



**MILWAUKIE**  
*Dogwood City of the West*

# DRAFT CODE AMENDMENTS

Land Use and Development Review  
(LUDR)  
Tune-Up Project

January 2011 Draft  
File No. ZA-10-02 & CPA-10-03

## **Milwaukie Municipal Code**

Title 19 Zoning Ordinance  
and  
Title 2 Administration and Personnel  
Title 3 Revenue and Finance  
Title 12 Streets, Sidewalks, and Public Places  
Title 13 Public Services  
Title 14 Sign Ordinance  
Title 17 Land Division Ordinance  
Title 18 Flood Hazard Regulations

## **Milwaukie Comprehensive Plan**

Chapter 1 Citizen Involvement  
Chapter 2 Plan Review and Amendment Process

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## NOTES TO THE READER

Only those sections or chapters to which amendments are being proposed are included in this document and listed on the previous page. Gaps in the numerical sequence are intentional. Amended sections and chapters are identified as being amended in one of the following ways at the beginning of each section or chapter:

- Amended
- Repealed/Replaced
- New

Only amended sections or chapters are shown with underline and strikeout text. New and repealed/replaced sections and chapters are not shown with underline or strikeout text.

The “Draft Code Amendments Commentary” document explains the proposed code amendments in more detail, including how they differ from the current code.

## Comprehensive Plan

### CHAPTER 1 CITIZEN INVOLVEMENT

#### OBJECTIVE #3—COMMUNICATION

Promote informed public participation in planning decisions by providing readily available publications and printed materials regarding current issues and proposed policies and providing for two-way communication between policy-makers and citizens.

#### Policies

1. Make planning documents available through City offices and public libraries. This includes, but is not limited to Plan inventories, planning background information, Staff reports and minutes of Planning Commission and Comprehensive Plan Review Committee meetings.
2. Keep the public informed of opportunities for involvement in land use planning using a range of available media including newspaper notices, the City website, mailings, the City newsletter, television, and meetings. ~~Advertise all public hearings regarding land use issues in the newspaper and on the local cable television station.~~
3. Seek citizens' input on major land use issues through community organizations, service organizations, interest groups, neighborhood groups, etc. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances. Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups, require citizen involvement opportunities of a broader scope than that required for more limited land use decisions. ~~Provide information concerning major land use issues by conducting one "town hall" meeting coordinated by City Staff a minimum of 10 days prior to the public hearing before the Planning Commission. Neighborhood Associations and identified community service or interest groups shall be notified of both "town hall" meetings and public hearings. A major land use change has widespread and significant impact beyond the immediate area, such as changes producing large volumes of traffic, changes in the character of the land use, or a change affecting large areas or many different ownerships.~~
4. City Staff will communicate with citizens about land use policy changes and significant development proposals through a variety of media early on and throughout the decision-making process. ~~issue a news release to local newspapers explaining upcoming issues which would result in changes to the Comprehensive Plan or its implementing ordinances prior to discussion of these issues at a public hearing.~~
5. Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them. ~~News releases and Planning Commission agendas will be provided to the City Library and community/senior center. These groups will be encouraged to include stories regarding planning issues in their newsletters.~~
6. Any citizen testifying at a public hearing regarding a land use issue will receive a copy of the outcome of the hearing and the findings and conclusions upon which the decision was based.

## CHAPTER 2 PLAN REVIEW AND AMENDMENT PROCESS

### OBJECTIVE #1—AMENDING THE PLAN

5. All proposed ~~legislative~~ Comprehensive Plan text and map amendments will be considered at advertised public hearings before the Planning Commission and City Council. ~~At least 30 days prior to a public hearing, a public notice shall be printed in a local newspaper and will appear on the public information cable television station. A second notice will appear at least ten days prior to the public hearing.~~
6. All Comprehensive Plan text and map amendments will be processed per the procedures set forth in the Zoning Ordinance. ~~If the proposed amendment is quasi-judicial, notice of the requested change will be mailed to all residents within 400 feet of the property under consideration at least 30 days prior to the public hearing. Newspaper notice in accordance with the requirements for legislative plan amendments is also required.~~
7. All Comprehensive Plan text and map amendments will be evaluated based on the criteria adopted in the Zoning Ordinance for approval of Comprehensive Plan amendments. ~~the following criteria:~~
  - ~~conformance with the Comprehensive Plan, its goals, policies, and spirit,~~
  - ~~public need for the change,~~
  - ~~public need is best satisfied by this particular change,~~
  - ~~the change will not adversely affect the health, safety, and welfare of the community,~~
  - ~~the change is in conformance with applicable Statewide Planning Goals,~~
  - ~~the change is consistent with Metro Growth Management Functional Plan and applicable regional policies.~~

## Title 19 Zoning Ordinance

### PROPOSED TITLE 19 RESTRUCTURING AMENDMENTS

Structural amendments are proposed to Title 19 as part of this project in addition to text amendments. The following table lists the proposed and current chapter/section numbers. Additional notations indicate text that is "new," "amended," or "repealed and replaced." The actual text amendments follow this table.

Proposed Chapter/Section Number	Current Chapter/Section Number <sup>1</sup>
<b>19.100</b> Introductory Provisions	<b>19.101, 19.102, 19.200, 19.1100, and 19.1200</b> repealed and replaced
<b>19.200</b> Definitions and Measurements	
19.201 Definitions	19.103 amended
19.202 Measurements	new
<b>19.300</b> Base Zones	
19.301 Residential Zone R-10	
19.302 Residential Zone R-7	
19.303 Residential Zone R-5	
19.304 Residential Zone R-3	
19.305 Residential Zone R-2.5	
19.306 Residential Zone R-2	
19.307 Residential Zone R-1	19.308
19.308 Residential-Business Office Zone R-1-B	19.307
19.309 Residential-Office-Commercial Zone R-O-C	
19.310 Downtown Zones	19.312.1-6 amended
19.311 Neighborhood Commercial Zone C-N	19.310
19.312 Limited Commercial Zone C-L	19.311
19.313 General Commercial Zone C-G	
19.314 Community Shopping Commercial Zone C-CS	19.315 amended
19.315 Manufacturing Zone M	19.314 amended
19.316 Business Industrial Zone BI	19.324
19.317 Planned Development Zone PD	19.319 amended
REPEALED	19.317 Reserved (empty)
<b>19.400</b> Overlay Zones	
19.401 Willamette Greenway Zone WG	19.320 amended
19.402 Water Quality Resource Regulations	19.322 amended
19.403 Historic Preservation Overlay Zone HP	19.323 amended
19.404 Mixed Use Overlay Zone MU	19.318
19.405 Aircraft Landing Facility L-F	19.316

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<sup>1</sup> Same as proposed chapter/section number unless otherwise noted.

Proposed Chapter/Section Number	Current Chapter/Section Number <sup>1</sup>
<b>19.500 Supplementary Development Regulations</b>	
19.501 General Exceptions	19.401 amended
19.502 Accessory Structures	19.402.1-2 amended
19.503 Accessory Uses	19.402.3
19.504 Site Design Standards	19.403.2-9, 11-12, and 13.B (19.403.7 amended)
19.505 Building Design Standards	19.403.10 and 13.A
19.506 Manufactured Dwelling Siting and Design Standards	19.406 amended
19.507 Home Occupation Standards	19.407
<b>19.600 Off-Street Parking and Loading</b>	
19.601-19.611	19.501-19.511
<b>19.700 Public Facility Improvements</b>	
19.701-19.709	19.1401-19.1409 (19.1403.2 amended)
<b>19.800 Nonconforming Uses and Development</b>	<b>19.800 repealed and replaced</b>
<b>19.900 Land Use Applications</b>	
19.901 Introduction	new
19.902 Amendments to Maps and Ordinances	19.900 repealed and replaced
19.903 Code Interpretations and Director Determinations	19.1001.4 and 19.809 repealed and replaced
19.904 Community Service Uses	19.321 amended
19.905 Conditional Uses	19.601-19.602.9 repealed and replaced
19.906 Development Review	new
19.907 Downtown Design Review	19.312.7 amended
19.908 Extensions to Expiring Approvals	new
19.909 Modifications to Existing Approvals	new
19.910 Residential Dwellings:	new introductory text
19.910.1 Accessory Dwelling Units (Type 1)	19.402.4 amended
19.910.2 Accessory Dwelling Units (Type 2)	19.602.10 amended
19.910.3 Manufactured Dwelling Parks	19.405
19.910.4 Temporary Dwelling Units	19.404 amended
19.911 Variances	19.700 repealed and replaced
<b>19.1000 Review Procedures</b>	<b>19.1000 repealed and replaced</b>
<b>19.1100 Annexations and Boundary Changes</b>	
19.1101-19.1105	19.1501-19.1505 amended
<b>19.1200 Solar Access Protection</b>	
19.1201-19.1205	19.1301-19.1305 amended

## PROPOSED TITLE 19 TEXT AMENDMENTS

Proposed text amendments are shown below within the context of the restructured/renumbered Zoning Ordinance as described in the table on the previous pages.

Underline/strikeout formatting is used only for proposed changes to text, not for proposed renumbering. Where noted, new or repealed/replaced sections and chapters are not underlined for better readability.

### CHAPTER 19.100 INTRODUCTORY PROVISIONS

[Current Sections 19.101 and 19.102, and Chapters 19.200, 19.1100, and 19.1200 repealed and replaced as Chapter 19.100. Complete chapter below—no underlining.]

#### 19.101 TITLE

This title shall be known and may be cited as the Zoning Ordinance of the City of Milwaukie, Oregon. This title and any amendments to it shall be adopted by ordinance. Amendments to this title shall be subject to the provisions of Section 19.902.

#### 19.102 PURPOSE

This title implements the Comprehensive Plan, which provides the policy framework within which land use and development review is conducted in the city. Amendments to the Comprehensive Plan shall be subject to the provisions of Section 19.902.

The purpose of this title is to provide for the public health, safety, and general welfare of the citizens of the City through orderly community development, including but not limited to consideration for concentration of population, economic development, limitation of dangerous, offensive, or unwholesome trades or industries, maintenance of adequate light and air, and regulation of traffic.

#### 19.103 APPLICABILITY

This title applies to all land, uses, and development within the corporate limits of the City of Milwaukie. It does not apply to temporary events as defined and provided for in Section 11.04.

#### 19.104 INTERPRETATION

The Planning Director shall have the authority and responsibility for interpreting all terms, provisions, and requirements of this title. Unless specifically defined in Section 19.201, words or phrases used in this title are intended to be interpreted with the meaning they have in common usage. Requests for interpretations may be made as described and provided for in Section 19.903.

#### 19.105 SEVERABILITY

The provisions of this title are severable. If any section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this title.



### **19.106 COMPLIANCE**

Development may occur, a lot may be used, and a structure or part of a structure may be constructed, reconstructed, altered, occupied, or used only as this title permits. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control. Where comparable provisions of this title are in conflict, the provisions that are the most restrictive shall control.

#### **19.106.1 Land Use Approvals**

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required land use applications prior to establishment or construction. Table 19.901 contains a complete list of the City's land use applications and the location of the provisions that govern their submittal, review, and approval. Chapter 19.1000 contains the City's land use review procedures.

#### **19.106.2 Permit Approvals**

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required development permits prior to establishment or construction.

- A. The Planning Director shall review applications for development and sign permits for compliance with applicable code provisions.
- B. The Planning Director may approve or deny applications for development and sign permits based on consistency with applicable code provisions.
- C. All development authorized by approved development and sign permits shall be in substantial conformance with plans approved by the Planning Director.
- D. Buildings for which permits have been issued shall not be occupied without prior occupancy approval in accordance with this subsection.
- E. Occupancy approvals shall not be issued until completion of final zoning inspections and issuance of notice of completion by the Planning Director. Approval criteria for issuance of notice of completion includes all of the following:
  1. A written statement from the applicant that all improvements have been constructed in accordance with approved plans except as modified and approved by appropriate approval authorities.
  2. Completion of zoning inspection by the Planning Director and confirmation that the project is in substantial conformance with approved plans.
  3. Payment of the final zoning inspection fee as adopted by the City Council.
- F. The Planning Director shall complete the final zoning inspection within 5 working days from receipt of the applicant's request for final zoning inspection.

#### **19.106.3 Violations**

- A. A person violating a provision of this title shall, upon conviction, be punished by imprisonment for not more than 30 days, or by a fine of not more than \$200.00, or both. A violation of this title shall be considered a separate offense for each day the violation continues. If the violation was of a provision that was repealed or amended, the violation shall remain a violation to the extent that it does not conform to the provisions of this title.
- B. In case a building or land is located, constructed, maintained, repaired, altered, or used in violation of this title, the building or land in violation shall constitute a nuisance, and the City

## Proposed Code Amendments

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may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.

### 19.107 ZONING

#### 19.107.1 Zone Classifications

For the purposes of this title, the following base zones and overlay zones are established in the City per Table 19.107.1:

<b>Table 19.107.1 Classification of Zones</b>	
<b>Zone Description</b>	<b>Abbreviated Description</b>
Residential	R-10
Residential	R-7
Residential	R-5
Residential	R-3
Residential	R-2.5
Residential	R-2
Residential	R-1
Residential-Business Office	R-1-B
Residential-Office-Commercial	R-O-C
Downtown Storefront	DS
Downtown Commercial	DC
Downtown Office	DO
Downtown Residential	DR
Downtown Open Space	DOS
Commercial, Neighborhood	C-N
Commercial, Limited	C-L
Commercial, General	C-G
Commercial, Community Shopping	C-CS
Manufacturing	M
Business Industrial	BI
Planned Development	PD
Willamette Greenway Overlay	WG
Water Quality Resource Overlay	NR
Historic Preservation Overlay	HP
Mixed Use Overlay	MU
Aircraft Landing Facility Overlay	L-F

#### 19.107.2 Zoning Map

The zones described in Subsection 19.107.1 above are displayed on a zoning map entitled "Zoning Map of Milwaukie, Oregon." The zoning map shall be dated with the effective date of the ordinance that adopted the zoning map and the effective date of the ordinance that most

recently amended the map. A certified copy of the map and map amendments, shall be maintained in the offices of the City Planning Department.

### **19.107.3 Zoning Map Amendments**

Zoning map amendments are subject to the provisions of Section 19.902. The procedures for processing a zoning map amendment application are located in Chapter 19.1000.

### **19.107.4 Zone Boundary Determinations**

The exact location of a zone boundary shall be determined by the Planning Director where there is uncertainty, contradiction, or conflict as to the intended location of any zone boundary due to the scale, lack of detail, or illegibility of the zoning map. The determination shall be in accordance with the following guidelines:

- A. Street Lines. Where zone boundaries are shown as approximately following the centerline of a right-of-way, such centerlines shall be construed to be the zone boundaries.
- B. Lot Lines. Where zone boundaries are shown as approximately following lot lines, such lot lines shall be construed to be the zone boundaries.
- C. Water Courses. Where zone boundaries are shown as approximately following the centerline of water courses, such lines shall be construed to be the zone boundaries unless such boundaries are otherwise fixed by dimensions described elsewhere in this title.

If a property owner disagrees with the Planning Director's initial determination, a formal determination request may be made as described and provided for in Section 19.903.

### **19.107.5 Zoning of Lots with Multiple Zones**

If a zone boundary for a base zone in Chapter 19.300 as shown on the zoning map divides a lot between 2 or more base zones, the entire lot shall be deemed to be in the base zone in which the greater area of the lot lies, provided that this adjustment involves a distance not to exceed 20 feet from the mapped base zone boundary. If an adjustment exceeds 20 feet, the regulations for the base zones shall apply to the lot as depicted on the zoning map.

### **19.107.6 Zoning of Annexed Areas**

Land annexed to the City shall be assigned a land use and zoning designation that is consistent with the land use designations established by the Comprehensive Plan and the zones established by this title at the time of annexation. Annexations shall be adopted by ordinance pursuant to Chapter 19.1100.

### **19.107.7 Zoning of Public Right-of-Way**

The zones applied to the public rights-of-way within the city boundaries as shown on the zoning map do not directly regulate the improvements or structures that are allowed in these rights-of-way. Improvements and structures in public rights-of-way are regulated by other rules, regulations, and ordinances maintained by the City and other road authorities, such as Chapter 19.700, Public Works Standards, and the Transportation System Plan.

## CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

[Section 19.103 renumbered as 19.201 and new Section 19.202 added. Only amended text is shown below.]

### 19.201 DEFINITIONS

“Basement” means a portion of a building, not deemed a story, which has more than one-half of its interior height (but not more than 6 feet) ~~measured from finished floor to finished ceiling~~ above the adjoining ground level grade.

“Building height” means the exterior vertical measurement of a building ~~distance measured from the adjoining street centerline grade, as established by the City, to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to the mean height level between the eaves and ridge for a gable, hip, or gambrel roof; provided, however, that where buildings are set back from the street line, the height of the building may be measured from the average elevation of the finished grade at the front of the building.~~

“Cellar” means a room or group of rooms, usually under a building, which has more than one half of its interior height ~~measured from finished floor to finished ceiling~~ below the average grade of the adjoining ground.

“Contract purchaser” means the party identified as the buyer in a land contract which is in force and is recorded with Clackamas County.

“Discontinued or abandoned use” means a use that is no longer in operation. A use shall be considered discontinued or abandoned upon the first day that any of the following events has occurred: (1) on the date the use physically vacates the site, (2) on the date the use ceases to be actively involved in the activity, (3) on the date of termination of any lease or contract under which the use has occupied the land, or (4) on the date a request for final reading of water and power meters is made to the applicable utility districts.

