

NEW TEXT IS SHOWN IN UNDERLINE AND DELETIONS OF CURRENT TEXT ARE SHOWN IN ~~STRIKEOUT~~. THIS DRAFT INCLUDES ONLY CHAPTERS AND SECTIONS OF CODE WITH PROPOSED AMENDMENTS AND SOME SURROUNDING SECTIONS FOR CONTEXT. CODE SECTIONS NOT INCLUDED IN THIS DRAFT WOULD NOT BE AMENDED.

CHAPTER 19.900

LAND USE APPLICATIONS

19.901 INTRODUCTION

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. Descriptions 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.

Table 19.901 Land Use Applications		
Application Type	Municipal Code Location	Review Types
Amendments to Maps and Ordinances:	Section 19.902	
Comprehensive Plan Text Amendment	Subsection 19.902.3	V
Comprehensive Plan Map Amendment	Subsection 19.902.4	IV, V ^{1[1]}
Zoning Text Amendment	Subsection 19.902.5	V
Zoning Map Amendment	Subsection 19.902.6	III, V ^{2[2]}
Annexations and Boundary Changes:	Chapter 19.1100	
Boundary Change	Section 19.1103	NA
Expedited Annexation	Section 19.1104	NA
Nonexpedited Annexation	Section 19.1102	IV
Appeal	Section 19.1010	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

Proposed Code Amendment

Conditional Use	Section 19.905	I, III
Development Review	Section 19.906	I, II, <u>III</u>
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

Table 19.901 CONTINUED**Land Use Applications**

Application Type	Municipal Code Location	Review Types
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	
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 Units (Type 1)	Subsection 19.910.1	I, II
Duplexes Accessory Dwelling Unit (Type 2)	Subsection 19.910.2	II, 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

19.905 CONDITIONAL USES

19.905.9 Standards Governing Conditional Uses

A conditional use shall comply with the standards of the base zone, and any overlay zones, 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 by the standards in this subsection.

~~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 ft.~~
- ~~2. Relationship to neighboring uses.~~
- ~~3. Street access.~~
- ~~4. Terrain of the site.~~

~~FG. 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.

GH. 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 shall submit materials and the Planning Commission shall attach conditions that will ensure that the special nature of the housing, and the groups to be served, are clearly defined and maintained in perpetuity. A project is required to meet the definition for this type of housing in Section 19.201.

19.906 DEVELOPMENT REVIEW

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 5 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. This includes the discretionary review option for multifamily developments per Subsection 19.505.3.C.2.
2. New construction of over 1,000 sq ft in the Manufacturing Zone within 120 ft of areas zoned for residential uses or within any part Business Industrial 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. Type III Review

New development or expansions, or modifications to existing development are subject to Type III development review where:

1. The proposed development, expansion, or modification requires review against discretionary criteria or standards.
2. The scale of development and/or the level of discretion required to evaluate applicable standards and criteria make it appropriate for the matter to be reviewed by the Planning Commission at a public hearing.

DG. 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 or III development review and require other land use approvals may submit a Type II or III 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 or III 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 or III 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 or III 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 or III 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 nondiscretionary 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.
3. Type III development review applications are evaluated through a Type III review per Section 19.1006. Type III development review is for proposals that require review against discretionary criteria or standards, and where the level of discretion and/or scale of development make it appropriate that the matter is heard by the Planning Commission at a public hearing.

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I, Type II, and Type III ~~Type I and Type II~~ development review applications. The criteria are based on a review of development standards throughout 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, Type II, and Type III ~~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 and Type III review will involve discretionary standards and/or criteria.

An application for Type I, Type II, and Type III ~~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.

19.910 RESIDENTIAL DWELLINGS

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

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

A. Purpose.

To provide the means for reasonable accommodation of accessory dwelling units, providing affordable housing, opportunity to house relatives, and a means for additional income for property owners, thereby encouraging maintenance of existing housing stock. It is the intent of this subsection that development of accessory dwelling units not diminish the single-family character of a neighborhood.

B. Applicability.

The procedures and standards of this chapter apply to the establishment of any accessory dwelling unit.

