

**Planning Commission Recommended Revisions  
to originally posted code amendments**

(Link to November 9<sup>th</sup> public hearing: <https://www.milwaukieoregon.gov/bc-pc/planning-commission-84> )

(see highlighted text for specific revised language)

1. Revise Table 19.301.4 with a new footnote and amended density for townhouses – per HB 2001.
2. Allow all middle housing types, except cottage clusters and townhouses, on lots with a minimum of 3,000 sq ft.
3. Provide reduced setbacks for development of income-restricted housing as a Type II variance.

<b>Table 19.301.4</b>					
<b>Moderate Density Residential Development Standards</b>					
<u>Standard</u>	<u>R-MD</u>				<u>Standards/ Additional Provisions</u>
	<u>Lot size (square feet)</u>				
	<u>1,500 – 2,999</u>	<u>3,000–4,999</u>	<u>5,000-6,999</u>	<u>7,000 and up</u>	
<b>A. Permitted Dwelling Type</b>					
	<u>Townhouse, Cottage<sup>1</sup></u>	<u>Single Detached Dwelling.</u>  <u>Single Detached Dwelling.</u>  <u>with up to 2 ADU.</u>  <u>Duplex</u>  <u>Triplex</u>  <u>Quadplex</u>	<u>Single Detached Dwelling.</u>  <u>Single Detached Dwelling.</u>  <u>with up to 2 ADU.</u>  <u>Duplex,</u>  <u>Triplex</u>  <u>Quadplex</u>	<u>Single Detached Dwelling.</u>  <u>Single Detached Dwelling.</u>  <u>with up to 2 ADU.</u>  <u>Duplex,</u>  <u>Triplex,</u>  <u>Quadplex.</u>	<b><u>Subsection 19.501.1 Lot Size Exceptions</u></b>

<sup>1</sup> For a Cottage within a Cottage Cluster only

**Table 19.301.4**

**Moderate Density Residential Development Standards**

Standard	R-MD				Standards/ Additional Provisions
	Lot size (square feet)				
	1,500 – 2,999	3,000–4,999	5,000-6,999	7,000 and up	
				Cottage Cluster	
<b>C. Development Standards</b>					
1. Minimum yard requirements for primary structures (ft) <sup>2</sup>					19.301.5.A Yards
a. Front yard	20 <sup>3</sup>	20	20	20	
b. Side yard	5 <sup>3</sup>	5	5	5/10	
c. Street side yard	15 <sup>3</sup>	15	15	20	
d. Rear yard	15 <sup>3</sup>	20	20	20	
<b>C. Other Standards</b>					
a. Minimum	25	7.0	7.0	5.0	
b. Maximum	34.8 25 <sup>4</sup>	8.7 <sup>4</sup>	8.7 <sup>4</sup>	6.2 <sup>4</sup>	

<sup>2</sup> Cottage Cluster developments are subject to the standards in Section 19.505.4

<sup>3</sup> For lots 3,000 sq ft and smaller: Where a newly created small lot abuts a larger or pre-existing lot, when abutting a 5,000-sq-ft lot, rear and side yard setback standards for 5,000-sq-ft lots apply; when abutting a 7,000-sq-ft lot, rear and side yard setback standards for 7,000-sq-ft lots apply, and when abutting a 10,000-sq-ft lot, rear and side yard setback standards for 10,000-sq-ft lots apply.

<sup>4</sup> Townhouses are allowed at four times the maximum density allowed for single detached dwellings in the same zone or 25 dwelling units per acre, whichever is less. Duplexes, Triplexes, Quadplexes, and Cottage clusters are exempt from density maximums.

## 19.301.5 Additional Development Standards

### A. Side Yards

On lots greater than 7,000 sq ft in the R-MD Zone, one side yard shall be at least 5 ft and one side yard shall be at least 10 ft, except on a corner lot the street side yard shall be 20 ft.

#### 1. Affordable Housing

For any middle housing development, except townhouses and cottage clusters, that includes at least 1 dwelling unit that is affordable that meets the exemption standards as defined in MMC 3.60.050, the minimum setbacks in Table 19.301.4 may be reduced as follows subject to a Type II variance per Subsection 19.911:

- a. Front yard: 10 ft
- b. Rear yard: 15 ft
- c. Side yard: 5 ft
- d. Street side yard: 10 ft

#### 4. Revise 19.301.5.D as follows:

##### D. Residential Densities

The minimum and maximum development densities in Subsection 19.301.4.C.1 are applicable for land divisions and replats that change the number of lots. Maximum densities apply to single detached dwellings; middle housing is exempt from maximum density, except for townhouses.

