

COUNCIL ORDINANCE No. 2201

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE TITLE 18 FLOOD HAZARD REGULATIONS TO COMPLY WITH FEDERAL EMERGENCY MANAGEMENT REQUIREMENTS (FILE #ZA-2020-002).

WHEREAS, the State of Oregon has in Oregon Revised Statute 197.175 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizens; and

WHEREAS, Title 18 of the Milwaukie Municipal Code (MMC) establishes flood hazard regulations designed to minimize public and private losses due to flooding; and

WHEREAS, the proposed amendments to Title 18 bring the MMC into compliance with federal requirements for floodplain protection; and

WHEREAS, adoption of the proposed amendments is required for the city to continue to participate in the National Flood Insurance Program; and

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

WHEREAS, on January 12, 2021, the Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the proposed amendments; and

WHEREAS, on March 2, 2021, the City Council adopted a larger package of amendments to Title 18 that did not include language necessary to maintain consistency with applicable federal requirements; and

WHEREAS, on April 20, 2021, the City Council was presented with two minor amendments to the newly adopted Title 18 that ensure consistency with applicable federal requirements for flood hazard regulations; and

WHEREAS, the 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 proposed amendments are attached as Exhibit A.

Section 2. Amendments. The relevant text of MMC Title 18 is amended as presented in Exhibit B (clean version). A strikeout/underline version of the amendments is provided in Exhibit C for reference only.

Section 3. Effective Date. The amendments will become effective in 30 days.

Read the first time on April 20, 2021 and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on April 20, 2021.

Signed by the Mayor on April 20, 2021.



Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

**Amended Findings in Support of Approval
File #ZA-2020-002
Amendments to MMC Title 18 (Flood Hazard Regulations)**

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 the flood hazard regulations that are established in Title 18 of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2020-002.
2. The purpose of the proposed code amendments is to update the City's flood hazard regulations to maintain consistency and compliance with federal regulations in order to retain eligibility for the National Flood Insurance Program (NFIP). The City's participation in the NFIP allows residents to purchase flood insurance at a reasonable cost. The proposal is to repeal the existing language in Title 18 and replace it with new (but very similar) language based on a model ordinance provided by the Oregon Department of Land Conservation and Development (DLCD).
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 19.1008 Type V Review

The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. An initial evidentiary hearing was held by the Planning Commission on January 12, 2021, and another public hearing was held by the City Council on March 2, 2021 as required by law.

Note on second Council hearing: The primary package of amendments was approved by Council on March 2, 2021, with Ordinance 2199. Following that approval, DLCD notified City staff that two additional minor amendments were needed to maintain the City's compliance with applicable federal flood hazard regulations. A second public hearing was held by the City Council on April 20, 2021 to consider those minor amendments. No substantive changes have been made to these original findings.

4. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. Specifically, MMC Subsection 19.902.5 establishes Type V review as the process for changing the text of land use regulations, with the following approval criteria:

 - 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, including MMC Section 19.402 Natural Resources.

This standard is met.

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

Of the various goals, objectives, and policies in the recently updated Comprehensive Plan, the chapter on Environmental Stewardship & Community Resiliency is where the language most relevant to the proposed amendments can be found. In particular, the section on Natural Hazards includes the following overarching Goal statement:

Protect the Milwaukie community from the threats of natural hazards, including those induced by climate change, through risk minimization, education, and adaptation.

Goal 5.1 – Identifying, Avoiding, and Reducing Hazard Potential

Identify areas with high natural hazard potential and develop policies and programs to avoid or reduce potential negative impacts.

Policy 5.1.1: Ensure that City natural hazard maps stay updated and reflect the most recent information and best available science for natural hazard areas, including flooding, landslides, liquefaction, unstable soils, wildfire, earthquakes, drought and sea level rise.

Policy 5.1.2: Require the submittal and neutral third-party review of detailed technical reports for proposed development within high risk flood, liquefaction and landslide hazard areas.

Policy 5.1.3: Encourage and prioritize development in areas with low risk of natural hazards and restrict development in areas with high risk that cannot be adequately mitigated.