C. Procedures

An application to establish an accessory dwelling unit shall be evaluated through a Type I Review per Section 19.1004.

D. Approval Criteria.

An application for an accessory dwelling unit shall be approved if the following are met.

1. An accessory dwelling unit is an allowed use in the base zones and any applicable overlay zones where the accessory dwelling unit would be located.
2. The primary use of property for the proposed accessory dwelling unit is a single-family detached dwelling.
3. One accessory dwelling unit per property is allowed.
4. The development standards of Subsection 19.910.1.E are met.
5. The proposal complies with all other applicable standards of this title.

E. Standards

1. Creation.

An accessory dwelling unit may be created by conversion of an existing structure, addition to an existing structure, or construction of a new structure. It is permissible to combine both an addition to an existing structure and conversion of space in the structure for the creation of an accessory dwelling unit.

2. Coordination of standards.

The more restrictive provisions shall be applicable in the event of a conflict between standards in Subsection 19.910.1.E and other portions of this title, except where specifically noted.

3. Size.

The floor area of an accessory dwelling unit is limited to 800 square feet or 75% of the floor area of the primary structure, whichever is less. The measurements are based on what the floor area of the primary dwelling unit and the accessory dwelling unit would be after completion of the accessory dwelling unit.

4. Design standards.

The design standards listed below apply to development of an accessory dwelling unit that would add any floor area to the property. Conversion of existing space that does not involve the addition of any floor area is exempt from these standards.

a. Exterior finish materials.

- (1) The exterior finish material must be the same as the primary dwelling unit; or
- (2) Visually match in type, size and placement the exterior finish material of the primary dwelling unit.

b. Trim must be the same in type, size, and location as the trim used on the primary dwelling unit.

c. Windows on street-facing facades must match those in the primary dwelling unit in proportion (relationship of width to height) and orientation (horizontal or vertical).

d. The roof must match the roof style and predominant roof pitch of the primary dwelling unit.

e. Eaves must project from the building walls at the same proportion as the eaves on the primary dwelling unit.

5. Standards for attached accessory dwelling units.

The standards listed below apply to accessory dwelling units that are part of the primary structure on the property, regardless of whether creation of the accessory dwelling units adds floor area.

a. The façade of the structure that faces the front lot line shall have only 1 entrance. A secondary entrance for the accessory dwelling unit is allowed on any other façade of the structure.

b. Stairs, decks, landings, or other similar features that leading to the entrance of the accessory dwelling unit are not allowed on the façade of the structure that faces the front lot line.

6. Detached accessory dwelling units.

The standards in Subsection 19.901.1.E.4 apply to accessory dwelling units that are separate from the primary structure on the property.

a. Creation of a detached accessory dwelling unit that involves the construction of a new accessory structure or addition to an existing accessory structure shall comply with all standards listed below.

- (1). The lot coverage of a detached accessory dwelling unit shall not exceed the lot coverage of the primary structure.

(2). The accessory structure shall be at least 10 ft away from the front yard, as defined in Section 19.201.

b. Creation of a detached accessory dwelling unit through the conversion of an existing accessory structure is allowed under the following circumstances.

(1). The accessory structure is not located within any required setback.

(2). The accessory structure is not within the front yard of the property.

(3). The conversion will not bring the accessory structure out of conformance with any applicable design or development standards. If the accessory structure is already nonconforming with design or development standards, the conversion will not make the structure go further out of conformance.

F. Additional provisions.

1. Accessory dwelling units are not counted in the calculation of minimum or maximum density requirements listed in this title.

2. Additional home occupations [are/are not] allowed for a property with an accessory dwelling unit.

3. Either the primary residence or the accessory unit must be occupied by the property owner. The property owner shall record a covenant to this effect to be recorded with Clackamas County upon establishing an accessory dwelling unit.

The Planning Director may require verification of owner occupancy at any time. Documents that establish occupancy may include, but are not limited to, voter registration, address information provided to state or federal agencies, and utility billing. Ownership of the accessory units shall not be subdivided or otherwise separated from ownership of the primary residence.