#### 5. Revise 19.501.2 as follows:

##### 19.501.2 Yard Exceptions

C. A covered porch on a single-family unit detached dwelling, or middle housing unit, may extend 6 ft into a required front yard if the following standards are met.

1. The porch is not enclosed on any side other than what is enclosed by the exterior walls of the dwelling. The following are not considered to be enclosures: structural supports for a covered porch, projections not extending more than 3 ft upward from the surface of the porch, railings, retractable sunshades, screens, or netting.
2. The surface of the porch does not exceed 18 in high above the average grade.
3. The porch is at least 5 ft from the front lot line.

#### 6. Revise 19.505.1 as follows:

##### **19.505.1 Single-Family Dwellings and Duplexes Single Detached and Middle Housing Residential Development**

###### A. Purpose

The design standards for ~~single-family dwellings and duplexes~~ one to four (1 - 4) unit dwellings (including single detached dwellings, duplexes, triplexes, and quadplexes), cottage clusters, and townhouses require a minimum level of design on every dwelling. These standards are

intended to promote attention to detail, human-scale design, street visibility, and privacy of adjacent properties, while affording flexibility to use a variety of architectural styles.

Site design **is intended to must** meet the following objectives:

1. Livability –Development should contribute to a livable neighborhood by incorporating visually pleasing design, minimizing the impact of vehicles, emphasizing pedestrian and bicycle connections, and providing public and private open spaces for outdoor use.
2. Compatibility –Development should have a scale that is appropriate for the surrounding neighborhood and maintains the overall residential character of Milwaukie.
3. Safety and Functionality –Development should be safe and functional, by providing visibility into and within a residential development and by creating a circulation system that prioritizes bicycle and pedestrian safety.
4. Sustainability –Development should incorporate sustainable design and building practices, such as energy conservation, preservation of trees and open space, quality building materials, and alternative transportation modes.

**7. Revise 19.505.5.D to comply with HB 2001 as follows:**

D. Number of Townhouses ~~Rowhouses~~ Allowed

In the High Density Zones , no more than 4 consecutive townhouses ~~rowhouses~~ that share a common wall(s) are allowed. A set of 4 townhouses ~~rowhouses~~ with common walls is allowed to be adjacent to a separate set of 4 townhouses ~~rowhouses~~ with common walls.

In the R-MD zone, the maximum width of attached townhouse frontage may not exceed 40 feet the maximum number of consecutive attached townhouses is 4 2.

**8. Revise 19.702 to include duplexes to comply with HB 2001 as follows:**

**19.702.2 Single-Family Detached and Duplex Residential Expansions**

Chapter 19.700 applies to single-family detached and duplex residential expansions as described below. The City has determined that the following requirements are roughly proportional to the impacts resulting from single-family detached and duplex residential expansions.

- A. For expansions or conversions that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures and garages) by 1,500 sq ft or more, all of Chapter 19.700 applies.
- B. For expansions or conversions that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures and garages) by at least ~~200~~ 800 sq ft, but not more than 1,499 sq ft, right-of-way dedication may be required pursuant to the street design standards and guidelines contained in Subsection 19.708.2.
- C. For expansions or conversions that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures and garages) by less than ~~200~~ 800 sq ft, none of Chapter 19.700 applies.
- D. single-family detached and duplex residential expansions shall provide adequate public utilities as determined by the ~~Engineering Director~~ City Engineer pursuant to Section 19.709.

E. Construction or expansion of garage and carport structures shall comply with the requirements of Chapter 12.16 Access Management. Existing nonconforming accesses may not go further out of conformance and shall be brought closer into conformance to the greatest extent possible.

**19.702.4 Exemptions**

Chapter 19.700 does not apply to the following types of development in all zones:

- A. Modifications to existing single-family detached and duplex residential structures that do not result in an increase in gross floor area.

**9. Revise minimum off-street parking requirements as follows:**

<b>Table 19.505.4.C.1</b>		
<b>Cottage Cluster Development Standards</b>		
<u>Standards</u>	<u>R-MD</u>	<u>R-1, R-2, R-2.5, R-3, R-1-B</u>
<b><u>G. Parking (see also 19.505.1.D.3)</u></b>		
1. <u>Automobile parking spaces per primary home (minimum)</u>	<b>0.5</b>	<u>0.5</u>

19.505.4. E. 2. Off-Street Parking

- a. There shall be at least **0.5** off-street parking spaces per dwelling unit in the R-MD zone and 0.5 spaces per dwelling unit in the high density zones, per Table 19.505.4.B.1. The parking space shall be located together with parking spaces for other cottages in a common area, and not located on the same lot as an individual cottage unit.