Policy 5.1.4: Regulate floodplain areas in a manner that protects the public, recognizes their natural functions as waterways and critical habitat, and provides open space/recreational opportunities.

Goal 5.2 – Partnerships and Education

Continue and expand partnerships with government agencies, utilities, and other groups that can help Milwaukie residents prepare for natural hazards.

Policy 5.2.1: Continue to coordinate with regional, state and federal agencies on disaster preparedness efforts.

Policy 5.2.3: Ensure that mapping of the 100- and 500-year floodplain areas stays current and accurate.

Goal 5.3 – Infrastructure and Building Resiliency

Ensure that the City’s built environment and infrastructure are adequately prepared for natural disasters.

Policy 5.3.1: Ensure that relevant sections of the Milwaukie Municipal Code, most notably those that deal with Flood Hazards, Seismic Conditions, and Soils, are maintained to reflect best available science.

Policy 5.3.5: Prohibit essential public facilities and uses with vulnerable populations from being located within areas at high risk of flooding, landslides, liquefaction, and fire, and aim to relocate existing uses in these areas.

Goal 5.4 – Adaptation and Mitigation

Develop programs that inform the public about the increased risks from natural hazards and create strategies for how to deal with them.

Policy 5.4.1: In areas where there is a high risk of flooding or other natural hazards, support efforts by the City and other public and private entities to acquire properties for conservation purposes. Restrict development to uses that have a demonstrated community benefit and for which the natural hazard risks and environmental impacts can be adequately mitigated.

Policy 5.4.3: Coordinate with local, regional, state and federal agencies on disaster preparedness efforts, including coordination for major seismic and flooding events.

The City’s flood regulations remain an important part of a larger network of regional, state, and federal rules intended to protect the public and reduce flood damage. The proposed amendments are intended to provide continued consistency and compliance with applicable federal regulations related to flood hazard management. This includes referencing the latest flood mapping available from FEMA, establishing a more formal floodplain development process, and continuing to regulate and restrict development in areas at high risk of flooding. The proposed amendments further restrict the siting of critical facilities in the regulatory floodplain and are aligned with the latest state building codes. As proposed, the amendments are consistent with and facilitate the actualization of several relevant goals and policies in the City’s Comprehensive Plan.

This standard is met.

- 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 are consistent with the following applicable sections of Metro’s Urban Growth Management Functional Plan:

Title 3 – Water Quality and Flood Management

MMC Title 18 (Flood Hazard Regulations) incorporates Metro’s Title 3 regulations as to ensure that the City’s regulations for flood management are consistent with those of Metro. Furthermore, the proposed amendments are designed to ensure that City regulations continue to be consistent with applicable federal regulations for flood management.

Title 8 – Compliance Procedures

The City’s current Comprehensive Plan and land use regulations are in compliance with the Functional Plan. The proposed amendments will be deemed to comply with the Functional Plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). As required by Metro Code Section 3.07.820.A, the City has provided notice of the proposed amendments to Metro’s Chief Operating Officer as much in advance of the City Council hearing on the proposed amendments as possible.

In processing the proposed amendments, the City has followed its own requirements and procedures for citizen involvement. The proposed amendments have been reviewed at a public City Council work session and made available to the City’s various Neighborhood District Associations for review. The City has conducted public hearings on the proposed amendments before the Planning Commission and City Council and has published public notice prior to each hearing.

This standard is met.

- 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.

Goal 1 – Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City has an adopted and acknowledged amendment process and has followed that process in making these amendments. Public hearings on the proposed amendments have been held and public notice was published prior to each hearing. In addition, all owners of property within designated flood hazard areas were sent notice of the public hearings. The Planning Commission members are appointed by an elected City Council, following an open and public selection process.

Goal 2 – Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The proposed amendments will not change the City’s land use planning process. The City will continue to have a comprehensive land use plan and implementing regulations that are consistent with the plan. The proposed amendments will update MMC Title 18 of the

municipal code and make it consistent with applicable federal flood management regulations. Specifically, the proposed amendments will update existing definitions related to flood hazard regulations to be consistent with those found in federal regulations, reorganize information for greater clarification, and generally ensure that MMC Title 18 operates consistently with respect to development issues within identified flood hazard areas. These changes strengthen the City's existing policies that implement Goal 2.