#### **“ Dwelling unit,” “ Accessory dwelling,”:**

“Type 1 accessory dwelling” means an accessory dwelling unit not less than 225 square feet net gross-floor area and not more than 600 square feet net gross-floor area and meeting the requirements of Subsection 19.910.1. For the purpose of this chapter, net gross-floor area is measured from the inside face of walls enclosing the unit including all storage space, closets, halls, stairwells, and rooms.

“High-impact nonconforming uses” means any use that is a nonconforming high-impact commercial business in any zone or any use that is a nonconforming industrial use in any zone. Nonconforming uses are defined as those uses that do not conform to the City’s current land use ordinances either because they were established prior to the enactment of City ordinances governing those uses or because the uses conformed at the time they were established but applicable City ordinances have since changed. High-impact commercial businesses are defined in this section.

“Lot coverage” means the footprint of a building(s) ~~or buildings~~ on a lot, measured from the outermost projection of the building(s) structure, expressed as a percentage of the total lot area.

“Low-impact nonconforming uses” means any use that is a nonconforming residential use in any zone.

“Minimum vegetation” means the area of a lot that supports vegetation, including planting areas under roof eaves, expressed plantings or natural growth, grass, shrubs, measured as a percentage of the total lot area including planted areas under roof eaves.

“Nonconforming development” means a lawful structure or site improvement, such as an off-street parking facility, landscaping, or accessway, that does not conform to the City’s current development ordinances either because it was established prior to the enactment of City ordinances governing the structure or improvement or because the structure or improvement conformed at the time it was established but applicable City ordinances have since changed.

“Nonconforming structure or use” means a lawful existing structure or use, at the time the ordinance codified in Chapter 19.100 or any amendment thereto becomes effective, which that does not conform to the requirements of the zone in which it is located. City’s current land use ordinances either because it was established prior to the enactment of City ordinances governing the use or because the use conformed at the time it was established but applicable City ordinances have since changed.

“Yard” means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in this title.

“Front yard” means a yard between side lot lines, and measured horizontally and at right angles to the front lot line from the front lot line to the nearest point of the building.

“Rear yard” means a yard between side lot lines or between a street side yard and opposite side lot line, and measured horizontally and at right angles to the rear lot line from the rear lot line to the nearest point of the a main building.

“Side yard” means a yard between the front and rear yards, and measured horizontally and at right angles from the side lot line to the nearest point of the building.

“Street side yard” means a yard adjacent to a street between the front yard and the rear yards lot line, measured horizontally and at right angles from the side lot line to the nearest point of the building.

## **19.202 MEASUREMENTS**

### **19.202.1 Horizontal Measurements**

All horizontal distances for yard widths and lot and building dimensions shall be measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances shall not be measured by following the topography of the land.

### **19.202.2 Vertical Measurements**

#### **A. Interior Height**

Floor-to-ceiling height shall be measured from the top of the floor finish to the bottom of the ceiling joists, or, where there is no ceiling, to the bottom of the roof rafters.

#### **B. Exterior Height**

Except where otherwise specified in Title 19, building height shall be measured from the adjoining street centerline grade, as established by the City, or, where the building is set back from the street, building height may be measured from the average elevation of the finished grade at the front of the building to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to the mean height between the eaves and the ridge for a gable, hip, or gambrel roof.

## CHAPTER 19.300 USE BASE ZONES

[Current Chapter 19.300 split into Chapters 19.300 Base Zones and 19.400 Overlay Zones, with both chapters restructured for more logical order. Only amended text is shown below.]

### 19.308 RESIDENTIAL-BUSINESS OFFICE-~~COMMERCIAL~~ ZONE R-1-B

#### 19.310 DOWNTOWN ZONES

**NOTE:** The C-L Zone in Riverfront Park just south of Johnson Creek (southerly portion of Tax Lot 1S1E35AA04600) was changed to Downtown Open Space by Ordinance 1981. **Figure 19.310-1 Downtown Zoning is amended to reflect the zone change adopted by that ordinance.**

##### 19.310.3 Uses

###### F. Similar Uses

The Planning Director, through a Type I ~~Administrative~~ review, may determine that a use that is not listed is considered similar to a listed use in Table 19.310.3. The unlisted use shall be subject to the standards applicable to the similar listed use.

##### 19.314.3 Application Review; Minimum Requirements

E. Detailed traffic report, analyzing existing traffic, traffic generation, turning movements, and impact on adjacent streets. Report shall recommend roadway improvements needed to mitigate impacts as specified in Chapter 19.700. The application shall be reviewed under ~~Minor Quasi-Judicial Type III~~ Type III review procedures as provided in Section 19.1006;

##### ~~19.315.4 Authority and Appeal of Administrative Decisions~~

~~If the Planning Director has any questions regarding the applicant's ability to meet the criteria in Subsection 19.315.1, the request may be scheduled for review by the Planning Commission. In addition, a member of the public may appeal a use administratively approved or denied by the Planning Director to the Planning Commission. See Section 19.1001 for appeal procedures.~~

##### 19.315.5 Site Development Requirements

###### F. Transition Area

~~When the Industrial development is adjacent to and within 120 feet of areas zoned for residential uses is subject to Type I or II review per Section 19.906 Development Review.; ~~†~~ The following characteristics will be considered:~~

1. Noise;
2. Lighting;
3. Hours of operation;
4. Delivery and shipping;
5. Height of structure;
6. Distance to residential zone boundary.

~~The Commission review authority may attach conditions to reduce any potentially adverse impacts to residential properties.~~

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

- A. Upon receipt of the final development plan and program, zone change application, and preliminary subdivision plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing ~~per Subsection 19.1011.4 Major Quasi-judicial Review~~ per Section 19.1007 Type IV Review. If the final development plan and program is found to be 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.

**19.317.11 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 zone change application shall be considered by the City Council per Section 19.1007 Type IV Review.

**19.317.16 Expiration of Planned Development Zone**

If, within 6 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 ~~Subsection 19.1011.4 Major Quasi-judicial Review of the Zoning Ordinance~~ 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 Ordinance and property changed back to original zoning.

## CHAPTER 19.400 OVERLAY ZONES

[Current Chapter 19.300 split into Chapters 19.300 Base Zones and 19.400 Overlay Zones, with both chapters restructured for more logical order. Only amended text is shown below.]

### 19.401.5 Procedures

The following procedures shall govern the application of WG Zones:

- B. The Oregon Department of Transportation shall be notified ~~according to the provision of Subsection 19.1011.3.D of a hearing on a conditional use in the Willamette Greenway Zone.~~ The notice shall be sent via “certified mail, return receipt requested.”

### 19.402.7 ~~Activities Permitted Under Minor Quasi-Judicial~~ Type III Review

### 19.402.9 Application Requirements

Applications for Type II and ~~III-Minor Quasi-judicial~~ review shall provide the following information in addition to the information required for the base zone:

### 19.402.12 Map Administration

- B. Map Corrections, Deletions

1. Improperly mapped water features shown on the Milwaukie Water Quality Resource Area Maps may be deleted by Type II ~~Administrative~~ review in accordance with Section 19.1005 subject to the following criteria:

### 19.403.4 Process for Designation or Deletion of a Landmark

- A. Application Request

The owner of record, contract purchaser, or an agent of any of the foregoing, of property within the City may make application for resource designation or deletion. The application shall be in such form and detail as the Planning Director prescribes and processed per Section 19.1007 Type IV Review ~~will be the same as the Major Quasi-Judicial review process of Subsection 19.1011.4 of this title.~~ The application shall be submitted to the Planning Director. The Planning Commission or the City Council may also initiate such proceedings on their own motion.



## CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

[Current Chapter 19.400 renumbered as Chapter 19.500 (except Subsection 19.402.4 and Sections 19.404 and 19.405 moved to Section 19.910 Residential Dwellings—see below). Only amended text is shown below.]

### 19.501 GENERAL EXCEPTIONS

The exceptions listed in Subsections 19.501.1–4 below are by-right exceptions. By-right exceptions are either automatically required or outright allowed and require no special review or approval by the City to implement.

#### 19.502.2 Single-Family Residential Provisions, Subsection B.1:

b. Commercial Zones

Maximum height 6 feet. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, following a Type II ~~Administrative~~ review as per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a 6-foot-high sight-obscuring fence.

c. Industrial Zones

Maximum height 8 feet. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, except where such fencing is proposed adjacent to residential zones or residential uses, in which case such may be allowed following a Type II ~~Administrative~~ review as per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a sight-obscuring fence with a minimum height of 6 feet.

### 19.504 ~~SITE DESIGN PROVISIONS~~ STANDARDS

#### 19.504.6 Transition Area Measures

~~In zones where multifamily, commercial, or industrial projects are proposed that are within 100 feet of areas designated for lower density, transition measures shall be applied in order to minimize the impact on lower density uses. The downtown zones are exempt from this subsection. The transition measures shall be subject to Planning Commission review at a public hearing per Subsection 19.1011.3 Minor Quasi-Judicial Review, and shall include one or a combination of the following. The Planning Commission may apply conditions to such approval as will meet the objectives of this subsection.~~

~~A. Roadways separating projects.~~

~~B. Open areas (developed or undeveloped) separating new structures from adjacent parcels. A minimum distance equal to the required front yard of adjacent parcels will be established and maintained as open area. Natural vegetation, landscaping, or fencing will be provided to the 6-foot level to screen living rooms from direct view across open areas.~~

~~C. Gradual Density Changes~~

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A new project may not have a density greater than 25% of the allowable density on lower-density residential parcels abutting the project. If abutting parcels have a variety of allowable residential densities, parcels with similar allowable densities abutting the highest percentage of the project perimeter will govern.

Where multifamily, commercial, or industrial development is proposed adjacent to properties zoned for lower density residential uses, the following transition measures shall be required. These additional requirements are intended to minimize impacts on lower residential density uses. The downtown zones are exempt from this subsection.

- A. All yards that abut or are adjacent across a right-of-way from a lower density zone shall be at least as wide as the required front yard width of the adjacent lower density zone. This additional yard requirement shall supersede the base zone yard requirements for the development property where applicable.
- B. All yards that abut or are adjacent across a right-of-way from a lower density zone shall be maintained as open space. Natural vegetation, landscaping, or fencing shall be provided to the 6-foot level to screen lower density residential uses from direct view across the open space.

### **19.505 BUILDING DESIGN PROVISIONS STANDARDS**

### **19.506 MANUFACTURED DWELLING PLACEMENT SITING AND DESIGN STANDARDS**

#### **19.506.1 Purpose**

This section is intended to meet State legislative requirements for the placement and design of manufactured homes on individual lots and to provide standards for unit placement.

#### **19.506.2 Applicability**

Manufactured homes placed on individual lots are subject to the provisions of this section. Treatment of manufactured homes by zones is shown in Table 19.506:

<b>Table 19.506 Manufactured Dwelling Placement by Zone</b>				
<b>Zone</b>	<b>Permitted Outright</b>	<b>Conditional Use</b>	<b>Temporary Permit</b>	<b>Manufactured Home Subdivision</b>
R-10	X		X	X
R-7	X		X	X
R-5	X		X	X
R-3	X		X	X
R-2.5	X		X	X
R-2	X		X	X
R-1-B	X		X	X
R-1	X		X	X
R-O-C	X		X	X

**19.506.3 Definitions**

**19.506.4 Siting Standards**

Manufactured homes are outright allowed in any zone that outright allows single-family detached dwellings. Manufactured homes placed on individual lots shall meet the following standards:

**19.506.6 Occupancy of Units**

Manufactured homes placed on individual lots shall comply with all siting standards of Subsection 19.506.4 before being approved for occupancy. ~~All approval and siting standards of this section shall be complied with before a manufactured home placed on an individual lot may be approved for occupancy.~~

**19.506.7 Review Process**

- ~~A. Siting standards of this section shall be reviewed as part of the building review procedures of Subsection 19.1011.1.~~
- ~~B. Subdivision processes and procedures are contained in Title 17 Land Division.~~

**19.507 HOME OCCUPATION PROVISIONS STANDARDS**

## CHAPTER 19.600 OFF-STREET PARKING AND LOADING

[Current Chapter 19.500 renumbered as Chapter 19.600. No amendments.]

## CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

[Current Chapter 19.1400 renumbered as Chapter 19.700. Only amended text is shown below.]

### 19.703.2 Application Submittal

For all proposed development that is subject to Chapter 19.700 per Section 19.702, one of the following types of applications is required.

A. Development Permit Application

If the proposed development does not require a land use application, compliance with Chapter 19.700 will be reviewed as part of the development permit application submittal.

B. Transportation Facilities Review (TFR) Land Use Application

If the proposed development triggers a transportation impact study (TIS) per Section 19.704, a TFR land use application shall be required. Compliance with Chapter 19.700 will be reviewed as part of the TFR application submittal and will be subject to a Type II review process as set forth in Chapter 19.1000. The TFR application shall be consolidated with, and processed concurrently with, any other required land use applications.

If the proposed development does not trigger a TIS per Section 19.704 but does require the submittal of other land use applications, compliance with Chapter 19.700 will be reviewed during the review of the other land use applications.

~~C. Non-TFR Land Use Application~~

~~If the proposed development requires a land use application but does not trigger a TIS per Section 19.704, compliance with Chapter 19.700 will be reviewed as part of the land use application submittal, pursuant to the review procedures associated with that land use application as set forth in Chapter 19.1000.~~

## **CHAPTER 19.800 NONCONFORMING USES AND DEVELOPMENT**

[Current Chapter 19.800 repealed and replaced. Complete chapter below—no underlining.]

### **19.801 PURPOSE**

Nonconforming uses and development are uses and development that do not conform to the City's current land use and development regulations either because they were established prior to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed.

Most nonconforming uses and development may be maintained but may not be altered without land use review. Nonconforming uses and development may be rebuilt if destroyed in some instances. In general, however, nonconforming uses and development shall be brought into conformance with applicable land use and development regulations when redevelopment occurs. In particular, the City does not support the continuation of high-impact nonconforming uses in perpetuity.

### **19.802 GENERAL PROVISIONS**

#### **19.802.1 Nonconforming Uses and Development**

A specific site may be nonconforming because it contains a nonconforming use, nonconforming development, or both as defined in Section 19.201. Determination of the legal status of a nonconforming use or development may be requested by the property owner pursuant to Section 19.903.

#### **19.802.2 Provisions**

The following provisions apply to all nonconforming uses and development:

- A. Changes in ownership may occur and do not affect the status of a nonconforming use or development.
- B. A nonconforming use or development is allowed to change to a conforming use or development. Once a conforming use or development occupies the site, the nonconforming status is lost and the nonconforming use or development may not be reestablished.
- C. Routine maintenance and repair, as defined in Section 19.201, of a nonconforming use or development is allowed. Alteration, as defined in Section 19.201 and further described in Section 19.804, or destruction, as described in Section 19.805, may require land use review and/or may result in the loss of the nonconforming status of the use or development.
- D. Where other sections of the Milwaukie Municipal Code require nonconforming uses or development to come closer to conformance, those provisions apply instead of the provisions of this chapter.

### **19.803 CONTINUATION OF NONCONFORMING USES AND DEVELOPMENT**

#### **19.803.1 Provisions**

A nonconforming use or development may continue indefinitely pursuant to the provisions in Subsection 19.802.2 unless it is discontinued as described in this section, altered as described

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in Section 19.804, destroyed as described in Section 19.805, or amortized as described in Section 19.806.

### **19.803.2 Loss of Nonconforming Use Status**

If a nonconforming use is discontinued or abandoned as defined in Section 19.201 for more than 1 year, the site will lose its nonconforming status and any subsequent use on the site shall conform to all applicable land use and development regulations.

## **19.804 ALTERATION OF NONCONFORMING USES AND DEVELOPMENT**

### **19.804.1 Nonconforming Uses**

#### A. Provisions

The following provisions apply to the alteration of nonconforming uses:

1. A nonconforming use shall not be moved in whole or in part to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.
2. No additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Additional development or physical alterations not associated with the nonconforming use and that conform to Title 19 are allowed.
3. No intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.

#### B. Land Use Review Required

1. A nonconforming use shall not be moved, altered, or intensified unless such move, alteration, or intensification is approved by the Planning Commission through a Type III review process per Section 19.1006. The applicant shall demonstrate that the proposed move, alteration, or intensification would result in no more of a detriment to surrounding properties than the existing nonconforming use.
2. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to Title 19 unless the Planning Commission determines that such structure is suitable only for another nonconforming use through a Type III review process per Section 19.1006. The applicant shall demonstrate that the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.

### **19.804.2 Nonconforming Development**

The following provisions apply to the alteration of nonconforming development:

- A. Alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to Section 19.911.
- B. Alterations or expansions that conform to Title 19 are allowed. For example, development that does not conform to height, yard requirements, or lot coverage may be altered provided that the alteration does not exceed the height, yard requirements, or lot coverage requirements of Title 19.

## **19.805 REBUILDING OF NONCONFORMING USES AND DEVELOPMENT**

### **19.805.1 Provisions**

The following provisions establish when a nonconforming use or development may be reestablished or rebuilt following its intentional or accidental destruction:

- A. When a nonconforming use or development is intentionally destroyed to an extent less than or equal to 50% of its replacement value, restoration is allowed. The restoration shall not result in an increase in the nonconformance of the use or development.
- B. When a nonconforming use or development is intentionally destroyed to an extent exceeding 50% of its replacement value, restoration of the use or development shall conform to all applicable land use and development regulations.
- C. If a nonconforming use or development is partially or totally destroyed by fire or other causes or natural hazards beyond the control of the owner, the use or development may be restored or replaced. The restoration or replacement shall not be more out of conformance with the land use or development regulations than the original use or development.

