- ~~G. F~~-Other temporary uses similar to those listed above as determined by the City Manager

11.05.030 PERMIT APPROVAL

A. Findings of Fact

A temporary use permit (TUP) may be authorized by the City Manager or designee provided that the applicant submits a narrative and detailed site plan that demonstrates that the proposed use:

1. Generally does not have negative impacts and is not inconsistent with the standards and limitations of the zoning district in which it is located;
2. Meets all applicable City and County health and sanitation requirements;
3. Meets all applicable Uniform Building Code requirements; and
4. On-site real-estate offices, construction offices, and construction trailers shall not be approved until land use approval and building permits, if applicable, have been issued.

B. Time Limits

The temporary use or structure shall be removed upon expiration of the temporary use permit, unless renewed by the City Manager or designee.

1. Temporary construction offices, construction trailers, and real estate offices shall not be issued for a period exceeding one year. The applicant may request a renewal for additional time to allow completion of the project provided that the applicant

provides a narrative describing the need for additional time and an anticipated date of project completion.

2. Permits for shelters for warming, cooling, or hazardous air quality uses are limited to no more than 90-days in any twelve-month period with an option for one 30-day extension.

23. Other temporary uses, that are not temporary events per MMC 11.04, shall be issued a permit for up to one year to accommodate the duration of the proposed temporary use.

Renewals may be provided as follows:

- a. A renewal permit may be obtained for a period of one year after providing a narrative describing how the use will remain temporary and how the use is not and will not become permanent.
 - b. A temporary use permit shall not be renewed for more than three (3) consecutive years; however, a renewal may be obtained annually for uses that do not exceed a four-month period of time per year.
-

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