Goal 7 – Areas Subject to Natural Hazards

To protect people and property from natural hazards.

The proposed amendments will improve the City's implementation of Statewide Planning Goal 7. The proposed amendments are specifically designed to ensure that City ordinances relating to development in designated flood hazard areas continue to be consistent with applicable federal regulations for flood management.

This standard is met.

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

The primary purpose of the proposed amendments is to revise the flood hazard regulations of MMC Title 18 so that they remain consistent with the latest federal regulations.

This standard is met.

The City Council finds that the proposed amendments to MMC Title 18 (Flood Hazard Regulations) are consistent with the applicable approval criteria for zoning text amendments as established in MMC 19.902.5.B.

5. MMC Section 19.1008 Type V Review

MMC 19.1008 establishes the procedures and requirements for Type V review, which is the process for legislative actions. The City Council, Planning Commission, Planning Manager, or any individual may initiate a Type V application.

The proposed amendments were initiated by the Planning Manager on December 9, 2020.

- a. MMC Subsection 19.1008.3 establishes the public notice requirements for Type V review.

- (1) MMC Subsection 19.1008.3.A General Public Notice

MMC 19.1008.3.A establishes the requirements for public notice, including a requirement to post public notice of a public hearing on a Type V application at least 30 days prior to the first evidentiary hearing. The notice must be posted on the City website and at City facilities that are open to the public.

A notice of the Planning Commission's January 12, 2021, hearing was posted as required on December 11, 2020. A notice of the City Council's March 2, 2021, hearing was posted as required on January 29, 2021. In addition,

(2) MMC Subsection 19.1008.3.B DLCD Notice

MMC 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) as per the standards of MMC Subsection 19.1001.6.C.4.a, which required notice to be sent to DLCD at least 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to DLCD on December 9, 2020, in advance of the first evidentiary hearing on January 12, 2021.

(3) MMC Subsection 19.1008.3.C Metro Notice

MMC 19.1008.3.C requires notice of a Type V application be sent to Metro at least 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on December 9, 2020, in advance of the first evidentiary hearing on January 12, 2021.

(4) MMC Subsection 19.1008.3.D Property Owner Notice (Measure 56)

MMC 19.1008.3.D requires notice to property owners if, in the Planning Manager's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments are largely administrative in nature and would not result in significant changes for most of the properties within a designated flood zone, though they would present new restrictions for a small portion of the affected areas. A notice to this effect was mailed to the owners of all affected properties on December 22, 2020.

b. MMC Subsection 19.1008.4 Type V Decision Authority

MMC 19.1008.4 establishes that the City Council is the review authority for Type V applications and may approve, approve with conditions, amend, deny, or take no action on a Type V application after a public hearing.

The City Council held a public hearing to consider this application on March 2, 2021, and approved the proposed amendments as presented.

c. MMC Subsection 19.1008.5 Type V Recommendation and Decision

MMC 19.1008.5 establishes the procedures for review and a decision on Type V applications. The process includes an initial evidentiary hearing by the Planning Commission and a recommendation to the City Council, followed by a public hearing and decision by the City Council.

The Planning Commission held an initial evidentiary hearing on January 12, 2021, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on March 2, 2021, and approved the proposed amendments as presented. As noted in Finding 3, the City Council held a second duly advertised public hearing on April 20, 2021, to consider two additional minor amendments required to maintain the City's compliance with applicable federal standards.

TITLE 18 FLOOD HAZARD REGULATIONS**18.20 PROVISIONS FOR FLOOD HAZARD REDUCTION**

In all regulatory floodplains, the following standards must be adhered to:

18.20.040 Structures

- A. All new construction and substantial improvements must be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. All new construction and substantial improvements must be constructed with materials and utility equipment resistant to flood damage.
- C. All new construction and substantial improvements must be constructed using methods and practices that minimize flood damage.

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- ~~B.C. All new construction and substantial improvements must be constructed using methods and practices that minimize flood damage with flood resistant materials below the flood protection elevation.~~