Type 1 accessory dwelling unit is a permitted accessory use in all residential zones that allow single-family detached structures subject to the following:

A. Purpose

~~To provide the means for reasonable accommodation of accessory dwelling units, providing affordable and decent housing while providing homeowners with alternative financial resources, thereby encouraging maintenance of existing housing stock. It is the intent of this subsection that development of accessory dwelling units not diminish the single-family character of a neighborhood and that any single-family residence containing an accessory dwelling maintain the appearance of a single-family dwelling as viewed from the street. Any conversion or alteration of a single-family structure that requires exterior additions or modifications must be designed so that the outward appearance of the structure is consistent with general design characteristics of single-family structures and is consistent with the architectural treatment of the existing structure.~~

B. Approval Required

~~Type 1 accessory dwelling units are subject to Section 19.1005 Type II Review. Applications shall be made on forms provided by the Planning Department and shall be accompanied by the following information:~~

~~1. Completed application forms.~~

~~2. Site plan showing the following:~~

- a. ~~Lot lines and location and dimensions of existing and proposed structures with yard dimensions.~~
- b. ~~Location and dimension of existing and proposed parking.~~
- c. ~~Location of structures on adjoining lots.~~
- 3. ~~Dimensioned architectural drawings showing existing and proposed floor plans and elevations. Elevations are to identify existing and proposed details such as siding material, window and door design, roof style and height, and otherwise as necessary to demonstrate compliance with the requirements of this regulation. Floor plans are to identify existing and proposed layout with all spaces identified.~~
- C. ~~The applicant must demonstrate the proposed modifications comply with applicable building and fire safety codes.~~
- D. ~~Notwithstanding the maximum allowable net floor area of 600 sq ft, the accessory dwelling unit shall not exceed 40% of the gross floor area of the primary structure.~~
- E. ~~Construction of an accessory dwelling unit is subject to Milwaukie Municipal Code Chapter 13.28 Capital Improvements.~~
- F. ~~Ownership and Tenancy~~

~~Either the primary residence or the accessory unit must be occupied by the property owner. Proof of owner occupancy shall be made annually in accordance with a procedure and submittal requirements established by the Planning Director. Ownership of the accessory units shall not be subdivided or otherwise separated from ownership of the primary residence.~~
- G. ~~Business License Required~~

~~A Milwaukie business license is required for operation of rental property, pursuant to Milwaukie Municipal Code Chapter 5.08.~~
- H. ~~Use, Alteration, or Conversion of Structure~~

~~Type 1 accessory dwelling units may be located in a single-family residential structure provided the following criteria are met:~~

 - 1. ~~All exterior modifications shall be consistent with general design characteristics of single-family residential design. In reviewing applications for exterior modifications for consistency of architectural treatment with existing design, consideration shall be given to design elements such as, but not limited to, placement of doors and windows, finish materials, location of parking, lighting, and the like.~~
 - 2. ~~For fronting lots, only 1 entrance to the residential structure shall face the street. Exterior access to the accessory unit shall be located in side or rear yards or by means of the existing main entrance.~~
 - 3. ~~No portion of a building that encroaches within a required yard setback may be converted to or used as an accessory dwelling unit.~~
 - 4. ~~Exterior lighting for accessory unit doorways shall not encroach beyond the property line of the lot on which it is located.~~
 - 5. ~~No fire escape or exterior stair for access to an upper level may be located on the front of the building.~~
 - 6. ~~No more than 1 accessory dwelling unit per lot is permitted.~~

~~I. Required Parking~~

~~Off-street parking shall be provided in accordance with Chapter 19.600. If new parking must be constructed to meet minimum required parking, it shall be located contiguous to existing parking.~~

