



MILWAUKIE

Dogwood City of the West

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From: Katie Mangle, Planning Director
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Project File #ZA-11-01
Subject: Proposed Amendments to Milwaukie Municipal Code
Milwaukie Land Use File #ZA-11-01
Natural Resource regulations and Other Misc. Code Sections
Date: March 10, 2011

Per the letter sent to Metro dated February 16, 2011, the City proposes to adopt amendments to several sections of the Milwaukie Municipal Code (MMC) and to the natural resources element of the City's Comprehensive Plan (Land Use File #ZA-11-01). The majority of the proposed amendments are to MMC 19.402 Water Quality Resources (formerly numbered as MMC 19.322), which establishes the City's regulations for designated natural resource areas. Below is the full list of code sections that are proposed to be modified:¹

- MMC Subsection 19.107.1 (Zone Classifications) – Specifies that the Water Quality Resource areas and Habitat Conservation Areas are not considered to be "overlay zone" designations and will not be shown on the City's official zoning map
- MMC 19.108 (Special Areas, introductory provisions) – Establishes designated natural resource areas as "special areas", as opposed to an overlay zone.
- MMC 19.201 (Definitions) – Includes some updates to existing definitions related to natural resources, as well as new definitions for "Direct Stormwater Discharge," "Downed Tree," "Habitat Conservation Area (HCA)," "Significant Pruning," and "Tree."
- MMC 19.400 (Overlay Zones and Special Areas) – Creates a new type of designation for special areas that are not technically overlay zones.
- MMC 19.402 (Natural Resource Areas) – Repeals the existing Water Quality Resource regulations section and replaces it with a new, expanded section that addresses habitat resources as well as water quality.
- MMC 19.1001 (General Provisions, review procedures) – Adds a boundary verification of designated natural resources to the list of land use decisions that are exempt from the City's application expiration policies.

¹ Recent amendments reorganized and renumbered the City's Zoning Ordinance (Land Use File # ZA-10-02) and will be effective on May 14, 2011. The list of code sections affected by the Natural Resource amendments (File #ZA-11-01) reflects that approved but pending reorganization.

- Comprehensive Plan Chapter 3 (Environmental and Natural Resources) – Updates the Natural Resources Element to reflect the new Habitat Conservation Area designation and establish an updated map of natural resource areas.

Staff distributed a draft hard copy of the proposed code amendments to Metro for review and comment on March 4, 2011. Updated drafts of the proposed amendments to MMC 19.402 and the Comprehensive Plan and other code sections are included as Attachments 1 and 2, respectively. The primary changes from the earlier version (Feb 2011 drafts) are mostly organizational in nature (moving subsections around or clarifying language).

The Milwaukie Planning Commission will hold the first public hearing on these amendments on March 22, 2011, to decide whether to recommend adoption by the City Council. The Milwaukie City Council is scheduled to hear these amendments on April 19, 2011.

The proposed amendments will comply with each of the Functional Plan (FP) Titles as described below:

Title 1: Requirements for Housing and Employment Accommodation

The proposed amendments will not change the City's housing or employment capacity.

Title 2: Regional Parking Policy

The proposed amendments will not change the City's policies related to parking.

Title 3: Water Quality and Flood Management

The proposed amendments will affect the City's regulation of Water Quality Resource (WQR) areas. The changes will establish clearer approval criteria for allowing disturbance in WQR areas, provide a process for administrative review of minor disturbances, and require a construction management plan for activities within a certain distance of the resource area.

The proposed amendments comply with the following applicable sections of Metro Title 3:

- **3.07.330:**
In December 2002, Milwaukie adopted WQR regulations that were based on the Metro Title 3 Model Code and in substantial compliance with the performance standards of FP Section 3.07.340.B. Maps were adopted into the zoning code that substantially complied with the Metro Water Quality and Flood Management Area map. The proposed amendments maintain the City's compliance with Title 3.
- **3.07.340.A:**
The proposed amendments will not change the City's flood management policies, which are implemented through MMC Title 18 Flood Hazard Regulations.
- **3.07.340.B:**
The proposed amendments will continue to comply with the Water Quality Performance Standards. The City's existing policies that address these standards have been reorganized and rewritten to make the regulations easier to understand, fill loopholes, or address locally-recognized problems.

With the proposed amendments, the WQR area will continue to be the vegetated corridor and protected water feature, as defined in a table that is similar to FP Table 3.07-3. The estimated location of these corridors will be illustrated on a map in the Comprehensive Plan and adopted into the Natural Resources administrative map.

- **3.07.340.C:**
No changes are proposed to the City's erosion control policies, which can be found in MMC Title 16.28 Erosion Control.
- **3.07.340.D:**
The proposed amendments include a new provision to allow on-site transfer of permitted units to mitigate effects of development restrictions.