### **19.805.2 Loss of Nonconforming Status**

Restoration or replacement of nonconforming uses or development that have been partially or totally destroyed, whether intentional or by accident, must commence within 1 year from the date of destruction. If restoration or replacement does not commence within the 1-year period, the use or development will lose its nonconforming status and any subsequent use or development on the site shall conform to all applicable land use and development regulations.

## **19.806 AMORTIZATION OF NONCONFORMING USES**

### **19.806.1 Purpose**

The purpose of this section is to provide a process whereby the City could require the discontinuance of nonconforming uses through amortization in a manner that is fair, predictable, and transparent.

### **19.806.2 Applicability**

- A. All legally established high-impact nonconforming uses as defined in Section 19.201 and as identified on the City's inventory pursuant to Subsection 19.806.3.B are subject to amortization and discontinuance. Illegally established uses are subject to enforcement proceedings by the City if not immediately discontinued or converted to a conforming use.
- B. The following nonconforming uses are not subject to amortization and discontinuance:
  - 1. Nonconforming uses that can be made conforming within 6 months, and the owner enters into an agreement with the City to bring the use into conformance within 6 months.
  - 2. Nonconforming uses that are protected under the Religious Land Use and Institutionalized Persons Act.
  - 3. Nonconforming uses that are identified as low-impact nonconforming uses as defined in Section 19.201.

### **19.806.3 Identification of Nonconforming Uses**

- A. The City Council may direct the Planning Director to evaluate existing land uses within the City for the purpose of compiling an inventory of uses subject to amortization and discontinuance. Such direction shall be made by resolution at a public meeting.

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- B. The Planning Director's evaluation shall be undertaken as follows:
1. Create a list of all nonconforming uses pursuant to City Council direction as provided in Subsection 19.806.3.C below.
  2. Remove all properties that are exempt under Subsection 19.806.2.B from the list.
  3. Determine which nonconforming uses are high-impact nonconforming uses as defined by Section 19.201 that remain on the list.
  4. Compile an inventory of all properties containing a high-impact nonconforming use.
- C. At the time of a vote directing the Planning Director to perform an evaluation of nonconforming uses, the Council shall specify the following:
1. The amount of time the Planning Director has to perform the evaluation, which shall be no less than 60 days.
  2. Whether the Planning Director shall evaluate all uses in the entire City or whether the evaluation should be limited to a specified geographic area, type of use, or zoning district.
- D. No less than 60 days after the Planning Director's completion of the inventory, City Council shall review and adopt the inventory by resolution. Upon review of the Planning Director's evaluation and inventory, Council may add or remove properties from the inventory prior to its adoption.
- E. No more than 30 days after the adoption of the inventory by City Council, the Planning Director shall provide notice to all property owners listed in the nonconforming use inventory. Such notice shall include the following:
1. A statement that the City has determined that the subject property contains at least one nonconforming use that is subject to discontinuance through amortization.
  2. The findings from the Planning Director's evaluation.
  3. A copy of this ordinance.
  4. The date of the first evidentiary hearing before the Planning Commission to determine the schedule of amortization and discontinuance. Such a hearing shall be scheduled no less than 60 days after the mailing of the notice.

### 19.806.4 Review Process

- A. For all properties with identified nonconforming uses that are included in the adopted nonconforming use inventory, the City shall require the discontinuance of such uses under a plan whereby the full value of any use-dependent structures and facilities are amortized within a definite and reasonable period of time. This action is a quasi-judicial action, not a legislative action, but shall utilize the Type IV review process pursuant to Section 19.1007. A separate hearing shall be conducted for each nonconforming use to determine the appropriate amortization schedule.
1. The approved amortization schedule shall be adopted by ordinance and shall commence upon the effective date of the ordinance.
  2. The hearings conducted under this subsection per Section 19.1007 Type IV Review shall be limited to the determination of the following:
    - a. Whether the use is properly included on the inventory.



- b. Whether the use is exempt from amortization and discontinuance under Subsection 19.806.2.B.
  - c. The duration of a reasonable amortization period and all terms associated therewith, based on the evaluation criteria in Subsection 19.806.5.
- B. The City Council may, by ordinance, execute a compliance agreement with the owner of any property found to contain a high-impact nonconforming use. Such an agreement shall include a schedule for the property owner to bring the property into conformance through discontinuance of all nonconforming uses in a certain amount of time or by other means acceptable to the City. Such an agreement shall alleviate the City's obligation to schedule a hearing to determine an amortization period pursuant to Subsection 19.806.4.A or, alternatively, shall supersede the established amortization period for the subject property.
- C. The City shall record in the Clackamas County real estate records all ordinances adopted pursuant to this subsection.

**19.806.5 Evaluation Criteria**

The City's review authorities shall consider the following criteria, at a minimum, in determining a reasonable length of time for the amortization period:

- A. Nature of the use, its operations, and structures.
- B. Character of the land and land uses in the surrounding area.
- C. Location of the use in relation to surrounding uses.
- D. Value of the land and its improvements.
- E. Length of time the use has been in existence and the length of time the use has been nonconforming.
- F. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming.
- G. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period.
- H. Existence or nonexistence of lease obligations.
- I. Removal costs that are directly attributable to the establishment of a discontinuance date.
- J. Other costs and expenses that are directly attributable to the establishment of a discontinuance date.
- K. Burden on the property owner resulting from discontinuance of the use.
- L. Benefit to the public resulting from discontinuance of the use.

**CHAPTER 19.900 LAND USE APPLICATIONS**

[All current land use applications are identified in Chapter 19.900. The new chapter includes some existing provisions, some new provisions, and references to all other application provisions that are located elsewhere.]

**19.901 INTRODUCTION**

[New text. Complete section below—no underlining.]

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval for all required land use applications prior to establishment or construction. Table 19.901 below contains a complete list of the City’s land use applications and the location of the provisions that govern their submittal, review, and approval. It also identifies the review type(s) associated with each application type. The review type determines who is given notice about land use and development proposals, when the City has to make a decision on a land use application, and who makes the final decision. A description of the different review types and the procedures associated with them are located in Chapter 19.1000. Decision makers for each review type are listed in Table 19.1001.5.

<b>Table 19.901 Land Use Applications</b>		
<b>Application Type</b>	<b>Municipal Code Location</b>	<b>Review Types</b>
Amendments to Maps and Ordinances: Comprehensive Plan Amendment Municipal Code Amendment Zoning Map Amendment	Section 19.902 Subsection 19.902.3 Subsection 19.902.4 Subsection 19.902.5	IV IV III, IV <sup>2</sup>
Annexations and Boundary Changes: Boundary Change Expedited Annexation Nonexpedited Annexation	Chapter 19.1100 Section 19.1103 Section 19.1104 Section 19.1102	NA NA IV
Appeal	Section 19.1009	Varies
Code Interpretation	Section 19.903	I
Community Service Use	Section 19.904	I, III
Compensation for Reduction in Property Value (Measure 37)	Chapter 1.20	NA
Conditional Use	Section 19.905	I, III
Development Review	Section 19.906	I, II

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<sup>2</sup> Level of review determined by City Attorney per Section 19.902.5.A.1.

<b>Table 19.901 CONTINUED Land Use Applications</b>		
<b>Application Type</b>	<b>Municipal Code Location</b>	<b>Review Types</b>
Director Determination	Section 19.903	I
Downtown Design Review	Section 19.907	I, II, III
Extension to Expiring Approval	Section 19.908	I, II
Historic Resource:	Section 19.403	
Alteration	Subsection 19.403.5	I, III
Demolition	Subsection 19.403.7	III
Status Designation	Subsection 19.403.4	IV
Status Deletion	Subsection 19.403.4	IV
Land Divisions:	Title 17	
Final Plat	Title 17	I
Lot Consolidation	Title 17	I
Partition	Title 17	II
Property Line Adjustment	Title 17	I, II
Replat	Title 17	I, II, III
Subdivision	Title 17	III
Miscellaneous:	Chapters 19.500 and 19.300	
Barbed Wire Fencing	Subsection 19.502.2.B.1.b-c	II
Bee Colony	Subsection 19.503.1.D	III
Multifamily Recycling Area	Subsection 19.504.8	I
Mixed Use Overlay Review	Section 19.404	III
Modification to Existing Approval	Section 19.909	I, II, III
Nonconforming Use Alteration	Chapter 19.804	III
Parking:	Chapter 19.600	
Quantity Determination	Subsection 19.605.2	II
Quantity Modification	Subsection 19.605.2	II
Shared Parking	Subsection 19.605.4	I
Structured Parking	Section 19.611	II, III
Planned Development	Section 19.317	IV
Residential Dwellings:	Section 19.910	
Accessory Dwelling Unit (Type 1)	Subsection 19.910.1	II
Accessory Dwelling Unit (Type 2)	Subsection 19.910.2	III
Manufactured Dwelling Park	Subsection 19.910.3	III
Temporary Dwelling Unit	Subsection 19.910.4	I, III
Sign Review	Title 14	Varies
Transportation Facilities Review	Chapter 19.700	II
Variances:	Section 19.911	
Use Exception	Subsection 19.911.5	III
Variance	Subsection 19.911.1-4	II, III
Water Quality Resource Review	Section 19.402	I, II, III, IV
Willamette Greenway Review	Section 19.401	III

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### **19.902 ~~MAP AND TEXT AMENDMENTS TO MAPS AND ORDINANCES~~**

[Current Chapter 19.900 repealed and replaced as Section 19.902. Complete section below—no underlining.]

#### **19.902.1 Purpose**

This section establishes the process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. The approval process related to Comprehensive Plan amendments is intended to ensure compliance with State laws and administrative rules, including the 19 statewide land use planning goals and the Metro Urban Growth Management Functional Plan, Chapter 3.07, Title III of the Metro Code. The approval process related to land use amendments is intended to ensure compliance with the Comprehensive Plan.

The goals and policies of the Comprehensive Plan are implemented, in part, through the land use regulations of the Milwaukie Municipal Code. The sections of the Municipal Code that most directly relate to implementation of the Comprehensive Plan are Title 14 Signs, Title 17 Land Division, and Title 19 Zoning.

#### **19.902.2 Applicability**

The requirements of Section 19.902 apply to the amendments described below.

- A. Amendments to add, modify, or delete the text of the Milwaukie Comprehensive Plan or its ancillary documents.
- B. Amendments to add, modify, or delete the text of Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.
- C. Amendments to change the maps of the Milwaukie Comprehensive Plan, including maps within ancillary documents. Changes to these maps resulting from actions taken by Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902.
- D. Amendments to change the "Zoning Map of Milwaukie, Oregon," which is the map established by Subsection 19.107.2. Changes to this map resulting from actions taken by Section 19.402.12 Map Administration, and Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902.

#### **19.902.3 Comprehensive Plan Amendments**

Changes to the Milwaukie Comprehensive Plan shall be called Comprehensive Plan Amendments.

##### **A. Review Process**

Changes to the Milwaukie Comprehensive Plan described by Subsections 19.902.2.A or C shall be evaluated through a Type IV review per Section 19.1007.

##### **B. Approval Criteria**

Changes to the Milwaukie Comprehensive Plan shall be approved if the following criteria are met:

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.

2. The proposed amendment is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the Comprehensive Plan or Land Use map.
3. The public need is best satisfied by this particular proposed amendment.
4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
5. The proposed amendment is consistent with relevant State Statutes and Administrative Rules, including the Statewide Planning Goals and Transportation Planning Rule.

#### **19.902.4 Municipal Code Amendments**

Changes to the text of land use regulations within the Milwaukie Municipal Code shall be called Zoning Text Amendments, regardless of the individual titles involved.

##### **A. Review Process**

Changes to Titles 14, 17, or 19 of the Milwaukie Municipal Code, or any land use regulation as defined by ORS 197.015, that are described by Subsection 19.902.2.B shall be evaluated through a Type IV review per Section 19.1007.

##### **B. Approval Criteria**

Changes to the Milwaukie Municipal Code described by Subsection 19.902.2.B shall be approved if the following criteria are met:

1. The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
4. The proposed amendment is consistent with relevant State Statutes and Administrative Rules, including the Statewide Planning Goals and Transportation Planning Rule.
5. The proposed amendment is consistent with relevant federal regulations.

#### **19.902.5 Zoning Map Amendments**

Changes to the Zoning Map of Milwaukie, Oregon, shall be called Zoning Map Amendments.

##### **A. Review Process**

1. Changes to the Zoning Map described in Subsection 19.902.2.D shall be evaluated through either a Type III review, per Section 19.1006, or Type IV review, per Section 19.1007. The City Attorney shall have the authority to determine the appropriate review process for each Zoning Map Amendment. The City Attorney's review process determination is not a land use decision per ORS 197.015 and is not subject to appeal.

Generally, Zoning Map Amendments that affect 5 or more property owners or encompass more than 2 acres of land should be considered legislative in nature, and subject to Type IV review. Zoning Map Amendments that involve fewer property owners and encompass a smaller area of land should be considered quasi-judicial in nature, and subject to Type III review.

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2. Changes that affect both the Zoning Map and text of Titles 14, 17, or 19, or other land use regulation of the Milwaukie Municipal Code shall be evaluated through a Type IV review per Section 19.1007. These changes are subject to the approval criteria of Subsections 19.902.4.B and 19.902.5.B.

### B. Approval Criteria

Changes to the Zoning Map of Milwaukie, Oregon, shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
  - a. Site location and character of the area.
  - b. Predominant land use pattern and density of the area.
  - c. Expected changes in the development pattern for the area.
2. The need for uses allowed by the proposed zone amendment.
3. The availability of suitable alternative areas of the same or similar zoning designation.
4. The subject property and adjacent properties are presently provided with adequate public facilities, services, and transportation networks to support the use, or such facilities, services, and transportation networks are proposed or required as a condition of approval.
5. The proposed amendment 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.
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.
7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
8. The proposed amendment is consistent with relevant State Statutes and Administrative Rules, including the Statewide Planning Goals and Transportation Planning Rule.

### C. Conditions of Approval

Conditions of approval may be applied to zoning map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, State, or federal regulations. Conditions of approval may include actual construction of facilities or a performance contract, bond, or escrow account to assure installation of public facilities to specified standards.

### D. Modification of Official Zoning Map

For zoning map amendments not involving conditions of approval, the Zoning Map shall be modified when the adopting ordinance goes into effect. For zoning map amendments involving conditions of approval, the Zoning Map shall not be modified until all conditions of approval are satisfied.

### E. Revocation

If conditions of approval are not met within 2 years of ordinance adoption, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning

through a Type III review per Section 19.1006. The Planning Commission may also, upon determination that the applicant is making satisfactory progress towards completing conditions of approval, grant a one-time extension not to exceed a maximum of 2 years.

### **19.903 CODE INTERPRETATIONS AND DIRECTOR DETERMINATIONS**

[Current Subsection 19.1001.4 and Section 19.809 repealed and replaced as Section 19.903. Complete section below—no underlining.]

#### **19.903.1 Purpose**

The purpose for both code interpretations and Director determinations is to allow for discretionary rulings on the interpretation and application of the provisions of land use regulations. The most common instances for which such rulings are required are where the text of the land use regulation is unclear, where a determination about the similarity of a proposed use and outright allowed uses is needed, and where a determination is requested regarding the legal status of a use or property. The initial decisions on these matters are to be made by the Planning Director at an administrative level with the option for appeal.

Code interpretations are not intended to substitute for legislative amendments to land use regulations. Code interpretations may, however, be used as an interim measure to allow the City's land use regulations to be applied consistently with regional, State, or federal requirements until legislative amendments can be made.

#### **19.903.2 Applicability**

The provisions of Section 19.903 apply to the situations described below.

- A. A code interpretation may be made where the language of Titles 14, 17, or 19 is unclear in its terms, meaning, or intent. An interpretation is not necessary where the meaning of the code is unambiguous and no discretion is required in its interpretation. An interpretation is prohibited in either of the following situations:
  - 1. The code interpretation may affect the evaluation of approval standards or criteria for any quasi-judicial land use application that is currently under review by the City.
  - 2. The code interpretation is being sought as a remedy to a violation of the Milwaukie Municipal Code for which the City has issued a citation and the citation is pending judgment or sentencing.
- B. A Director determination may be requested for the following situations.
  - 1. Determination of whether a use is similar in nature to other outright allowed uses within a zone. A formal determination is not necessary where the comparison is obvious and the decision is nondiscretionary.
  - 2. Determination of the legal status of a nonconforming use or development.
  - 3. Determination of the legal status of a unit of land.
  - 4. Determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19. This process is not available for provisions that specifically state that a decision under that provision cannot be appealed.

#### **19.903.3 Review Process**

- A. General Provisions

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1. Code interpretations are initiated by application to the City. The applicant may be any member of the public, the Planning Director, Planning Commission, or City Council. The Planning Director will decide within 14 days of receipt of an application whether to refuse or accept the request and issue an interpretation. Any application fees will be refunded if a request is refused.
  2. Director determinations are initiated by application to the City.
- B. Review Procedures
1. Code interpretations are evaluated through a Type I review per Section 19.1004. In addition to other notice provisions, a copy of the notice of decision shall be sent to the Planning Commission and City Council.
  2. Director determinations are evaluated through a Type I review per Section 19.1004.

### 19.903.4 Approval Criteria

A. Code Interpretations

Code interpretations are different from other land use applications in that they are an interpretation of language, policy, and legal matters, as opposed to an evaluation of a use or development. A code interpretation shall be as consistent as possible with the criteria listed below. Not all of the criteria need to be met for a code interpretation to be issued.

1. The proposed interpretation is consistent with the common meaning of the words or phrases at issue.
2. The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.
3. The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.
4. The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.
5. The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.