**Table 19.605.1 Off-street Parking Requirements**

<b>Table 19.605.1</b>		
<b>Minimum To Maximum Off-Street Parking Requirements</b>		
<b>Use</b>	<b>Minimum Required</b>	<b>Maximum Allowed</b>
<b>A. Residential Uses</b>		
3. <u>Middle Housing</u>		

<u>a. Duplexes</u>	<u>0</u>	<u>1 space per dwelling unit</u>
<u>b. Triplexes</u>	<u>0</u>	<u>1 space per dwelling unit</u>
<u>c. Quadplexes</u>	<u>0</u>	<u>1 space per dwelling unit</u>
<u>d. Town Houses</u>	<u>0</u>	<u>1 space per dwelling unit</u>
<u>e. Cottage Clusters</u>	<u>0.5 spaces per dwelling unit</u>	<u>1 space per dwelling unit</u>

**9. Revise MMC 19.911.3.B to include an additional variance request to minimum setbacks for income-restricted middle housing, except townhouses and cottage clusters.**

**19.911.3 Review Process**

**B. Type II Variances**

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

1. A variance of up to 40% to a side yard width standard.
2. A variance of up to 25% to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 ft through a Type II review.
3. A variance of up to 10% to lot coverage or minimum vegetation standards.
4. A variance of up to 10% to lot width or depth standards.
5. A variance of up to 10% to a lot frontage standard.
6. A variance to compliance with Subsection 19.505.1.C.4 Detailed Design, or with Subsection 19.901.1.E.4.c.(1) in cases where a unique and creative housing design merits flexibility from the requirements of that subsection.
7. A variance to compliance with Subsection 19.505.7.C Building Design Standards in cases where a unique design merits flexibility from the requirements of that subsection.
8. A variance to fence height to allow up to a maximum of 6 ft for front yard fences and 8 ft for side yard, street side yard, and rear yard fences. Fences shall meet clear vision standards provided in Chapter 12.24.

9. A variance of up to a 25% increase in the size of a Type B Accessory Dwelling unit as identified in Subsection 19.910.1.E.4.

10. A variance to interior height of a garage in a cottage cluster to allow up to a maximum of 15 ft for cases that would use space saving parking technology (e.g., interior car stacking) that might require additional interior height.

11. Minimum setbacks for income restricted middle housing, except townhouses and cottage clusters, may be reduced to the following:

- a. Front yard: 10 ft
- b. Rear yard: 15 ft
- c. Side yard: 5 ft
- d. Street side yard: 10 ft

10. Revise MMC 17.28.070 to permit flag lots and back lots in new subdivisions as follows:

**17.28.070 FLAG LOT AND BACK LOTS IN SUBDIVISIONS LIMITATIONS**

Flag lots and back lots are prohibited permitted in new subdivisions. ~~and subdivisions platted after August 20, 2002, the effective date of Ordinance #1907. (Ord. 2051 § 2, 2012; Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)~~

## Planning Commission Recommended Changes to Tree Code

1. Revise the non-development tree code type 1 healthy tree removal approval standard to allow for one healthy tree removal under 12" diameter at breast height instead of 18" diameter at breast height.

### CHAPTER 16.32.042 TREE PRESERVATION AND PLANTING IN RESIDENTIAL ZONES

#### I. Non-Development Tree Permit Requirements

1. Applicability: A permit is required prior to the removal of the following trees in residential zones on property that is outside the right-of-way and not owned or maintained by the City:

- a. Trees that are at least 6-inch DBH.
- b. Trees that are less than 6-inch DBH as specified on the City of Milwaukee threatened tree list.
- c. Trees that were planted to meet any requirements in MMC 16.32.042.

Permits are not required in residential zones when tree removal is approved with development listed in MMC 16.32.042.A. Permits are also not required in residential zones for the removal of trees that are grown for commercial agricultural or horticultural purposes including fruit trees, nut trees, or holiday trees.

2. Type 1 Tree Removal Permit: The following approval standards will be applied to type 1 tree removal permits by the Urban Forester:

a. Approval Standards: A type 1 permit will be issued only if the following criteria are met as determined by the Urban Forester:

(1) The proposed tree removal will be performed according to current ISA Best Management Practices.

(2) The tree proposed for removal meets one or more of the following criteria:

(a) The tree is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.