The proposed amendments will continue to comply with the standards for modification of existing structures and other development. The City's existing policies that address these standards have been reorganized and rewritten to make the regulations easier to understand, fill loopholes, or address locally-recognized problems.

The City has added a new process for preparation, approval, and implementation of Natural Resource Management Plans. The intent of this process is to encourage restoration by removing regulatory hurdles that would apply if such work was considered to be "development."
- **3.07.340.E:**
The existing WQR map is proposed to be removed from the Zoning Ordinance and will be represented in two places: 1) a Natural Resources map in the Comprehensive Plan and 2) a Natural Resources administrative map. Having the WQR map in the zoning code made it burdensome to meet the FP requirements to keep the map current, and in fact the City has not modified the map in several years. The criteria for amending the administrative map are largely the same for WQR as in the current policies.

Title 4: Industrial and Other Employment Zones

The proposed amendments will not change the City's regulation of industrial land, except where those lands are also mapped as natural resource areas.

Title 5: Neighbor Cities and Rural Reserves

The City is within the Metro boundary. Title 5 is not applicable to the proposed amendments.

Title 6: Central City, Regional Centers, Town Centers, and Station Communities

The proposed amendments will not change the City's regulation of land and development in the Milwaukie Town Center, except where those lands are also mapped as natural resource areas.

Title 7: Affordable Housing

The proposed amendments will not change the City's policies with regards to housing.

Title 8: Compliance Procedures

The proposed amendments shall be deemed to comply with the FP if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9).

Metro Code Section 3.07.820.A requires that the City provide notice of proposed amendments to Metro's Chief Operating Officer at least 45 days before the first evidentiary hearing. The Milwaukie Municipal Code is not yet in compliance with this particular requirement, as it requires notice to Metro 45 days prior to the final evidentiary hearing. This discrepancy has very recently been rectified by the amendments proposed with Land Use File #ZA-10-02 (adopted March 1, 2011). With this discrepancy in mind, staff sent notice of the proposed natural resource amendments to Metro on February 16, 2011, approximately 34 days prior to the first evidentiary hearing, which is approximately 62 days prior to the anticipated final hearing.

In developing the proposed amendments, the City has worked with Metro staff to ensure that

the City's zoning code would become substantially compliant with Metro Title 13 (Nature in Neighborhoods) and would remain compliant with Metro Title 3 (Water Quality and Flood Management). In addition, the amendment project has had a strong citizen involvement component throughout. The proposed amendments were discussed at length by a stakeholder advisory group over a six-month period and have been sent to the City's neighborhood associations and relevant agencies (e.g., ODOT and TriMet) for review and comment. The Planning Commission and City Council have had a dozen public work sessions on the proposed amendments.

Title 9: Performance Measures

This title relates to the monitoring of FP implementation progress and is not applicable to the proposed amendments.

Title 10: Functional Plan Definitions

This title relates to FP vocabulary and is not applicable to the proposed amendments.

Title 11: Planning for New Urban Areas

This title relates to the planning process for areas brought into the Metro Urban Growth Boundary (UGB). The City has been within the Metro boundary since the inception of the UGB. Title 11 is not applicable to the proposed amendments.

Title 12: Protection of Residential Neighborhoods

The proposed amendments do not include changes to planned density or to the scale or location of commercial development. Title 12 is not applicable to the proposed amendments.

Title 13: Nature in Neighborhoods

The City began implementing Title 13 on May 22, 2009, using a model ordinance and resource inventory maps provided by Metro. Adoption of the proposed amendments will make the City fully compliant with Title 13 by expanding existing WQR regulations to incorporate new regulations for HCAs.

The proposed amendments comply with the following applicable sections of Metro Title 13:

- **3.07.1330.A:**
Milwaukie has been directly applying the Title 13 Model Ordinance to regionally mapped HCAs since June 1, 2009, when the City began to apply the Model Ordinance, as required by Metro's Urban Growth Management Functional Plan. The City has applied the Title 13 Model Ordinance only to land use decisions as defined in the Oregon Revised Statutes (ORS), not to development that only triggers a building permit, Type I review, or to Final Plat approval.

Adopting the proposed amendments will bring Milwaukie into full compliance with Title 13 by applying the requirements of Title 13 to areas identified as habitat on the Inventory Map.
- **3.07.1330.B:**
The City of Milwaukie is proposing to comply with Title 13 by meeting FP Section 3.07.1330.B.2, and by adopting both new implementation ordinances that substantially comply with the performance standards and maps that substantially comply with the Metro HCA map.
- **3.07.1330.C:**
The proposal includes clear and objective standards for HCAs (see MMC 19.402.11.D Non-Discretionary Standards for HCAs).