B. Director Determinations

1. Similar Use

Director determinations of similar use shall be based on the following criteria:

- a. The proposed use and outright allowed uses are comparable with respect to the characteristics described below.
  - (1) Hours of operation.
  - (2) Generation of off-site impacts such as noise, lighting glare, dust, and odors.
  - (3) Employment and customer characteristics.
- b. The proposed use is consistent with the stated purpose, if available, of the zone under consideration.
- c. The base zone of the location where the use is proposed is reasonably similar to other zones where the proposed use is allowed outright.



- d. The proposed use is consistent with goals and policies in the Comprehensive Plan regarding the proposed land use and the appropriate locations within the city for the use.

2. Legal Status of a Nonconforming Use or Development

Director determinations of legal status of a nonconforming use or development shall be based on the following criteria:

- a. The nonconforming use or development was permitted under applicable regulations at the time it was established. Evidence to address this criterion may include the following items:
  - (1) Copies of building and/or land use permits issued at the time the use, building, or other condition was established.
  - (2) Copies of zoning code provisions and/or maps.
  - (3) Demonstration that the situation was established before the applicable development code for the community was adopted.
- b. The nonconforming use has been legally maintained over time, and has not been discontinued or abandoned as described by Subsection 19.803.2. Evidence to address this criterion may include the following items:
  - (1) Utility bills.
  - (2) Income tax records.
  - (3) Business licenses.
  - (4) Listings in telephone, business, and Polk directories.
  - (5) Advertisements in dated publications; e.g., trade magazines.
  - (6) Building, land use or development permits.

3. Legal Status of a Unit of Land

Director determinations of the legal status of a unit of land shall evaluate the date of creation or boundary change for the units of land in question and determine whether the required City, County, and State approvals were granted at that time to approve the land division or boundary change.

Evidence that required approvals were granted may include the following items:

- a. Title report, including related instruments of conveyance.
- b. Plats on file with the Clackamas County Surveyor's office.
- c. Deeds recorded with the Clackamas County Recorder's office.
- d. Land use applications and decisions from the City of Milwaukie or Clackamas County.

4. Other

The Planning Director may make other determinations, aside from similar use, legal status of a nonconforming use or development, or legal status of a unit of land. Such a determination shall evaluate the specific facts concerning the determination request and make a ruling of how to apply the provisions of Title 14, 17 or 19, or other land use

## Proposed Code Amendments

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regulations within the Milwaukie Municipal Code. The approval criteria for this determination are as follows:

- a. The determination is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.
- b. The determination is consistent with the purpose or intent statements, if available, in the applicable sections of code.
- c. The determination is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.
- d. The determination is consistent with any legal opinions from the City Attorney.

### **19.903.5 Other Provisions for Code Interpretations and Director Determinations**

#### A. Code Interpretations

1. Code interpretations shall control the future application of the sections of the Milwaukie Municipal Code to which they pertain unless superseded by a subsequent code interpretation or legislative change to the Milwaukie Municipal Code.
2. The Planning Director shall maintain current code interpretations on file at the Planning Department's offices for public review.

#### B. Director Determinations: Similar Use and Other

1. Director determinations issued under Subsections 19.903.4.B.1 and 4 are based on the specific facts presented for each determination. Director determinations issued by the City may be relied upon for future determinations where circumstances are similar, but do not necessarily set precedent for subsequent code determinations.
2. Issuance of a Director determination does not obligate the City to issue any permit or preclude code enforcement action if the situation evaluated by the City differs from what was presented in the determination request.
3. A Director determination issued under Subsections 19.903.4.B.1 or 4 does not expire unless the code used for the determination is amended.

#### C. Director Determinations: Legal Status of a Nonconforming Use or Development or Unit of Land

1. An applicant for a Director determination issued under Subsections 19.903.4.B.2 or 3 may request a subsequent determination if new evidence or materials become available.
2. The City may pursue code enforcement to correct a violation of the Milwaukie Municipal Code following a Director determination where evidence is clear that a use, land division, or boundary change was illegally established.

## **19.904 COMMUNITY SERVICE USES ~~CSU~~**

[Current Section 19.321 renumbered as Section 19.904. Only amended text is shown below.]

### **19.904.3 ~~Review Process~~ Notice Requirements**

Except as provided in Subsections 19.904.5.C for minor modifications and 19.904.11 for ~~Wireless Communication Facilities~~, community service uses shall be evaluated through a Type III review per the Planning Commission shall hold a public hearing for a community service use request per the procedures outlined in Section 19.1006.

### **19.904.4 ~~Approval Criteria~~ Standards for Community Service Uses**

#### **19.904.5 Procedures for Reviewing a Community Service Use**

- A. The Planning Commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the Commission finds that the approval ~~criteria standards~~ in Subsection 19.904.4 are met, the Commission shall approve the designation of the site for community service use. If the Commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the Planning Commission may attach.
- C. The Planning Director may approve minor modifications to an approved community service use per Section 19.1004 Type I Review use pursuant to a Type I procedure, provided that such modification:

#### **19.904.11 Standards for Wireless Communication Facilities**

##### **C. Application Process:**

- 1. Placement, construction, or modification of WCFs not involving the construction of a new monopole ~~shall be~~ are subject to the provisions of Section 19.1005 Type II Review, provided that the antennas and base equipment comply with the standards contained in this subsection. Also see Table 19.904.11.C.
- 2. All proposed new monopole towers are subject to Section 19.1006 Type III Minor Quasi-judicial Review. Also see Table 19.904.11.C

##### **Table 19.904.11.C (footnotes):**

- 1 = ~~Type III Minor Quasi-judicial~~ review—requires a public hearing in front of the Planning Commission
- 2 = Type II ~~Administrative~~ review—provides for an administrative decision ~~with the option of a public hearing~~

##### **Subsection G.6:**

- d. In some cases equipment cabinets may be placed in areas where landscaping may not be practical. For ~~these circumstances for~~ Type II land use ~~reviews applications~~, the applicant may request that the Planning Director waive landscaping requirements. For ~~Type III Minor Quasi-judicial~~ land use applications, the applicant may request that the Planning Commission waive landscaping requirements.

**19.905 CONDITIONAL USES**

[Current Chapter 19.600 repealed and replaced as Section 19.905 (except Subsection 19.602.10 moved to Subsection 19.910.2—see below). Complete section below—no underlining.]

**19.905.1 Purpose**

The purpose of the conditional use regulations is to evaluate the establishment of certain uses that may be appropriately located in some zoning districts, but only if appropriate for the specific site on which they are proposed.

Conditional uses are not allowed outright. Although they may provide needed services or functions in the community, they are subject to conditional use review because they may change the character of an area or adversely impact the environment, public facilities, or adjacent properties. The conditional use review process allows for the establishment of conditional uses when they have minimal impacts or when identified impacts can be mitigated through conditions of approval. The review process also allows for denial when concerns cannot be resolved or impacts cannot be mitigated.

Approval of a conditional use shall not constitute a zone change and shall be granted only for the specific use requested. Approval is subject to such modifications, conditions, and restrictions as may be deemed appropriate by the review authority.

**19.905.2 Applicability**

- A. This section applies to the establishment of a use identified as a conditional use in the base zones in Chapter 19.300 or overlay zones in Chapter 19.400 that are applicable to the property on which the use is proposed.
- B. This section applies to the major or minor modification of existing conditional uses.
- C. This section does not apply to modification of uses that received conditional use approval at one time but are currently allowed outright by the property's base zones and overlay zones.

**19.905.3 Review Process**

- A. Establishment of a new conditional use or major modification of an existing conditional use shall be evaluated through a Type III review per Section 19.1006.
- B. Minor modification of an existing conditional use shall be evaluated through a Type I review per Section 19.1004.

**19.905.4 Approval Criteria**

- A. Establishment of a new conditional use or the major modification of an existing conditional use shall be approved if the following criteria are met:
  - 1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.
  - 2. The operating and physical characteristics of the proposed use will be reasonably compatible with and have minimal impact on nearby uses.
  - 3. All identified impacts will be mitigated to the extent practicable.
  - 4. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by outright allowed uses at the proposed location.

5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
  6. The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.
  7. Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.
- B. Minor modification of an existing conditional use shall be approved if the following criteria are met:
1. The proposed modification will not significantly increase the intensity of the use at this location.
  2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
  3. The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities more than the original conditional use.
  4. The proposed modification will comply with any conditions of approval from the original conditional use approval.

#### **19.905.5 Conditions of Approval**

The Planning Commission, or Planning Director in the case of minor modifications, may impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and minimize and mitigate potential adverse impacts caused by the proposed use.

Conditions of approval may include, but are not limited to, the following aspects of the proposed use:

- A. Limiting the hours, days, place, and manner of operation.
- B. Requiring structure and site design features that minimize environmental impacts such as those caused by noise, vibration, air pollution, glare, odor, and dust.
- C. Requiring additional front, rear, or side yard width.
- D. Limiting building height, size, or location or limiting lot coverage.
- E. Limiting or otherwise designating the size, number, or location of vehicle access points from the street.
- F. Requiring additional landscaping or screening of off-street parking and loading areas.
- G. Limiting or otherwise designating the location, intensity, and shielding of outdoor lighting.
- H. Requiring screening or landscaping for the protection of surrounding properties.
- I. Requiring and designating the size, height, location, and materials for fences.
- J. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.
- K. Requiring adequate public transportation facilities and public utilities prior to occupancy.

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### 19.905.6 Conditional Use Permit

- A. The City will issue a conditional use permit upon the approval of an application to establish a conditional use or allow major modification of an existing conditional use. The Planning Director may decide if it is necessary to revise an existing conditional use permit after approval of a minor modification.
- B. The conditional use permit shall include the following information:
  - 1. A description of the use that has been approved by the City.
  - 2. Restrictions and/or conditions of approval placed upon the use.
  - 3. Ongoing responsibilities required for the operation of the conditional use.
  - 4. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
  - 5. Procedures for review, revisions, and suspension of the conditional use permit.
- C. The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.
- D. A conditional use permit is not affected by a change in ownership of the use or the property containing the use. A conditional use permit is valid unless one of the following occurs:
  - 1. There is a change in use.
  - 2. The permit is suspended per the procedures in Subsection 19.905.6.
  - 3. The use is discontinued as described in Subsection 19.905.8.
- E. Compliance with the terms and conditions of the conditional use permit is required on an ongoing basis.
- F. The notice of decision, Planning Commission minutes, and other city records shall constitute the conditional use permit for conditional uses that were approved prior to the effective date of this ordinance.

### 19.905.7 Review of Existing Conditional Use Permits

- A. The Planning Director may evaluate the operation of a conditional use for compliance with the conditional use permit if it appears the terms and conditions of the permit are being violated or complaints are received regarding the use. An observation or complaint must be based on one of the following occurrences:
  - 1. Violation of any applicable development standard or requirement that pertains to the conditional use.
  - 2. Failure to operate as approved or failure to satisfy a condition of approval from the original conditional use approval.
  - 3. Incidents that are perceived to be a direct result of the conditional use and that may be detrimental to the health, safety, property, or general welfare of the public.
- B. If the Planning Director finds that the conditional use is noncompliant or is having unanticipated impacts that are detrimental to the health, safety, property, or general welfare of the public, the Planning Director shall require the owner and/or operator to resolve the issue within a specified period of time.

- C. If the owner and/or operator of the conditional use cannot or does not resolve the issue in Subsection 19.905.7.B, the matter shall be heard by the Planning Commission to review the conditional use permit and to consider modification, suspension, or revocation of the conditional use permit. The review shall follow the procedures of Section 19.1006 Type III Review. The owner and/or operator shall not be charged a fee for this review.

The Planning Commission may take the following actions in consideration of the conditional use permit:

1. Allow the continued operation of the conditional use without modifications to the conditional use permit. This option should be utilized when the Planning Commission finds that the use is not out of conformance with the conditional use permit or that complaints raised under Subsection 19.905.7.A.3 are not detrimental to the health, safety, property, or general welfare of the public.
2. Suspend the permit and require the cessation of the conditional use until the issue is resolved. Upon suspension of the conditional use permit, the Planning Commission shall set a future meeting date to consider reinstating the permit. A suspended permit may be reinstated when, in the judgment of the Planning Commission, the issue has been resolved.
3. Modify the conditional use permit to address the circumstance(s) that gave rise to the issue. Modifications to the conditional use permit shall be based on factors relevant to the approval criteria for conditional uses in Subsection 19.905.4. The Planning Commission may opt to suspend the permit per Subsection 19.905.7.C.1 until compliance with the modified conditional use permit is achieved.
4. Revoke the conditional use permit. Revocation of a conditional use permit shall only occur in either of the following circumstances:
  - a. The nature of the conditional use is such that its impacts cannot be minimized or mitigated to be consistent with the conditional use approval criteria.
  - b. The property owner and/or operator of the conditional use failed to comply with the terms and/or conditions of the original or modified conditional use permit.

#### **19.905.8 De Facto Conditional Use Status and Loss of Conditional Use Status**

- A. A legally established use currently identified in the code as a conditional use is a de facto conditional use, rather than a nonconforming use, even if:
1. It had previously been identified as an outright allowed use or nonconforming use.
  2. It had not previously undergone conditional use review.

A de facto conditional use does not require a conditional use permit. Modifications to a de facto conditional use shall be evaluated per Subsections 19.905.3 and 4.

- B. A conditional use or de facto conditional use shall automatically lose its conditional use status if either of the following occurs. A dispute about whether either of these situations has occurred shall be resolved by the Planning Director through the Director determination process pursuant to Section 19.903.
1. The conditional use or de facto conditional use undergoes a change in use. Changes in use to an outright allowed use or a use approved through another discretionary review process results in the loss of any conditional use status. Changes in use to another approved conditional use results in the loss of the conditional use status only for the prior use.

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2. The conditional use or de facto conditional use has been discontinued or abandoned as defined in Section 19.201 for more than 2 years. This discontinuation applies only to properties that both:
  - a. Received conditional use approval or became de facto conditional uses following the effective date of Ordinance #\_\_\_\_\_.
  - b. Are not residential conditional uses or residential de facto conditional uses.

### 19.905.9 Standards Governing Conditional Uses

A conditional use shall comply with the standards of the zone in which it is located, except as these standards have been modified by the Planning Commission when authorizing the conditional use and as otherwise modified within this subsection.

#### A. Yards

Additional yard width requirements may be imposed as a condition of approval to address impacts related to building height, mass, and proximity to residential land uses.

#### B. Access to Property and Building Openings

The City may limit or prohibit vehicle access from a conditional use to a residential street, and it may limit or prohibit building openings within 50 feet of residential property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.

#### C. Surface Mining

In considering a conditional use application for surface mining, the following minimum requirements shall apply:

1. Open pit and gravel excavating or processing shall not be permitted nearer than 50 feet to the boundary of an adjoining property line, unless written consent of the owner of such property is first obtained. Excavating or processing shall not be permitted closer than 30 feet to the right-of-way line of an existing or platted street or an existing public utility right-of-way.
2. Production from an open pit or the removal of sand and gravel shall not leave a slope exceeding 1 foot horizontal for 1 foot vertical.
3. An open pit or sand and gravel operation shall be enclosed by a fence suitable to prevent unauthorized access.
4. A rock crusher, washer, or sorter shall not be located nearer than 500 feet to a residential or commercial zone. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.

#### D. Junk or Wrecking Yard

In considering a conditional use application for a junk or wrecking yard, the Planning Commission shall require that it be enclosed by a sight-obscuring fence not less than 6 feet high.

#### E. High-Impact Commercial Use

In considering a conditional use application for a high-impact commercial use, the Planning Commission shall consider the following:



1. Nearness to dwellings, churches, hospitals, or other uses which require a quiet environment.
2. Building entrances, lighting, exterior signs, and other features which could generate or be conducive to noise or other disturbance for adjoining uses.
3. Parking vehicles and pedestrian access and circulation could contribute to noise or attract habitual assembly of unruly persons.
4. Hours of operation.
5. In addition to consideration of the above with respect to building and site design, the Planning Commission may attach conditions or standards of performance and impact, and methods for monitoring and evaluating these, to ensure that such establishments do not become unduly or unnecessarily disruptive.

F. Single-Family Attached Dwellings

In considering a conditional use application for single-family attached dwellings, the Planning Commission shall consider the following:

1. Whether a structure of a similar type is within 200 feet.
2. Relationship to neighboring uses.
3. Street access.
4. Terrain of the site.

G. Multifamily Condominium and Apartment Dwellings

In considering a conditional use application for multifamily condominium and apartment dwellings, the Planning Commission shall consider the following:

1. Relationship to neighboring uses.
2. Street access.
3. Terrain of the site.

H. Senior and Retirement Housing

In considering a conditional use application for senior and retirement housing, the Planning Commission shall consider the following:

1. Pedestrian access to transit.
2. Pedestrian access to convenience facilities such as grocery store, pharmacy, laundromat, park and open space, and senior activity center.
3. Pedestrian access to banking, churches, hospitals, and restaurants.
4. Quality of project as a living environment for residents.
5. Minimizing impact on the surrounding area.

The Planning Commission may recommend to the City Council an increase in density to as much as that permitted by the next higher zone. The City Council shall make the final decision on density increase.

An applicant is required to submit materials and the Planning Commission shall attach conditions which will ensure that the special nature of the housing, and groups to be

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served, are clearly defined and maintained in perpetuity. Also a project is required to meet the definition for this type of housing defined in Section 19.201.

### **19.906 DEVELOPMENT REVIEW**

[New text. Complete section below—no underlining.]