(b) The tree is having an adverse effect on adjacent infrastructure or buildings that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

(c) The tree has sustained physical damage that will cause it to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.



(d) The tree poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist in accordance with current ISA tree risk assessment standards.

(e) The tree is on the Oregon State Noxious Weed List or the Milwaukie Invasive Tree List.

(f) The tree is part of a stormwater management system and has grown too large to remain an effective part of the system.

(g) The tree location conflicts with areas of public street widening, construction or extension as shown in the Transportation System Plan and there is no practicable alternative to removing the tree.

(h) Tree removal is required for the purposes of a building or land use permit, utility or infrastructure installation or utility or infrastructure repair and there is no practicable alternative to removing the tree.

(i) The tree is recommended for removal by a designated fire marshal for Clackamas County because it presents a significant fire risk to habitable structures or limits emergency access for rescue workers, and the risk or access issue cannot be abated through pruning or other means that results in tree retention.

(j) An ISA certified arborist determines that thinning of interior trees within a stand of trees is necessary for overall stand health, the thinning will result in no less than 80 percent canopy cover at maturity for the area to be thinned, and that thinning of non-native trees is maximized prior to thinning of native trees.

(k) Healthy trees. One (1) healthy tree may be removed per site per calendar year if the tree meets the following:

i. The tree is less than 48 12 inches in diameter;

ii. None of the trees are required to be preserved by a condition of a land use review, a provision of this chapter or Title 19, or as part of a required stormwater facility;

2. Add tree preservation and tree canopy standards variance language to MMC 19.911 and refer to the new MMC 19.911.8 in the tree code

### **19.911.8 Tree Preservation and Tree Canopy Standards Variance (DRAFT LANGUAGE)**

#### **A. Intent**

To provide a discretionary option for variances to the tree preservation and/or tree canopy standards in MMC 16.32.042 to reward projects that provide significant environmental benefit.

#### **B. Applicability**

The Type III tree preservation and tree canopy variance is an option for proposed developments that chooses not to, or cannot, meet the tree preservation and/or tree canopy standards specified in MMC 16.32.042.

#### **C. Review Process**

The tree preservation and tree canopy variance shall be subject to Type III review and approval by the Planning Commission, in accordance with Section 19.1006.

#### **D. Approval Criteria**

The approval authority may approve, approve with conditions, or deny the tree preservation and/or tree canopy variance based on the following approval criteria. The applicant is required to demonstrate that equivalent or greater environmental benefits are provided as preserving or planting the required tree canopy. Examples of activities that may justify a variance include but are not limited to:

1. Use of techniques that minimize hydrological impacts beyond regulatory requirements (examples include porous pavement, green roofs, infiltration planters/rain gardens, flow through planters, LIDA (low impact development approach) swales, vegetated filter strips, vegetated swales, extended dry basins, and constructed water quality wetlands).
2. Use of techniques that minimize reliance on fossil fuels and production of greenhouse gases beyond regulatory requirements through the use of energy efficient building technologies, on-site energy production technologies, and green buildings standards (MMC 19.510).
3. Use of techniques that preserve and enhance wildlife habitat beyond regulatory requirements, including, but not limited to, the use of native plant species in landscape design, removal of invasive plant species, and restoration of native habitat and preservation of habitat through the use of conservation easements or other protective instruments.
4. Use of techniques that preserve open space for sustainable urban agriculture through the use of conservation easements or other protective instruments at sites that are not compatible with tree canopy preservation or planting.

3. Discuss bonding requirements for development related tree code with City Council as allowed in draft residential tree code (MMC 16.32.J.1.c.5)

#### J. Enforcement

##### 1. City Authority: The City has the ultimate authority to:

a. Interpret the provisions of MMC 16.32.042 and determine whether code criteria have been met.

b. Establish conditions of permit and land use approval to ensure MMC 16.32.042 is properly implemented.

c. Create rules and procedures as needed to implement MMC 16.32.042. Rules and procedures may include but are not limited to:

(1) Priority tree lists.

(2) Tree protection standards, specifications, and procedures.

(3) Tree planting standards, specifications, and procedures.

(4) Tree establishment and maintenance standards, specifications, and procedures.

(5) Performance bonding, letters of credit, and cash assurances to help ensure proper tree protection, planting, and establishment.

(6) Tree protection inspections and oversight.

(7) Soil protection inspections and oversight.

(8) Performance path tree protection standards and specifications.

(9) Performance path soil volume standards and specifications.

(10) Fees for permit applications, reviews, mitigation, inspections, and violations.