19.910.2 Accessory Dwelling Units (Type 2)

~~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.~~

~~A. Requirements for Conversion of Existing Space or Addition~~

- ~~1. The unit is in conformance with the site development requirements of the underlying zone;~~
- ~~2. Off-street parking shall be provided in accordance with Chapter 19.600;~~
- ~~3. Garage or carport space may not be converted to an accessory dwelling unit, unless parking standards can be met after the completion of the unit;~~
- ~~4. Public facilities must be adequate to serve both dwelling units, as determined by the Public Works Department;~~
- ~~5. One unit shall be occupied by the property owner;~~
- ~~6. The Planning Commission may impose conditions regarding modification of building height, landscaping, buffering and orientation of the accessory unit to protect privacy of the neighbors, and any other conditions deemed necessary to ensure compliance with the requirements of this subsection, except that no condition may be imposed that prohibits rental occupancy, separate access, and full kitchens in any accessory unit;~~
- ~~7. Conditions of approval shall be part of the deed restrictions;~~
- ~~8. No more than 1 additional unit is allowed.~~

~~B. Requirements for Conversion of Existing Space~~

- ~~1. Cannot exceed 50% of the existing structure;~~
- ~~2. Each unit shall be a minimum of 250 sq ft;~~
- ~~3. No fire escape or exterior stair for access to an upper level may be located on the front of a building.~~

~~C. Requirements for Addition~~

- ~~1. Does not exceed 1 bedroom;~~
- ~~2. The maximum area is 800 sq ft.~~

19.310.2 Duplexes

A. Purpose.

This subsection is intended to allow duplexes in order to increase available housing in the city while maintaining the coherence of single-family residential neighborhoods.

B. Applicability

The regulations of Subsection 19.910.2 apply to proposals to construct a new duplex or to convert or add on to an existing structure to create a duplex. They also apply to additions and modifications to existing duplexes.

C. Review Process

1. The following review process is required for proposals to establish a duplex, either by construction of a new structure or conversion of or addition to an existing structure.
 - a. In the Residential zones R-5, R-3, R-2.5 R-2, R-1, R-1-B, R-O-C, a duplex is allowed outright, subject to the lot size requirements for the zone. The review of applicable development and design standards occurs during the review of a development permit. The approval criteria in Subsection 19.910.2.D are not applicable.
 - b. Duplexes are allowed outright, subject to the lot size requirements for the zone, in the Residential zones R-10 and R-7 in either of the following situations. For these properties, the review of applicable development and design standards occurs during the review of a development permit. The approval criteria in Subsection 19.910.2.D are not applicable.
 - (1) The property has frontage on a collector or arterial street, as identified by the Milwaukie Transportation System Plan.
 - (2) The property is a corner lot.
 - c. Duplexes in the Residential zones R-10 and R-7 that are not eligible as an outright allowed use under Subsection 19.910.2.C.1.b are allowed through a Type II Review per Section 19.1005.
 - d. Duplexes in the Limited Commercial Zone C-L are allowed through a Type II Review per Section 19.1005.
2. For additions or modifications to existing duplexes, the review of applicable development and design standards occurs during the review of a development permit. The approval criteria in Subsection 19.910.2.D are applicable.

D. Approval Criteria

1. A duplex in the Residential zones R-10 and R-7 that is not eligible as an outright allowed use under Subsection 19.910.2.C.1.b must meet the following criteria.
 - a. The location of a duplex at the proposed site will not have a substantial impact on the existing pattern of single-family detached dwellings that exists within the general vicinity of the site.
 - b. The design of the proposed duplex is generally consistent with the surrounding development.
 - c. The proposed duplex is designed as reasonably as possible to appear like a single-family detached dwelling.
2. A duplex in the Limited Commercial Zone C-L must meet the following criteria.
 - a. The proposed residential use will not be incompatible with existing and outright-allowed commercial uses in the Limited Commercial zone.
 - b. The approval of a duplex will not significantly diminish the ability of the area zoned as Limited Commercial to provide goods and services to the surrounding neighborhoods.

3. Additions and modifications to existing duplexes shall meet the following criteria.
- a. The duplex will remain in compliance with base zone standards, single family design standards, parking standards, and duplex design standards.
 - b. The addition or modification does not contravene any conditions of approval if the duplex was initially permitted as a Conditional Use or through a Type II Review per Subsection 19.910.2.D.1.

DRAFT