#### **19.906.1 Purpose**

The purpose of this section is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions. Development review is intended to encourage quality development that is compatible with its surroundings and reflects the goals and policies of the Milwaukie Comprehensive Plan.

#### **19.906.2 Applicability**

##### **A. Type I Review**

The following development proposals must submit a Development Review application and are subject to the requirements of this section, unless explicitly stated otherwise in an applicable land use approval, waived by the Planning Director at the time of development permit submittal, or exempted per Subsection 19.906.2.C.

1. New development and expansions or modifications of existing development that require review against standards and criteria that are either clear and objective, or that require the application of limited professional judgment.
2. A change in primary use.
3. Parking lot expansions or modifications that change the number of parking spaces by five spaces or more.

##### **B. Type II Review**

The following development proposals must submit a Development Review application and are subject to the requirements of this section. Type II Development Review does not apply to development proposals in the downtown zones as these zones have a separate design review process.

1. New development, or expansions or modifications to existing development, for which the applicant elects, where a choice is available, to have the proposal reviewed against discretionary criteria or standards.
2. New construction of over 1,000 square feet in the Manufacturing (M) zone within 120 feet of areas zoned for residential uses or within any part Business Industrial (BI) zone.
3. New development or expansions, or modifications to existing development, where the scale of development and/or the level of discretion required to evaluate applicable standards and criteria is not appropriate for a Type I development review.

##### **C. Exemptions**

The following development proposals are not required to submit a Development Review application and are exempt from the requirements of this section. Proposals that are exempt from this section must still comply with all applicable development and design standards. For proposals that require a development permit, compliance with standards will be reviewed during the permit review process.

1. New or expanded single-family detached or attached residential dwellings.
2. Single-family residential accessory uses and structures.
3. Interior modifications to existing buildings that do not involve a change of use.
4. Construction of public facilities in the public right-of-way.
5. Temporary events as allowed in Chapter 11.04.

### **19.906.3 Review Process**

#### **A. General Provisions**

1. Development review generally includes review of the proposed use(s), structure(s), and site improvements for compliance with applicable standards. For expansions or modifications of existing development, the review is limited to the modified portions of the site or structure and any other site improvements that may be affected by the proposed modifications.
2. Development proposals that are subject to Type II development review and require other land use approvals may submit a Type II development review application with the other required land use application(s) for concurrent review per Subsection 19.1001.6.B.
3. Development proposals that are subject to Type II development review and require development permits may submit a development permit application at any time; however, the City will not issue development permits until the Type II development review application has been approved.
4. Development proposals that are subject to Type I development review and require development permits may submit a Type I development review application with the required development permits for concurrent review. The City will not issue development permits until the Type I development review application has been approved.
5. Submittal of a Type II development review application may not preclude the need for submittal of a Type I development review application. Depending on the nature of the development proposal, Type II development review may be required during the land use review phase of the proposal, and Type I development review may be required during the development permit review phase of the proposal.

#### **B. Review Types**

1. Type I development review applications are evaluated through a Type I review per Section 19.1004. Type I development review ensures compliance with applicable land use and site development standards, and non-discretionary design standards.
2. Type II development review applications are evaluated through a Type II review per Section 19.1005. Type II development review is for proposals that opt for or require discretionary review because they either do not meet clear and objective design standards or not all applicable design standards are clear and objective. The Planning Director will determine whether existing standards are clear and objective where they are not clearly identified as such.

### **19.906.4 Approval Criteria**

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout

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Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II Development Review shall be approved when all of the following criteria have been met

- A. The proposal complies with all applicable base zone standards in Chapter 19.300.
- B. The proposal complies with all applicable overlay zone standards in Chapter 19.400.
- C. The proposal complies with all applicable supplementary development regulations in Chapter 19.500.
- D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.
- E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.
- F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the Development Review application.

### **19.907 DOWNTOWN DESIGN REVIEW**

[Current Subsection 19.312.7 renumbered as Section 19.907. Only amended text is shown below.]

#### **19.907.3 Design Guidelines**

Design guidelines shall be established for the downtown zones and shall be considered as part of design review applications in accordance with the provisions of Section 19.310. ~~The design guidelines shall be adopted by resolution of the City Council, in accordance with the procedures of Subsection 19.1011.5.~~

#### **19.907.5 Application Procedure**

- C. Major exterior alterations, as defined in Subsection 19.310.6.B.3 shall be processed as a Type III Minor Quasi-judicial review in accordance with the procedures in Section 19.1006. Applications for major exterior alterations shall be heard in a public hearing by and decided by the Planning Commission, except as follows:

#### **19.907.8 Report and Recommendation by Design and Landmarks Committee**

~~When an application also requires Planning Commission approval, the Planning Director for Type II reviews, or Design and Landmarks Committee for Minor Quasi-Judicial Reviews, shall make a written report of its recommendation concerning the design to the Planning Commission. After receiving the Planning Director's or Design and Landmarks Committee's recommendation, the Planning Commission shall consider the design review recommendation and integrate it with the land use application process applicable to the project.~~

The Design and Landmarks Committee shall hold a public meeting and prepare a design review report for design review applications that require Type III review pursuant to Section 19.1010. The Planning Commission shall consider the findings and recommendations contained in the design review report during the public hearing on the proposal.

**19.908 EXTENSIONS TO EXPIRING APPROVALS**

[New text. Complete section below—no underlining.]

**19.908.1 Purpose**

The purpose of this section is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

**19.908.2 Applicability**

A. Approvals Eligible for Extensions

An extension may be requested for any unexpired land use application that was required by Titles 14, 17, or 19 of the Milwaukie Municipal Code and that was approved through a Type I, II, or III review.

B. Approvals Not Eligible for Extensions

An extension pursuant to this section may not be requested for an approved land use application that has expired or where other sections of the municipal code specifically prohibit or limit the length or number of extensions allowed.

**19.908.3 Review Process**

A. General Provisions

1. An extension application must be submitted and approved prior to the expiration date of the approval. An extension application may not be submitted more than 6 months in advance of an expiration date.
2. An extension may be approved up to a maximum of two years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that may be requested or approved.
3. If the original application was approved through a Type III review process, the Planning Director shall notify the Planning Commission of receipt of an extension application at the same time that public notice is mailed for the application.
4. If an extension application is denied, the applicant may seek approval for the proposed development by resubmitting all applicable land use applications. Such applications are subject to all procedures, approval criteria, and development standards in effect at the time of submission.

B. Review Types

1. If the original application was approved through a Type I review process, the extension application shall be evaluated through a Type I review per Section 19.1004.
2. If the original application was approved through a Type II or Type III review, the extension application shall be evaluated through a Type II review per Section 19.1005 in order to provide public notice and opportunity for public comment.

**19.908.4 Approval Criteria**

An extension shall be approved when all of the following criteria have been met:

- A. There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.
- B. No modifications to the approved application or to the conditions of approval are proposed.

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- C. If the previously approved application included a Transportation Impact Study or a Water Quality Resource Report, an updated report was provided with the extension application that shows no significant changes on the subject property or in the vicinity of the subject property. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

### **19.909 MODIFICATIONS TO EXISTING APPROVALS**

[New text. Complete section below—no underlining.]

#### **19.909.1 Purpose Statement**

The purpose of this section is to provide an appropriate and efficient review process for modifying approved land use applications and development plans after approvals have been obtained but prior to issuance of development permits.

#### **19.909.2 Applicability**

##### **A. Modifications Requiring Submittal of New Application**

A modification application is required for any land use application that was approved pursuant to Titles 14, 17, or 19 of the Milwaukie Municipal Code through a Type I, II, or III review and that has been subsequently modified such that the proposal no longer substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved.

##### **B. Exceptions**

A modification application is not required when modifications are required by City staff during development review for compliance with conditions of approval, development standards, public works standards, or any other applicable standards that the City has the authority to implement at the time of development.

#### **19.909.3 Review Process**

##### **A. General Provisions**

1. The Planning Director shall 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.
2. If the Planning Director determines that a modified proposal no longer substantially conforms to the original approval, the Planning Director shall require one of the following before approving any development permits:
  - a. Submittal and approval of a modification application to modify the original approval per this section.
  - b. Withdraw of the original land use application and resubmittal of the application with the proposed modifications.
3. For a modification requiring review under this section, the Planning Director shall determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.

- a. Major modifications are modifications that alter a condition of approval imposed by the Planning Commission, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
  - b. Minor modifications are all modifications not otherwise identified as major modifications.
4. The scope of review for a modification application reviewed under this section is limited to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.
  5. Denial of a modification application does not invalidate the original approval.
- B. Review Types
1. Major or minor modification of original Type I approval  
Major and minor modifications shall be evaluated through a Type I review per Section 19.1004.
  2. Major or minor modification of original Type II approval  
Minor modifications shall be evaluated through a Type I review per Section 19.1004. Major modifications shall be evaluated through a Type II review per Section 19.1005.
  3. Major or minor modification of original Type III approval  
Minor modifications shall be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The Planning Director shall determine the review type after considering the nature and scope of the modification. The Planning Director'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 shall be evaluated through a Type III review per Section 19.1006.

#### **19.909.4 Approval Criteria**

- A. Approval Criteria for Minor Modifications
1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
  2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.
  3. The proposed modification, as either proposed or conditioned, will not negatively impact nearby uses, protected natural features, or public facilities any more than what was identified in the original approval.
  4. The proposed modification does not alter or contravene any conditions of approval from the original approval.
- B. Approval Criteria for Major Modifications
1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
  2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.

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### 19.909.5 Conditions of Approval

The review authority may impose conditions of approval that are suitable and necessary to ensure that the proposed modification will not cause the approved development proposal to fail to meet any approval criteria upon which the original approval was based or negatively impact nearby uses, protected natural features, or public facilities.

### 19.910 RESIDENTIAL DWELLINGS

[Four current residential dwelling types combined into one section, with new introductory text. Sources for the four individual subsections are described below.]

This section contains applications for types of residential dwellings that require land use approval.

#### 19.910.1 Accessory Dwelling Units (Type 1)

[Current Subsection 19.402.4 renumbered as Subsection 19.910.1. Only amended text is shown below. See Exhibit D for complete section.]

- D. Notwithstanding the maximum allowable ~~gross net~~ floor area of 600 square feet, the accessory dwelling unit shall not exceed 40% of the gross floor area of the primary structure.

#### 19.910.2 Type 2 Accessory Dwelling Units (Type 2)

[Current Subsection 19.602.10 renumbered as Subsection 19.910.2. Only amended text is shown below. See Exhibit D for complete section]

Type 2 accessory dwelling units are only allowed in the base zones where they are listed as conditional uses. Where allowed, they are subject to conditional use review and approval per Section 19.905. A Type 2 accessory dwelling unit may be allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition.

#### 19.910.3 Manufactured Dwelling Parks

[Current Section 19.405 renumbered as Subsection 19.910.3. No amendments. See Exhibit D for complete section.]

#### 19.910.4 Temporary Dwelling Units Provisions

[Current Section 19.404 renumbered as Subsection 19.910.4. Only amended text is shown below. See Exhibit D for complete section.]

##### C. Review Process

Applications for temporary structures shall be evaluated through a Type I review per ~~processed according to~~ Section 19.1004. Temporary permits that exceed the 6-month time period allowed under Subsection 19.910.4.A shall be evaluated through a Type III review ~~per~~ must be reviewed by the Planning Commission under Section 19.1006.



**19.911 VARIANCES, EXCEPTIONS, AND HOME IMPROVEMENT EXCEPTIONS**

[Current Chapter 19.700 repealed and replaced as Section 19.911. Complete section below—no underlining.]

**19.911.1 Purpose**

Variations provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. Variations are intended to provide some flexibility while ensuring that the intent of each development standard is met. Variations may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impacts, and/or precluding an economic taking of property. Variations shall not be granted that would be detrimental to public health, safety, or welfare.

**19.911.2 Applicability**

A. Eligible Variations

Except for situations described in Subsection 19.911.2.B, a variance may be requested to any standard or regulation in Titles 17 or 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

B. Ineligible Variations

A variance may not be requested to address the following situations:

1. To eliminate restrictions on uses or development that contain the word "prohibited."
2. To change a required review type.
3. To change or omit the steps of a procedure.
4. To change a definition.
5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.
6. To justify or allow a Building Code violation.
7. To allow a use not outright allowed by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5; nonconforming use replacement provisions in Subsection 19.804.1.B.2; conditional use provisions in Section 19.905, or; community service use provisions in Section 19.904.

C. Exceptions

A variance application is not required where other sections of this code specifically provide for exceptions, adjustments, or modifications to standards either by-right or as part of a specific land use application review process.

**19.911.3 Review Process**

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending upon the nature and scope of the variance request and the discretion involved in the decision-making process.
2. Variance applications may be combined with and reviewed concurrently with other land use applications.

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3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through the Type II review process. If one or more of the variance requests is a Type III, the application will be processed through the Type III review process. Additional variance requests must be made on a separate variance application.

### 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 percent to a side yard width standard.
2. A variance of up to 25 percent to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 feet through the Type II review process.
3. A variance of up to 10 percent to lot coverage or minimum vegetation standards.
4. A variance of up to 10 percent to lot width or depth standards.
5. A variance of up to 10 percent to a lot frontage standard.

### C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

## 19.911.4 Approval Criteria

### A. Type II Variances

An application for a Type II variance shall be approved when all of the following criteria have been met:

1. The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
2. The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.
3. Where site improvements already exist, the proposed variance will sustain the integrity of or enhance an existing building or site design.
4. Impacts from the proposed variance will be mitigated to the extent practicable.

### B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. Discretionary Relief Criteria

- a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.
  - b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
    - (1) The proposed variance avoids or minimizes impacts to surrounding properties.
    - (2) The proposed variance has desirable public benefits.
    - (3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.
  - c. Impacts from the proposed variance will be mitigated to the extent practicable.
2. Economic Hardship Criteria
- a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.
  - b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.
  - c. Impacts from the proposed variance will be mitigated to the extent practicable.

#### **19.911.5 Use Exceptions**

##### **A. Applicability**

Use exceptions are a type of variance intended to allow uses that are not outright or conditionally allowed by a property's base or overlay zones. Use exceptions shall not be granted to allow uses that are specifically prohibited by a property's base or overlay zones.

##### **B. Review Process**

Use exceptions shall be evaluated through a Type III review per Section 19.1006.

##### **C. Approval Criteria**

Economic hardship shall not be a primary basis for allowance of a use exception nor shall circumstances of which the applicant had prior knowledge be considered upon application. The Planning Commission may authorize exceptions to uses established by Title 19 upon a determination that all of the following criteria have been met:

1. Exceptional circumstances exist on or near the property over which the property owner has no control.
2. None of the allowed or conditionally allowed uses for which the property is zoned are practical.
3. The proposed use will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
4. Impacts from the proposed use will be mitigated to the extent practicable.

## **CHAPTER 19.1000 ~~ADMINISTRATIVE PROVISIONS~~ REVIEW PROCEDURES**

[Current Chapter 19.1000 repealed and replaced. Complete chapter below—no underlining.]

### **19.1001 GENERAL PROVISIONS**

#### **19.1001.1 Purpose**

The purpose of this chapter is to establish procedures for the review and processing of land use applications. This chapter is intended to make the land use review process clear and understandable; to facilitate timely review of land use applications by the City; and to enable the public to participate in the local land use decision-making process. The provisions contained in this chapter are intended to be consistent with Oregon law regulating land use review procedures.

#### **19.1001.2 Applicability**

All land use applications shall be reviewed using the procedures contained in this chapter.

#### **19.1001.3 Consistency with Statute**

The processing of applications and permits authorized under Titles 14, 17 and 19 shall be consistent with the Oregon Revised Statutes (ORS). The City shall follow the provisions of the ORS in instances where following the provisions of this chapter alone would fail to meet State requirements for the processing or review of land use applications or permits.

#### **19.1001.4 Review Types**

All land use applications have both a review type and an application type. Chapter 19.900 contains a list of application types and their associated review types. This chapter establishes the review process associated with each review type.

##### **A. Review Types**

There are four types of reviews: Type I, II, III, and IV. Table 19.901 lists the City's land use applications and their associated review type.

##### **B. Determination**

When a review type for a land use application is not specified in Table 19.901, or otherwise required by law, the Planning Director shall determine the review type. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. The Director's review type determination is not a land use decision per ORS 197.015 and is not subject to appeal.

##### **C. Notice**

The notice requirements in this chapter shall be the minimum amount of notice required for the specific type of application review. The City may provide notice in excess of the minimum requirements as long as the remaining procedures for the specified type of review are followed.

#### **19.1001.5 Review and Appeal Authorities**

A. The review authority for each review type shall be as listed in Table 19.1001.5. The review authority is also the decision authority, except for Type IV reviews as described below.

B. The appeal authorities listed in Table 19.1001.5 are appeal authorities within the City of Milwaukie's land use review process. The decision of the appeal authority is the City of

Milwaukie’s final decision for a permit, land use action, or zone change. Parties with standing may appeal the City’s final decision to the Oregon Land Use Board of Appeals or other court.

<b>Table 19.1001.5 Land Use Application Review and City Appeal Authorities</b>		
<b>Review Type</b>	<b>Review Authority</b>	<b>Appeal Authority</b>
Type I	Planning Director	Planning Commission
Type II	Planning Director	Planning Commission
Type III	Planning Commission	City Council
Type IV	City Council, with initial hearing and recommendation by Planning Commission	None

**19.1001.6 Applications**

A. Initiation

Type I, Type II and Type III applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

In addition, Type III applications for amendments to the zoning map and all Type IV applications may be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

B. Review of Multiple Applications

When multiple land use applications are required for a single proposal, the applicant may opt, or the City may require, that the applications be processed concurrently or individually.