- **3.07.1330.D:**
The proposal includes an optional process for discretionary review of a proposal for development in an HCA (see MMC 19.402.12 General Discretionary Review).
- **3.07.1330.E:**
In 2006, Metro conducted a preliminary code audit to identify barriers to habitat-friendly development (see Attachment 3 for a summary of this analysis).

The proposed amendments and other amendments that the City has adopted since 2007 collectively remove the barriers to habitat-friendly development (see Attachment 4).
- **3.07.1330.F:**
The City of Milwaukie will hold the first public hearing on the proposed amendments on March 22, 2011. Throughout the project, the latest draft proposal at any given point in time has been available on the City website since October 2009, with an additional presentation of the proposed amendments at a public open house on January 6, 2011.
- **3.07.1330.G:**
A boundary verification process is included in the proposed amendments (see MMC 19.402.15 Boundary Verification and Map Administration).
- **3.07.1330.H:**
The proposed amendments include provisions for land division that closely resembles the policies in the Model Code. The proposal also includes a provision for approval of “cluster development” to allow more flexibility and require conservation for sites that are highly impacted by natural resource restrictions. The amendments do not allow for approval of subdivisions below minimum densities unless the resource land is set aside in a conservation tract.
- **3.07.1340.A:**
 1. The proposed amendments will establish HCAs as protected areas in Milwaukie, and the proposed regulations in MMC 19.402 will enforce the performance standards.
 2. Milwaukie is proposing to merge the WQR and HCA regulations into one set of Natural Resources regulations. As explained on page 2 of this report, the revised ordinance will continue to comply with Title 3.
 3. Not applicable.
 4. The limitations and exceptions provided in the proposed amendments comply with Title 13.
 5. HCAs within parks owned by the City of Milwaukie, City of Portland, or North Clackamas Parks District will be regulated in a manner similar to the Model Ordinance. North Clackamas Parks and Recreation District (NCPRD) manages several public park facilities within the city limits. Key management practices include the following:
 - NCPRD has adopted the Integrated Pest Management Plan used by Portland Parks and Recreation.
 - NCPRD strives to minimize the amounts of herbicides and fertilizers used for grounds maintenance.
 - The Intergovernmental Agreement between NCPRD and the City of Milwaukie acknowledges that some parks will maintain dedicated natural areas in addition to active recreation facilities.
 - NCPRD is exploring the potential of developing a parks management plan that could include site-specific inventories and assessments of natural resources.

6. The proposed amendments include exemptions and prohibitions that comply with this section. Additionally, the draft amendments include a new program for private property owners to work with resource management agencies to develop long-range Natural Resource Management Plans.
 7. The proposed amendments comply with this section.
 8. Not addressed in the draft amendments, but the City will implement this section should the need arise.
 9. Not applicable.
 10. Not applicable.
- **3.07.1340.B.1:**
In Milwaukie, a majority of the HCAs identified in the regional inventory are designated as High-value HCAs. To simplify the administration of the new HCA rules, the proposed amendments combine the High-, Moderate-, and Low-value HCA designations into a single HCA category. That category is largely regulated according to the protective standards proposed for High-value HCAs in the Metro Title 13 Model Code. For example, the non-discretionary development standards proposed in MMC 19.402.11.D would allow a maximum HCA disturbance of only 50% of the total HCA on the lot (up to a maximum of 5,000 square feet) for single-family residential uses—this is more restrictive than the allowance recommended for High-value HCAs in the Metro Title 13 Model Code, which allows disturbance of up to 50% of lot area. The proposed amendments retain the clear and objective option for review of development activities involving HCA disturbance.
 - **3.07.1340.B.2:**
The discretionary review criteria proposed in MMC 19.402.12 meet the requirements of this section to push proposed development to avoid, minimize, the mitigate for impacts. The one exception is that Milwaukie will not consider the specific quality of HCA—as explained above in response to FP Section 8.07.1340.B.1, Milwaukie is adopting only one category of HCA, without distinction of High-, Modertate-, or Low-value designation.

The proposed amendments include provisions to allow limited flexibility with regard to site development standards.
 - **3.07.1340.C:**
The proposed amendments include a provision for a hardship variance (see MMC 19.402.14).
 - **3.07.1340.D:**
The proposed amendments include a process for a boundary verification process (see MMC 19.402.15.A) and for administering the HCA map (see MMC 19.402.15.B).

The process and criteria for locating and classifying HCAs closely resembles that found in the Metro Title 13 Model Code.

Attachments

1. Proposed MMC 19.402 (March 2011 Draft)
2. Other Proposed Amendments (March 2011 Draft)
3. Summary of Metro Analysis of Milwaukie Municipal Code
4. Summary of Habitat-Friendly Amendments