The City shall generally allow applicants the discretion to have multiple applications for a proposal processed concurrently or individually. The City may require that applications be reviewed concurrently for proposals where a review of an application(s) would be difficult without the context of the other applications related to the proposal. Alternatively, the City may require parts of an application to be processed separately in order to comply with the 120-day decision requirement or to allow decisions on parts of a proposal to be made with a lower level of review.

1. Applications Processed Concurrently

A concurrent application review consolidates the review of multiple applications into a single review process. The applications shall be processed according to the highest numbered review type required for any part of the application. For example, a concurrent review of a Type II review and a Type III review would be processed through a Type III review. A single decision shall be issued that includes findings for all of the applications that are part of the concurrent review.

The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

2. Applications Processed Individually

Multiple applications related to a single proposal may be submitted individually at the same time or at different points in time. Each individual application or group of

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concurrent applications shall be processed according to their specified review type. Any concurrent applications shall be processed as specified in Subsection 19.1001.6.B.1. For each application or group of concurrent applications, the review authority will issue a separate decision.

The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

### 19.1001.7 Decisions

#### A. Conditions of Approval

The review authority shall impose conditions of approval on an application as necessary to ensure conformance with relevant approval criteria and development standards.

#### B. Applicable Standards and Criteria

Approval or denial of all ministerial or quasi-judicial applications, as defined by the ORS, shall be based upon the development standards and approval criteria that were in effect at the time the application was first submitted. In cases where implementation of an initial application approval will require approval of subsequent applications, the review authority for the initial application may make an exception to this requirement. This exception shall be valid for as long as the initial land use application is valid.

#### C. 120-Day Decision Requirement

The City shall take final action on land use actions subject to ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete, unless the applicant provides a written statement consenting to an extension of the 120-day decision requirement. The total of all extensions, except as provided for mediation per ORS 227.178(11), shall not exceed 245 days.

#### D. Effective Date of Decisions

Decisions on land use applications become effective as described below.

1. The day after the appeal period expires, if no appeal is filed.
2. The day the decision is issued by the City's final appeal authority, if an appeal is filed.

#### E. Expiration of Approved Decisions

1. Type I, II and III land use approvals granted pursuant to this chapter for land use applications submitted after the effective date of Ordinance #\_\_\_\_\_ shall expire and become void unless the following criteria are satisfied:
  - a. For proposals requiring any kind of development permit, the development must complete both of the following:
    - (1) Obtain and pay for all necessary development permits and start construction within two years of land use approval.
    - (2) Pass final inspection and/or obtain a certificate of occupancy within four years of land use approval.
  - b. For proposals not requiring development permits, the development must utilize its approvals within four years of land use approval.
2. Land use approvals shall expire as outlined above unless one of the following occurs:

- a. An extension is granted pursuant to Section 19.908.
  - b. The review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.
  - c. The expiration period for an approval is specified in another section of the municipal code.
3. The following land use approvals are exempt from expiration:
- a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
  - b. Code Interpretations and Director Determinations per Section 19.903.
  - c. Annexations per Chapter 19.1100.
- F. Extensions to Expiring Approvals
- The time period during which a land use approval is valid may be extended per Section 19.908.
- G. Modifications to Existing Approvals
- A valid land use approval may be modified per Section 19.909.
- H. Appeals of Decisions
- Land use decisions may be appealed per Section 19.1009. An appeal of a final decision by the City may be made by a party with standing to other courts.

## **19.1002 PREAPPLICATION CONFERENCE**

### **19.1002.1 Purpose**

The purpose of the preapplication conference is to acquaint the applicant or applicant's representative with the requirements of this code in preparation for submission of a land use application, including relevant approval criteria, development standards, and procedures. The preapplication conference is not an exhaustive review of all potential issues or requirements. Furthermore, the information provided by the City is not binding, and it does not preclude the City from raising new issues or identifying additional requirements during the land use review process.

### **19.1002.2 Applicability**

- A. For Type I applications, a preapplication conference is optional.
- B. For Type II, Type III and Type IV applications, and expedited annexations per Section 19.1104, a preapplication conference is required, with the following exceptions:
  1. The Planning Director may waive the preapplication conference requirement for proposals that are not complex or, for some other reason, would not benefit from a formal conference.
  2. A preapplication conference is not required for City-initiated Type IV applications.

### **19.1002.3 Preapplication Conference Procedures**

The Planning Director shall adopt administrative rules for how the City processes preapplication conferences. The procedures shall ensure that preapplication conferences are held in a timely fashion and provide a thorough explanation of all required City permits, fees, and approvals for

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any given development proposal. The administrative rules shall include standards for scheduling, conducting, and communicating the outcomes of preapplication conferences.

### **19.1002.4 Preapplication Conference Expiration**

- A. A preapplication conference is valid for 2 years. If a land use application or development permit has not been submitted within 2 years of the conference date, the applicant is required to schedule a new preapplication conference prior to submittal. This requirement may be waived per Subsection 19.1002.2.B.1.
- B. An applicant may request additional preapplication conferences at any time. There is no limit to the number of preapplication conferences that may be requested.
- C. If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference. The City may refuse to accept a land use application or development permit for a significantly altered development proposal until a new preapplication conference is held.

### **19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW**

#### **19.1003.1 Application Forms and Checklists**

- A. The City shall supply land use application forms pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions.
- B. The City shall supply checklists or information sheets which specify the information that must be contained in the application, including format and number of copies.

#### **19.1003.2 Application Submittal Requirements**

All application information must be sufficiently detailed and specific to the development being proposed to allow for adequate public review. Furthermore, all of the following items must be submitted for the City to accept the application and initiate completeness review:

- A. Application form, including signature(s) of the property owner or public agency initiating the application.
- B. Deed, title report, or other proof of ownership.
- C. Detailed and comprehensive description of all existing and proposed uses and structures, including a summary of all information contained in any site plans. The description may need to include both a written and graphic component such as elevation drawings, photo simulations, etc.
- D. Detailed statement that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.
- E. Site plan(s), preliminary plat, or final plat as applicable.
- F. All materials identified on the Submittal Requirements form, including the signature(s) of the applicant submitting the materials.
- G. Payment of all applicable land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.
- H. Copy of a valid preapplication conference report if one was required per Subsection 19.1002.2.



**19.1003.3 Application Completeness Review**

- A. The City shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within 30 days of receipt of the application.
- B. The City may determine an application to be incomplete based on any of the following:
  - 1. Failure to pay the required fees or deposits.
  - 2. Failure to address the relevant approval criteria or development standards.
  - 3. Failure to supply the required information on the Submittal Requirements form.
- C. Incompleteness shall not be based on differences of opinion as to quality or accuracy.
- D. Determination that an application is complete indicates only that the application contains the information necessary to review it for compliance against applicable development standards and approval criteria.
- E. If an application is incomplete, the completeness notice shall list the information that is missing. The applicant is allowed 180 days from the date of first submittal to submit the missing information.
- F. The application will be deemed complete upon receipt by the City of any of the following:
  - 1. All of the missing information.
  - 2. Some of the missing information and written notice from the applicant that no other information will be provided.
  - 3. Written notice from the applicant that none of the missing information will be provided.
- G. The application will be deemed void if the application has been on file with the City for more than 180 days and the applicant has not made the application complete per Subsection 19.1003.3.F. The City will not refund application fees for voided applications. The applicant may resubmit a voided application to the City; however, it will be treated as a new application and will be subject to all current fees, development standards, approval criteria, and submittal requirements.

**19.1003.4 Resubmittal of Applications Following Denial**

- A. If an application for a land use action has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:
  - 1. Two years have passed since the denial became final.
  - 2. Substantial changes are made to the application. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.
  - 3. Standards and criteria relative to the findings of the original denial have changed and now support the application.
  - 4. For Type III or IV decisions, there has been a substantial change in the composition of the City Council and the Council was the final decision-maker. A substantial change in the composition of the Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.
- B. For purposes of Subsection 19.1003.4, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal. An application that was denied

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solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this subsection.

### 19.1003.5 Withdrawal of Applications Under Review

- A. An application may be withdrawn by the applicant at any time prior to issuance of the final decision with the written consent of the property owner or contract purchaser.
- B. If an application is withdrawn after the City has mailed the public notice, the City shall send additional notice that the application has been withdrawn to all affected parties.
- C. The City may refund application fees if staff has, in writing, recommended withdrawal and an application is withdrawn prior to being referred for comment. In all other cases, the City will not refund application fees for withdrawn applications.

### 19.1003.6 Modifications to Applications Under Review

The procedures of this subsection shall apply if an applicant modifies an application after the City has deemed it complete but prior to issuance of a decision.

- A. Upon receipt of materials that modify an application, the Planning Director shall evaluate the modifications, determine which of the 3 categories listed below describes the modification, and follow the related procedures. This decision is not a land use decision and is not appealable.

#### 1. Substantial Modification

A substantially modified application greatly differs from the application that was deemed complete. Such differences may include the land use; size, height, and/or design of proposed structures; location of uses and structures on the site; or other such characteristics of the proposal. Substantial modifications may alter which approval criteria and development standards are applicable to the development proposal.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the choice of the applicant:

- a. Allow the applicant to withdraw the original application and submit the modified proposal as a new application. The applicant shall submit all items required by Subsection 19.1003.2 for the new submittal.
- b. Reject the modifications and continue processing the original application. Rejecting a substantial modification does not preclude the applicant from submitting significant or minor modifications.

#### 2. Significant Modification

Significant modifications change an application so that one or more aspects of the modified proposal differ from the original proposal, while the overall proposal remains similar to the proposal that was deemed complete. Significant modifications typically should not alter which approval criteria and development standards apply to the development proposal.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the choice of the applicant:

- a. Accept the modifications and proceed with the review of the modified application. The applicant shall pay the required fee for review of a modified application per the adopted fee schedule. The Planning Director may repeat any part of the public

notice or referral process to provide appropriate opportunity for public review of the modifications. The applicant shall also extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the City.

- b. Reject the modifications and continue processing the original application. Rejecting a significant modification does not preclude the applicant from submitting minor modifications.

3. Minor Modification

Minor modifications change an application so that a limited number of aspects differ from the original proposal and the differences are small relative to the original proposal. The magnitude of a minor modification should be small enough that another review of the proposal by other agencies or the public is not warranted.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the choice of the applicant:

- a. Accept the modifications and proceed with the review of the modified application. The applicant shall extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the City.
- b. Reject the modifications and continue processing the original application.

B. In addition to the procedures of Subsection 19.1003.6.A, modifications received after the issuance of a staff report for a public hearing are subject to the following provisions:

- 1. If an applicant submits a substantial modification and chooses the option listed in Subsection 19.1003.6.A.1.a, the hearing shall be cancelled or suspended without the issuance of a decision by the review authority.
- 2. If an applicant submits a significant or minor modification and chooses the option listed in Subsection 19.1003.6.A.2.a or 3.a, the Planning Director may do any of the following:
  - a. If the hearing has been opened:
    - (1) Proceed with the hearing and allow a decision. The record may be left open at the request of any party to allow other parties a reasonable opportunity to respond.
    - (2) Continue the hearing to a future date to allow other parties a reasonable opportunity to respond.
  - b. If the hearing has not been opened:
    - (1) Open the hearing as scheduled and proceed per Subsection 19.1003.6.B.2.a.
    - (2) Reschedule the hearing to open at a later date.

**19.1004 TYPE I REVIEW**

Type I applications involve permitted uses or development governed by clear and objective approval criteria and/or development standards that require the exercise of professional judgment only about technical issues. Type I review provides for ministerial review of an application by the Planning Director and does not include public notice.

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### **19.1004.1 Preapplication Conference**

A preapplication conference is not required for Type I applications.

### **19.1004.2 Type I Application Requirements**

- A. Type I applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.
- B. Type I applications are subject to completeness review per Subsection 19.1003.3.

### **19.1004.3 Type I Public Notice**

Public notice is not required for Type I applications.

### **19.1004.4 Type I Review Authority**

- A. The review authority for all Type I applications shall be the Planning Director.
- B. The Planning Director shall approve, approve with conditions, or deny an application based on applicable approval criteria and development standards.

### **19.1004.5 Type I Decision**

Written notice of the decision for Type I applications shall be provided to the applicant and property owner of record. The decision shall be issued with sufficient time to allow the appeal authority for a Type I application to issue a final decision within 120 days from when the application was deemed complete. The decision shall include the following information:

- A. A brief summary of the proposal.
- B. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
- C. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
- D. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
- E. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
- F. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

### **19.1004.6 Appeal of a Type I Decision**

A Type I decision may be appealed by filing a written appeal within 15 days of the date the notice of decision was mailed. The appeal authority for a Type I decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1009.

## **19.1005 TYPE II REVIEW**

Type II applications involve uses or development for which review criteria require only limited discretion. Type II review provides for administrative review of an application by the Planning

Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

**19.1005.1 Preapplication Conference**

A preapplication conference is required for all Type II applications per Section 19.1002. The Planning Director may waive this requirement.

**19.1005.2 Type II Application Requirements**

- A. Type II applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.
- B. Type II applications are subject to completeness review per Subsection 19.1003.3.

**19.1005.3 Type II Public Notice**

A. Referral

Within 7 days after the application has been deemed complete, the City shall provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of referral, the City will presume that no comments will be submitted.

- 1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 feet of the subject property.
- 2. Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.
- 3. Affected City departments and any governmental agency which is entitled to notice by the municipal code.

B. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application and submit written comments concerning the application prior to issuance of the Type II decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

- 1. Within 7 days after the application has been deemed complete, public notice of the application shall be mailed to the following:
  - a. The applicant and/or the applicant's authorized representative.
  - b. The owner(s) of record of the subject property.
  - c. Owners of record of properties within 300 feet of the perimeter of the subject property.
  - d. Neighborhood district associations to which the application was referred.
- 2. The public notice shall:
  - a. Provide the case file number and a brief summary of the proposal.
  - b. Provide a brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
  - c. State that the City will consider written comments submitted prior to the issuance of the decision, and state that the decision may be issued as early as 14 days from the date of the public notice.

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- d. State the place, date, and time that comments are due.
- e. List the applicable approval criteria and/or development standards against which the proposal will be reviewed.
- f. State that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.
- g. Include the name and phone number of the City representative to contact for additional information.
- h. Include the following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

### C. Notice Sign

7 days after the application has been deemed complete, notice of the application shall be posted on the subject property by the applicant. Signs shall be posted on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property. The number and size of signs shall be appropriate given the size of the property, number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least one sign and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the case file.

### 19.1005.4 Type II Review Authority

- A. The review authority for Type II applications shall be the Planning Director.
- B. A decision will not be issued sooner than 14 days after mailing of the public notice and referral. Once issued, the decision is final and may only be reconsidered by appeal. Comments submitted within 14 days of the date of the public notice shall be considered. The City may consider comments received after 14 days from the date of the public notice and prior to the issuance of the decision.
- C. The review authority shall approve, approve with conditions, or deny an application based on applicable approval criteria, development standards, and written comments received.

### 19.1005.5 Type II Decision

- A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from when the application was deemed complete.
- B. Written notice of decision shall be sent by mail to the following parties. The date the notice is mailed shall be considered the date of the decision.
  - 1. The applicant and/or the applicant's authorized representative.
  - 2. The owner(s) of record of the subject property.
  - 3. Any group or individual who submitted written comments during the comment period.
  - 4. Any governmental agency which is entitled to notice by the municipal code or has requested notice of the decision.
  - 5. Any group or individual who requested notice of the decision.
- C. The notice of decision shall include:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
4. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that any person who is adversely affected or aggrieved by the decision may appeal the decision by filing a petition of appeal within the 15-day appeal period.
7. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

#### **19.1005.6 Appeal of a Type II Decision**

A Type II decision may be appealed by filing a written appeal within 15 days of the date the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1009.

#### **19.1006 TYPE III REVIEW**

Type III applications are quasi-judicial in nature and are subject to criteria that require the exercise of discretion and judgment and about which there may be broad public interest. Impacts may be significant and development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with applicable approval criteria and development standards. The review process requires notice to nearby property owners and at least one public hearing before the Planning Commission.

When the Design and Landmarks Committee is required to conduct a design review meeting for applications in the downtown zones per Section 19.907, the design review meeting shall be in addition to the public hearing before the Planning Commission. The procedures for a design review meeting are contained in Section 19.1010.

##### **19.1006.1 Preapplication Conference**

A preapplication conference is required for Type III applications per Section 19.1002.

##### **19.1006.2 Type III Application Requirements**

- A. Type III applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.
- B. Type III applications are subject to completeness review per Subsection 19.1003.3.

##### **19.1006.3 Type III Public Notice**

- A. DLCD Notice

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For zoning map amendments, the City shall provide notification to the Department of Land Conservation and Development at least 45 days prior to the first public hearing on adoption.

### B. Metro Notice

For zoning map amendments, the City shall provide notification to Metro at least 45 days prior to the initial evidentiary hearing on adoption. A Functional Compliance Plan report regarding the map change proposal shall be sent to Metro at least 15 days prior to the first public hearing.

### C. Referral

Within 7 days after the application has been deemed complete, the City shall provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of the referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 feet of the subject property.
2. Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.
3. Affected City departments and any governmental agency which is entitled to notice by the municipal code.

### D. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application, submit written comments, and participate in the proceedings concerning the Type III decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. At least 20 days prior to the first public hearing on the application, public notice of the application shall be mailed to the parties listed below. Notice requirements specific to zoning map amendments are listed in Subsection 19.1006.3.D.3.
  - a. The applicant and/or applicant's authorized representative.
  - b. The owner(s) of record of the subject property.
  - c. Owners of record of properties located within 300 feet of the perimeter of the subject property.
  - d. Neighborhood district associations to which the application was referred.
2. The public notice shall:
  - a. Provide the case file number and a brief summary of the proposal.
  - b. Provide a brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
  - c. State the date, time, and place of the hearing.
  - d. State that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
  - e. State that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.



- f. Provide a general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
  - g. State that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least seven days prior to the hearing.
  - h. List the applicable approval criteria and/or development standards against which the proposal will be reviewed.
  - i. State that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.
  - j. Include the name and phone number of the City representative to contact for additional information.
  - k. Include the following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
3. Notice requirements specific to zoning map amendments are as follows:
- a. At least 20 days prior to the first public hearing on the application, public notice of the application that conforms to Subsection 19.1006.3.D.2 shall be mailed to the parties listed below.
    - (1) The applicant and/or applicant's authorized representative.
    - (2) The owner(s) of record of the subject property.
    - (3) Owners of record of properties located within 400 feet of the perimeter of the subject property.
    - (4) Neighborhood district associations to which the application was referred.
  - b. A Measure 56 notice that conforms to Subsection 19.1007.3.E shall be mailed at least 20 days, but not more than 40 days, prior to the first public hearing on the application to all owners of property affected by the proposal.
  - c. For applications that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the City shall mail written notice to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, prior to the date of the first public hearing on the application. This notice shall conform to the requirements of Subsection 19.1007.3.E.
4. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the public notice was mailed to the parties required by Subsection 19.1006.3.D.

E. Notice Sign

At least 14 days prior to the hearing, notice of the application shall be posted on the subject property by the applicant and shall remain posted continuously until the hearing. Signs shall be posted on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property. The number and size of signs shall be appropriate given the size of the property, number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least one sign

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and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the case file.

### **19.1006.4 Type III Review Authority**

- A. The review authority for Type III applications shall be the Planning Commission, as noted in Table 19.1001.5.
- B. The review authority shall approve, approve with conditions, or deny an application subject to a Type III review after the public hearing.

### **19.1006.5 Type III Decision**

- A. The decision shall be issued with sufficient time to allow the appeal authority for a Type III application to issue a final decision within 120 days from when the application was deemed complete.
- B. Written notice of decision shall be sent by mail to the following parties within 7 days of the date of the decision:
  - 1. The applicant and/or the applicant's authorized representative.
  - 2. The owner(s) of record of the subject property.
  - 3. Any group or individual who submitted written comments at or prior to the public hearing.
  - 4. Any group or individual who submitted oral testimony during the public hearing.
  - 5. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
  - 6. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at the public hearing on the application.
- C. The notice of decision shall include:
  - 1. Description of the proposal with sufficient detail to explain the applicant's proposal.
  - 2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
  - 3. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
  - 4. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
  - 5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
  - 6. A statement that only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal within the 15-day appeal period.
  - 7. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

- D. In addition to the requirements of Subsections 19.1006.5.A and B, the following requirements apply to zoning map amendments evaluated through a Type III review process.
1. Following the close of the appeal period for a zoning map amendment for which no appeal was filed, the Planning Director shall prepare an ordinance to enact the approved zoning map amendment.
  2. The ordinance shall be publicized per Milwaukie Charter, Chapter VIII, Section 31, subsection (c) to allow a reading of the ordinance by title only. The ordinance shall be brought before Council at the first meeting following the close of the appeal period that allows the notice requirements of Milwaukie Charter, Chapter VIII, Section 31, subsection (c) to be met.
  3. The City Council shall enact the ordinance per the procedures of Milwaukie Charter, Chapter VIII, Section 31, subsection (b), with the reading being by title only.

#### **19.1006.6 Appeal of a Type III Decision**

A Type III decision may be appealed by filing a written appeal within 15 days of the date the notice of decision was mailed. Only the applicant or persons who submitted comments or made an appearance of record at the public hearing have standing to appeal a Type III decision. Appeal requirements and procedures are outlined in Section 19.1009.

#### **19.1007 TYPE IV REVIEW**

Applications evaluated through a Type IV review are typically legislative matters, although the City does require a Type IV review for some quasi-judicial matters as well. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to more than just one property). Quasi-judicial matters, by contrast, involve the application of existing policies to a specific property or proposal. Quasi-judicial applications requiring Type IV review will typically be of a broader scale or impact to the community than quasi-judicial applications requiring Type III review. The Type IV review includes a public hearing before the Planning Commission, who forwards a recommendation to the City Council. The City Council holds at least one public hearing before making a final decision.

The City Council, Planning Commission, Planning Director or an individual may initiate a Type IV application to amend the Milwaukie Comprehensive Plan or Zoning Ordinance.

##### **19.1007.1 Preapplication Conference**

A preapplication conference is required for Type IV applications that are initiated by an individual or party other than the City.

##### **19.1007.2 Type IV Application Requirements**

- A. Type IV applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.
- B. Type IV applications are subject to completeness review per Subsection 19.1003.3.

##### **19.1007.3 Type IV Public Notice**

- A. Public Notice for Nonlegislative Applications

Any nonlegislative application being evaluated through a Type IV review shall provide notice that meets the minimum requirements of Subsections 19.1006.3.C-E. The following types of applications are considered nonlegislative:

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1. Nonexpedited annexations, pursuant to Section 19.1102.
2. Amortization of nonconforming uses, pursuant to Section 19.806.

### B. Public Notice for Legislative Applications

The purpose of general public notice for legislative applications is to allow the public, organizations, and other governmental agencies a meaningful opportunity to review and comment on legislative proposals.

1. The Planning Director shall provide opportunities for public review and input on a proposal at an early stage in the adoption process. This may include the Type III referral process; open houses; discussions with neighborhood district associations; work sessions with the City Council, Planning Commission, and other City boards and commissions; and direct communication with parties that may be affected by the proposal. This subsection is not prescriptive with regard to the timing or manner of public notice.
2. At least 30 days prior to a public hearing on a legislative matter, the City shall provide notice of the hearing. At a minimum, the notice shall be available on the City web site and at City facilities that are open to the public and that customarily display public information. At a minimum, the notice shall include:
  - a. The date, time, and location of the hearing.
  - b. The case file number and summary of the proposal.
  - c. A map showing the properties that will be impacted by the proposal if applicable.
3. Individual property owners shall be notified if the legislative matter involves a discrete geographic area or specific properties in the City. The Planning Director has the discretion to decide when individual property owner notification is warranted. The content of the notice shall be as described in Subsection 19.1007.3.B.2. The notice parties and timeline shall be as described in Subsections 19.1006.3.D.3.a and 19.1006.3.E.

### C. DLCD notice

Notice of a proposal to amend the Comprehensive Plan or Zoning Code or to adopt a new land use regulation shall be mailed to the Department of Land Conservation and Development at least 45 days prior to the initial evidentiary hearing on adoption.

### D. Metro Notice

Notice of a proposal to amend the Comprehensive Plan or Zoning Code or to adopt a new land use regulation shall be mailed to Metro at least 45 days prior to the initial evidentiary hearing on adoption. A Functional Compliance Plan report regarding the map change proposal shall be sent to Metro at least 15 days prior to the first public hearing.

### E. Property Owner Notice (Measure 56)

At least 20 days but not more than 40 days before the initial evidentiary hearing on a Type IV application, the City shall mail notice to owners of property within the City for which the proposed ordinance, if adopted, may, in the Planning Director's opinion, affect the permissible uses of land for those property owners. The notice shall, at a minimum, include the following information:

1. A statement in bold type across the top of the first page of the notice that reads substantially as follows: “This is to notify you that the City has proposed a land use regulation that may affect the permissible uses of your property or other properties.”
  2. The case file number and/or ordinance number.
  3. A brief summary of the proposal, including how it may, if adopted, affect the permissible uses and value of property in the City.
  4. The date, time, and place of the hearing.
  5. A statement that a copy of the proposal is available for review at the City at no cost and that a copy can be obtained at a reasonable cost.
  6. The name and phone number of the City representative to contact for additional information.
  7. If applicable, a statement that the proposal is a result of an order of the Land Conservation and Development Commission.
- E. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the required notice was mailed to the parties required by 19.1007.2.

**19.1007.4 Type IV Decision Authority**

- A. The review authority for Type IV applications shall be the City Council
- B. For nonlegislative applications, the review authority shall approve, approve with conditions, or deny an application subject to Type IV review after the public hearing.
- C. For legislative applications, the review authority may approve, approve with conditions, amend, deny, or take no action on an application subject to a Type IV review after the public hearing.

**19.1007.5 Type IV Recommendation and Decision**

- A. The following procedures apply to legislative applications evaluated through a Type IV review.
  1. The Planning Commission shall serve as the recommendation authority for Type IV applications.
  2. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council within 180 days from when the application was deemed complete.
  3. The Planning Commission may recommend that the City Council deny or adopt the ordinance with or without changes. The Planning Commission shall provide a written justification for the recommendation.
  4. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsections 19.1007.3.A-B.
  5. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:
    - a. Continue the matter to a date, time, and location certain.
    - b. Remand the matter back to the recommendation authority for additional deliberation.

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- c. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the ordinance with written findings that demonstrate adoption will comply with applicable approval criteria.
    - d. Deny the proposal.
    - e. Take no action on the proposal.
  6. Not more than 5 days after the date of the adoption or denial of the proposal, the City shall provide the required notice to the Department of Land Conservation and Development.
  7. Within 7 days after the date of the adoption or denial of the proposal, the City shall mail or otherwise provide notice to persons who testified orally or in writing to the recommendation or review authority while the public record was open regarding the proposal. The notice shall include:
    - a. A brief summary of the decision.
    - b. If adopted:
      - (1) The date and number of the adopting ordinance.
      - (2) Where and when the adopting ordinance and related findings may be reviewed.
    - c. A summary of the requirements for appealing the decision to the Land Use Board of Appeals.
- B. The following procedures apply to quasi-judicial applications evaluated through a Type IV review.
  1. The Planning Commission shall serve as the recommendation authority for Type IV applications.
  2. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council with sufficient time to allow the City Council to issue a final decision within 120 days from when the application was deemed complete.
  3. The Planning Commission may recommend that the City Council deny or adopt the ordinance with or without changes. The Planning Commission shall provide a written justification for the recommendation.
  4. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsections 19.1007.3.A-B.
  5. At the conclusion of the first public hearing before City Council, the City Council may take one of the following actions:
    - a. Continue the matter to a date, time, and location certain.
    - b. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the written findings that demonstrate compliance with applicable approval criteria.
    - c. Deny the proposal. City staff, with review from the City Attorney, shall prepare the written findings that demonstrate how the application fails to meet any applicable approval criteria.

6. Written notice of decision shall be sent by mail to the following parties within 7 days of the date of the decision:
  - a. The applicant and/or the applicant's authorized representative.
  - b. The owner(s) of record of the subject property.
  - c. Any group or individual who submitted written comments at or prior to any public hearing.
  - d. Any group or individual who submitted oral testimony during any public hearing.
  - e. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
7. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at any public hearing on the proposal.
8. The notice of decision shall include:
  - a. Description of the proposal with sufficient detail to explain the applicant's proposal.
  - b. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
  - c. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
  - d. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
  - e. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
  - f. A statement that only persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal the decision by filing written appeal within the 15-day appeal period.
  - g. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.
  - h. A summary of the requirements for appealing the decision to Land Use Board of Appeals.

#### **19.1007.6 Appeal of a Type IV Decision**

The City Council decision on a Type IV application is the City's final decision. A Type IV decision may be appealed to the Land Use Board of Appeals consistent with ORS 197 and OAR 661, as may be amended. Only the applicant or persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal a Type IV decision.

#### **19.1008 PUBLIC HEARINGS**

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### **19.1008.1 Responsibility of City for Public Hearings**

The City shall:

- A. Schedule land use applications for review and public hearing before the appropriate review authority as required per Table 19.1001.5.
- B. Provide public notice of the public hearing consistent with the requirements in this chapter.
- C. Prepare minutes for the public hearing that include the decision on the matter and the reasons for the decision.
- D. Provide a copy of the notice of decision to all parties consistent with the requirements in this chapter.

### **19.1008.2 General Public Notice Requirements**

- A. Notice of public hearings shall be provided as described in Sections 19.1006, 19.1007 and 19.1009.
- B. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.

### **19.1008.3 Rules of Procedure**

- A. Public hearings shall be conducted in accordance with the bylaws and rules of procedure adopted for the hearing body by City Council. Additionally, the provisions in Subsections 19.1008.4-13 below apply to all public hearings.
- B. At the commencement of a hearing, a statement shall be made to those in attendance that:
  - 1. Lists the applicable approval criteria.
  - 2. States that testimony and evidence must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person testifying believes is applicable to the proposal.
  - 3. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes an appeal of the decision.

### **19.1008.4 Challenges to Impartiality**

- A. Except for Type IV hearings on legislative matters, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner.
- B. The challenged person shall have an opportunity to respond to the challenge. The challenge and any response to the challenge shall be incorporated into the record of the hearing.
- C. The hearing body shall deliberate and vote to decide whether or not the challenged person may remain a member of the hearing body for the decision on which their impartiality was challenged. The person who is the subject of the challenge may not vote on the motion.



**19.1008.5 Participation by Interested Officers or Employees**

No officer or employee of the City who has a financial or other private interest in a proposal may give an official opinion to the hearing body on the proposal.

**19.1008.6 Ex Parte Contacts**

Except for Type IV hearings on legislative matters, the general public has a right to have the hearing body members unbiased by prehearing or ex parte contacts on matters heard by them. This must be balanced with the public right to access public officials on any matter. Therefore, hearing body members shall reveal any relevant prehearing or ex parte contacts at the commencement of the public hearing on the matter. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication at the commencement of the public hearing on the matter.

**19.1008.7 Disqualification**

Except for Type IV hearings on legislative matters, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

**19.1008.8 Rights of Abstaining or Disqualified Member of the Hearing Body**

- A. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by making full disclosure to the hearing body, abstaining from voting on the proposal, vacating the seat on the hearing body, and physically joining the audience. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum.
- B. If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be requalified and shall proceed with the hearing.

**19.1008.9 Absence of a Member of the Hearing Body**

Except for Type IV hearings on legislative matters, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed all the evidence received.

**19.1008.10 Burden and Nature of Proof**

Except for Type IV applications for legislative matters, the applicant shall bear the burden of proof and persuasion that the proposal is in compliance with applicable provisions of this code. The applicant and any opponents may submit a set of written findings or statements of factual information which are intended to demonstrate the proposals complies or fails to comply with any or all applicable development standards and approval criteria.

**19.1008.11 Continuance of Hearing**

- A. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. If additional documents or evidence are provided by any party at the hearing, the hearing body may allow a continuance or leave the record open for at least 7 days to allow the parties a reasonable opportunity to respond. The hearing body may ask the applicant to consider granting an extension of the 120-day decision

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requirement if a delay in proceedings could impact the ability of the City to take final action on the application, including resolution of any local appeals.

- B. Prior to closing the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to Subsection 19.1008.11.C below.
- C. If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain, at least 7 days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
- D. If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 7 days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.
- E. A continuance or extension granted pursuant to this subsection shall be subject to the limitations of ORS 227 unless the continuance or extension is requested or agreed to by the applicant.
- F. Unless waived by the applicant, the hearing body shall allow the applicant at least 7 days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final arguments shall be considered part of the record, but shall not include any new evidence. For purposes of this subsection, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies believed relevant by the applicant. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the applicant to be relevant to the decision.

### **19.1008.12 Decision**

- A. Following the close of the public portion of the hearing, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse, or remand the decision that is on appeal.
- B. A final local decision on a Type I, II, III, or nonlegislative Type IV land use application shall be made within 120 days from the date the application was deemed complete, except that, with the agreement of the hearing body and the applicant or appellant, the processing of a matter under consideration may be extended per Subsection 19.1001.7.C.
- C. Notice of decision shall be provided consistent with the requirements established for Type III and IV applications and appeals in this chapter.
- D. The hearing body shall prepare written findings for the decision. The findings shall include:
  - 1. A statement of the applicable approval criteria against which the proposal was evaluated.

2. A statement of the facts that the hearing body relied upon to determine whether the proposal satisfied or failed to satisfy each applicable approval criterion and development standard.
3. The decision to approve, conditionally approve, or deny a proposal and the reasons for that decision.

### **19.1008.13 Record of Proceedings**

The City shall prepare and maintain minutes of all proceedings in accordance with the bylaws adopted for the hearing body.

### **19.1009 APPEALS**

A decision on the issuance of a Type I, II or III land use application may be appealed by filing a written appeal with the City within 15 days of the date on the notice of decision. If the 15th day falls upon a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next day which is not a weekend or legal holiday. Table 19.1001.5 identifies the review authority and appeal authority for each review type.

#### **19.1009.1 Filing an Appeal**

- A. An appeal shall contain:
  1. Date and case file number of the decision being appealed.
  2. Documentation that the person filing the petition has standing to appeal per Subsections 19.1009.4.A, 5.A, and 6.A.
  3. Detailed statement describing the basis of the appeal.
    - a. For appeal of a Type I or Type III decision, the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.
    - b. For appeal of a Type II decision, the statement must identify either an error described in Subsection 19.1009.1.A.3.a, or the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.
- B. The appeal application fee shall be paid at the time of filing.
- C. If the appeal application and applicable fee are not submitted within the 15-day appeal period, or if the appeal application does not contain the required items specified in Subsections 19.1009.1.A.1-3 above, the petition shall not be accepted by the City. A decision by the City to not accept an appeal within the specified appeal period shall be considered final.

#### **19.1009.2 General Procedures Applicable to All Appeals**

Appeal hearings before the appropriate appeal authority as specified in Table 19.1001.5 shall be conducted in accordance with the public hearing provisions in Section 19.1008.

#### **19.1009.3 Types of Appeal Hearings**

The City has two types of hearings used for appeals of land use decisions. The general procedures for these hearings are as follows.

- A. Unrestricted De Novo Hearing

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An unrestricted de novo hearing allows for the presentation of new evidence, testimony and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

### **B. On the Record De Novo Hearing**

An on the record de novo hearing does not allow for the presentation of new evidence by any party. New testimony is allowed. New arguments based on evidence already in the record and testimony that is new or already in the record are allowed. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review for an on the record de novo hearing is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments.

### **19.1009.4 Specific Provisions for Appeal of a Type I Decision**

- A. A Type I decision may only be appealed by the applicant or the applicant's representative.
- B. The City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing.
- C. The appeal hearing shall be an unrestricted de novo hearing.
- D. The decision of the designated appeal authority for appeals of Type I decisions shall be the final local decision.

### **19.1009.5 Specific Provisions for Appeal of a Type II Decision**

- A. A Type II decision may be appealed by the applicant, the applicant's representative, or any other person or organization who is adversely affected or aggrieved by the decision.
- B. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type II public notice under Subsection 19.1005.3.B.1 at least 20 days prior to the appeal hearing.
- C. The appeal hearing shall be an unrestricted de novo hearing.
- D. The decision of the designated appeal authority for appeals of Type II decisions shall be the final local decision.

### **19.1009.6 Specific Provisions for Appeal of a Type III Decision**

- A. A Type III decision may be appealed by the applicant, applicant's representative, or any other person or organization who participated in the original decision by providing either oral testimony or written evidence on the record leading to the decision by the review authority.
- B. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type III public notice under Subsection 19.1006.3.D at least 20 days prior to the appeal hearing.
- C. The appeal hearing shall be an on the record de novo hearing.
- D. The record shall include:
  - 1. A factual report prepared by the Planning Director.

2. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under appeal.
  3. The minutes from the original hearing and a detailed summary of the evidence.
- E. The decision of the designated appeal authority for appeals of Type III decisions shall be the final local decision.

**19.1009.7 Remand from the Land Use Board of Appeals**

City of Milwaukie decisions remanded by the Land Use Board of Appeals shall be heard by the appeal authority following the procedures of Section 19.1009 and shall be decided within 90 days from the date of the remand.

**19.1010 DESIGN REVIEW MEETINGS**

The Design and Landmarks Committee shall conduct a design review meeting when required by Section 19.907 for applications in the downtown zones. The meeting shall occur prior to the initial Planning Commission hearing on the application. Design review meetings provide an opportunity for the Design and Landmarks Committee to hear public comment, evaluate the proposal against relevant approval criteria, and vote on a recommendation to forward to the Planning Commission.

**19.1010.1 Responsibility of City for Design Review Meetings**

The City shall:

- A. Schedule land use applications for design review before the Design and Landmarks Committee at the earliest available scheduled meeting. If the Design and Landmarks Committee is unable to schedule a design review meeting with sufficient time for the Planning Commission to hold a public hearing in compliance with the 120-day decision requirement, one of the following shall occur:
  1. The applicant may extend the 120-day decision requirement per Subsection 19.1001.7.C in order to accommodate Design and Landmarks Committee review of the application.
  2. If the applicant does not extend the 120-day decision requirement, the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.8.
- B. Provide public notice of the design review meeting per Subsections 19.1010.2.A - C below.
- C. Prepare minutes for the design review meeting that include the Design and Landmarks Committee recommendation and the reasons for the recommendation.

**19.1010.2 Design Review Meeting Notice Requirements**

- A. When a design review meeting is required by Section 19.907, the City shall mail written notice of the design review meeting at least 10 days prior to the meeting. The written notice shall be mailed to:
  1. The applicant and/or applicant's authorized representative.
  2. The owner(s) of record of the subject property.
  3. Owners of record of properties located within 300 feet of the perimeter of the subject property.

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4. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 feet of the subject property.
- B. The public notice shall meet the requirements of Subsections 19.1006.3.D and E.
- C. At least 5 days prior to the design review meeting, notice of the meeting shall be posted on the subject property by the applicant, and shall remain posted continuously until the meeting. Signs shall be posted on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property. The number and size of signs shall be appropriate given the size of the property, number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least one sign and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the case file.

### **19.1010.3 Rules of Procedure**

- A. Design review meetings shall be conducted in accordance with the bylaws and rules of procedure adopted for the Design and Landmarks Committee by City Council. Additionally, the provisions in Subsections 19.1010.4-11 below apply to all design review meetings.
- B. At the commencement of a design review meeting, a statement shall be made to those in attendance that:
  1. Lists the applicable approval criteria.
  2. States that public comment must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person commenting believes is applicable to the proposal.
- C. The design review meeting is not a public hearing, but shall be organized in the following manner:
  1. The applicant shall have an opportunity to make a presentation on the application.
  2. The public shall be allowed to comment on the application.
  3. The Design and Landmarks Committee shall deliberate on the application and presentation and shall make findings and a recommendation on the application per Subsection 19.1010.10.
- D. An abstaining or disqualified member of the committee shall be counted for purposes of forming a quorum. If all members of the committee abstain or are disqualified, the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.8.

### **19.1010.4 Challenges to Impartiality**

- A. A party to a meeting may challenge the qualifications of a member of the committee to participate in the recommendation. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, or other facts from which the challenger has concluded that the member of the committee cannot participate in an impartial manner.
- B. The challenged person shall have an opportunity to respond orally and in writing to the challenge. The challenge shall be incorporated into the record of the meeting.

**19.1010.5 Participation by Interested Officers or Employees**

No officer or employee of the City who has a financial or other private interest in a proposal may participate in the recommendation on the proposal.

**19.1010.6 Ex Parte Contacts**

Committee members shall reveal any relevant premeeting or ex parte contacts at the commencement of the design review meeting. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication at the commencement of the meeting on the matter.

**19.1010.7 Abstention or Disqualification**

Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of the committee who are present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

**19.1010.8 Burden and Nature of Proof**

The applicant shall bear the burden of proof and persuasion that the proposal complies with all applicable approval criteria and development standards. The applicant and any opponents may submit a set of written findings or statements of factual information which are intended to demonstrate the proposal complies or fails to comply with any or all applicable criteria and standards.

**19.1010.9 Continuance of Meeting**

- A. A design review meeting may be continued if the Planning Director determines that there is sufficient time to hold a continued meeting before the Design and Landmarks Committee and a public hearing before the Planning Commission within the required 120 days or if the applicant waives the 120-day decision requirement per Subsection 19.1001.7.C.
- B. Design review meeting continuance proceedings shall be per Subsection 19.1008.11.

**19.1010.10 Design Review Recommendation**

Following the close of the public portion of the design review meeting, the Design and Landmarks Committee shall prepare a written report to the Planning Commission that recommends either approval, approval with conditions, or denial of the application.

- A. The written recommendation shall contain the following:
  - 1. The applicable approval criteria against which the application was evaluated.
  - 2. A statement of the facts that the committee relied upon to determine whether the application satisfied or failed to satisfy each applicable approval criterion and development standard.
  - 3. The decision to recommend approval or denial of the application, and, if the recommendation is for approval, any recommended conditions of approval. Recommended conditions of approval shall ensure conformance with the applicable approval criteria and development standards and mitigate the anticipated impacts, if any, of the proposal.
- B. The recommendation of the Design and Landmarks Committee shall be forwarded to the Planning Commission, which shall consider the recommendation and integrate it into the review process applicable to the proposal.

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C. Design and Landmarks Committee recommendations are not appealable.

### **19.1010.11 Record of Proceedings**

The City shall prepare and maintain minutes of all proceedings in accordance with the bylaws adopted for the Design and Landmarks Committee.



## CHAPTER 19.1100 ANNEXATIONS AND BOUNDARY CHANGES

[Current Chapter 19.1500 renumbered as Chapter 19.1100. No amendments. Only amended text is shown below.]

### 19.1102.1 Administration and Approval Process

- A. Annexation petitions shall include a request for Comprehensive Plan and zoning designations, and shall be reviewed by the Planning Commission and the City Council in accordance with Section 19.1007 Type IV Review ~~Subsection 19.1011.4 Major Quasi-Judicial Review~~. The Council decision on the proposal shall be considered the “final decision,” for purposes of compliance with Metro Code Chapter 3.09.
- B. Notice of the Planning Commission and Council hearings to consider annexation proposals shall follow the procedures of Section 19.1007 Type IV Review ~~Subsection 19.1011.4 Major Quasi-Judicial Review~~ as well as the uniform notice requirements provided in Metro Code Section 3.09.030.

### 19.1104.1 Administration and Approval Process, Subsection A:

2. A prerequisite to the filing of an expedited boundary change petition is a preapplication conference, at which time the Planning Director shall explain the requirements and provide the appropriate forms. The preapplication conference requirement may be waived by the Planning Director pursuant to Subsection 19.1002.2.B.1 or may be met by requesting a preapplication meeting.

## CHAPTER 19.1200 SOLAR ACCESS PROTECTION

[Current Chapter 19.1300 renumbered as Chapter 19.1200. Only amended text is shown below.]

### 19.1204.10 Application and Review Process

An application for a building permit shall include the information necessary to meet the provisions of Subsection 19.1204.4, and shall be processed pursuant to Section 19.1004 Type I Review ~~of this title~~. The Building Official shall refer the plan to the Director for review and approval prior to issuing a building permit, or the Director may delegate this responsibility for review and approval to the Building Official.

## PROPOSED TITLE 17 TEXT AMENDMENTS

[Only amended text is shown below.]

### CHAPTER 17.04 ADMINISTRATION AND ENFORCEMENT

#### 17.04.110 Determinations of Legal Status

Requests for determinations on the legal status of units of land shall be processed pursuant to Section 19.903 Code Interpretations and Director Determinations.

- ~~A. All requests for determination of the legal status of parcels or lots shall be submitted in writing to the Planning Director and shall be accompanied by the following:~~
- ~~1. The fee for Director determinations as adopted by the City Council;~~
  - ~~2. Title report including related instruments of conveyance; and~~
  - ~~3. A detailed written request specifically identifying what information is being sought.~~
- ~~B. On review of the request, the Planning Director may require additional information as needed to respond to the request.~~

#### REFERENCE UPDATES

The following text amendments are also proposed to Title 17:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

#### 17.04.100:

Legislative amendments to this title shall be made in accordance with Chapters ~~19.900 and 19.1000~~ and Section 19.902.

#### 17.12.020:

- A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and ~~Minor Quasi-Judicial Type III~~ Type III procedures as indicated in this section.

#### 17.12.020.B:

1. ~~Minor Quasi-Judicial Type III~~ Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
2. ~~Minor Quasi-Judicial Type III~~ Type III review may be required in the following situations:

Table 17.12.020 Boundary Change Review Procedures			
Boundary Change Action	Type I	Type II	<u>Minor Quasi-Judicial Type III</u>

**17.12.020.D:**

1. Applications for preliminary partition plat shall be processed in accordance with ~~Subsection 19.1011.2~~ Section 19.1005 Type II Administrative Review. Should any associated application subject to ~~Minor Quasi-Judicial Type III~~ review be submitted in conjunction with a partition, the partition application shall be processed according to ~~Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-Judicial Type III~~ Review.

**17.12.020.E:**

Applications for subdivision preliminary plat applications shall be processed in accordance with ~~Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-Judicial Type III~~ Review.

**17.12.020.F:**

Applications for final plats of partitions and subdivisions shall be processed in accordance with ~~Subsection 19.1011.4~~ Section 19.1004 Type I Administrative Review.

**17.16.020.A:**

The Planning Director shall review applications for consistency with submission requirements of this chapter. Application submissions that do not meet the requirements of this chapter shall be deemed incomplete for the purpose of ORS 227.178 and Chapter 19.1000 of this code. The Planning Director shall provide to the applicant notice of whether an application is complete or incomplete in accordance with ORS 227.178 and ~~Subsection 19.1004~~ 19.1003.3.

**17.28.020:**

All land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter ~~19.1400~~ 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

**17.28.040.D:**

Lot shape standards may be adjusted subject to Chapter ~~19.700~~ Section 19.911 Variances, Exceptions and Home Improvement Exceptions.

**17.28.060.A:**

Flag lot design shall be consistent with Subsection ~~19.403.11~~ 19.504.9.

**17.32.010:**

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, shall conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter ~~19.1400~~ 19.700 Public Facility Improvements. The improvements shall be installed in accordance with the following procedure:

**17.44.010:**

A variance of any provision of this title may only be granted in accordance with Chapter ~~19.700~~ Section 19.911.

## PROPOSED TITLE 14 TEXT AMENDMENTS

[Only amended text is shown below.]

### 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS

- A. The Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard shall not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.
- B. The Design and Landmarks Committee shall hold a public meeting and prepare a report for adjustment applications that require Planning Commission review per Section 19.1010 Design Review Meetings. The Planning Commission shall consider the findings and recommendations contained in the report during the public hearing on the proposal. ~~Requests for adjustments in the downtown zones shall receive their first review from the Design and Landmarks Committee. The Design and Landmarks Committee shall make recommendations to the Planning Commission, which is the review authority, and may authorize adjustments to the requirements of this chapter.~~
- C. Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the Downtown Design Guidelines, and the adjustment meets either of the following criteria:
1. Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard shall not constitute a hardship; or
  2. The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

### REFERENCE UPDATES

The following text amendments are also proposed to Title 14:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

#### 14.08.040:

The City Manager or the Planning Director shall have the power and duty to interpret and enforce the provisions of this chapter. ~~An appeal from a ruling by the City Manager or the Planning Director regarding a requirement of this chapter may be made only to the Planning Commission, who may hold a public hearing per the provisions of the Zoning Ordinance, Section 1011.3, Minor Quasi-Judicial Review.~~

**14.08.050:**

~~An appeal of a ruling by the City Manager, Planning Director, or Planning Commission regarding a requirement of this chapter may be made per Section 19.1009 Appeals. Any action or ruling of the Planning Commission pursuant to this chapter may be appealed to the City Council per the procedures in Section 19.1002 of the Zoning Ordinance.~~

**14.08.090:**

- C. The standards of the underlying zone may be increased to the standards in Table 14.08.090.C, ~~pursuant to Minor Quasi-Judicial review by the Planning Commission, as specified in MMC Subsection 19.1011.3~~ per Section 19.1006 Type III Review.

**14.12.010:**

- E. Banners on community service use properties, as defined in Subsection ~~19.321.2~~ 19.904.2, not exceeding a total display area of 40 square feet per face per site, and pennants not to exceed a length of 50 feet per site. Such banners and pennants may remain in place for 6 months or less in any 1 calendar year.

**14.16.060.H:**

3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1010 Design Review Meetings, and approval by the Planning Commission, ~~as provided in Subsection 19.1011.3~~ per Section 19.1006 Minor Quasi-Judicial Type III Review, and according to the following criteria:
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to ~~design~~ review by the Design and Landmarks Committee, per Section 19.1010 Design Review Meetings, and approval by the Planning Commission, ~~per the procedures outlined in Subsection 19.1011.3~~ Section 19.1006 Type III Review, according to the following criteria:

**14.32.020:**

- B. The review authority shall hold a public hearing ~~for any adjustment request which is 25% or more of the required standard~~ per the provisions of ~~Ordinance 1712, the Zoning Ordinance, Subsection 19.1011.3~~ Section 19.1006 Minor Quasi-Judicial Type III Review, ~~for any adjustment request which is 25% or more of the required standard.~~ Adjustment requests of less than 25% from the required standard required shall be reviewed by the Planning Director per the provisions ~~outlined in Subsection 19.1011.2, of Section 19.1005~~ Type II Administrative Review, ~~of the Zoning Ordinance~~. Within 5 days after a decision has been rendered with reference to a request for an adjustment, the City Manager or duly authorized representative shall provide the applicant with notice of the decision of the review authority.

## PROPOSED MUNICIPAL CODE MISCELLANEOUS TEXT AMENDMENTS

[Only amended text is shown below.]

### REFERENCE UPDATES

The following text amendments are also proposed to the non-Planning titles of the Municipal Code:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

#### Amended text follows.

#### 2.16.010.A.9:

- f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance Subsection ~~19.323.5~~ 19.403.4,
- g. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance Subsection ~~19.323.5~~ 19.403.4,
- i. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance Subsection ~~19.323.8~~ 19.403.7,

#### 3.25.010:

Dwelling Unit. As defined in Section ~~19.103~~ 19.201.

#### 12.16.050:

Relief from any access management requirement or standard of Section 12.16.040 may be granted through a variance process, which requires submission and approval of a Variance land use application. Variance criteria and procedures are located in ~~Chapter 19.700~~ Section 19.911.

#### 12.16.060:

Appeal of any access management requirement or standard of Section 12.16.040 not associated with a land use decision is subject to the provisions of ~~Subsection 19.1011.3~~ Section 19.1006 for ~~Minor Quasi-Judicial Type III~~ Review.

#### 13.14.025.B:

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including ~~MMC 19.322~~ Section 19.402 ~~Water Quality Resource Areas Regulations~~. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

#### 18.04.150.F.2.d:

- (2) The proposed excavation is authorized under applicable municipal code provisions including Section ~~19.322~~ 19.402, ~~Natural Resource Overlay Zone~~ Water Quality Resource Regulations; and