



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No. 2140

An ordinance of the City Council of the City of Milwaukie, Oregon, amending Title 19 Zoning to make minor changes to select sections for the purpose of clarification and improved effectiveness (File #ZA-2016-002).

WHEREAS, the proposed amendments to Title 19 make changes and clarifications that will more effectively communicate and implement existing policy; and

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

WHEREAS, on December 13, 2016, the Milwaukie Planning Commission conducted a public hearing, as required by MMC 19.1008.5 and adopted a motion in support of the amendment; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The Milwaukie Municipal Code is amended as described in Exhibit B (Title19 Zoning underline/strikeout version), and Exhibit C (Title19 Zoning clean version).

Section 3. Effective Date. The amendments shall become effective 30 days from the date of adoption.

Read the first time on 2/7/17, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 2/7/17.

Signed by the Mayor on 2/7/17.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott Stauffer, City Recorder

City Attorney

**Recommended Findings in Support of Approval
File #ZA-2016-002, Housekeeping Code Amendments**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to amend various regulations that are contained in Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2016-002.
2. The purpose of the proposed code amendments is as a collection of “housekeeping” amendments – clarifications or minor tweaks – that are not intended to affect the meaning or intent of existing regulations; they are not intended to be a change in policy. The amendments are located in several titles of the municipal code:

Zoning Ordinance

- MMC 19.303 – Commercial Mixed-Use Zones – accessory uses and home occupations to be included as permitted uses in the GMU and NMU Zones
 - MMC 19.306 – CL zone — include eating establishments as permitted uses
 - MMC 19.310 – BI zone – include Contractors and Related Businesses as permitted uses
 - MMC 19.401 – Willamette Greenway Overlay – revisions to applicability to include exemptions and revisions to definitions
 - MMC 19.402 – Natural Resources – various minor clarification revisions
 - MMC 19.502 – Accessory Structures – clarification of definition
 - MMC 19.607 – Off-Street parking in residential areas – revision to standard to provide additional flexibility
 - MMC 19.702 – Public Facility Improvements – revision to applicability section to include all applications for a replat
 - MMC 19.706 – Fee In Lieu of Construction – delete section as it is duplicative of Section 13.32 adopted by Ordinance 2122.
 - MMC 19.904 – Wireless Communication Facilities – applicability and review process revisions to reflect recent FCC decision regarding review process for modifications to existing facilities
 - MMC 19.907 – Downtown Design Review – include a list of exemptions to land use review for minor site improvements
 - MMC 19.911 – Variances – include a Type II review process for fence height variances
 - MMC 19.1104 – Expedited Annexation – revision to County/City zone designations to reflect existing standards
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures

4. Sections of the MMC or MCP not addressed in these findings are found to be not applicable to the decision on this land use application.
5. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing was held on December 13, 2016 and February 7, 2017 as required by law.
6. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.
The amendments were initiated by the Planning Director on September 29, 2016.
 - b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V Review have been met as follows:
 - (1) Subsection 19.1008.3.A.1 requires opportunity for public comment.
Opportunity for public comment and review has been provided. The Planning Commission had 2 worksessions about the proposed amendments on September 13, 2016 and October 25, 2016. The City Council had a worksession about the proposed amendments on October 4, 2016 and a study session on October 20, 2016. The current version of the draft amendments has been posted on the City's web site since November 10, 2016. On November 16, 2016 staff e-mailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments.
 - (2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.
A notice of the Planning Commission's December 13, 2016, hearing was posted as required on November 10, 2016. A notice of the City Council's February 7, 2017 hearing was posted as required on January 6, 2017.
 - (3) Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.
The Planning Director has determined that, except for the changes to the Limited Commercial Zone C-L, the proposal affects a large geographic area. Notice to individual property owners and individual properties in the C-L zone was provided.
 - (4) Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.
Notice of the proposed amendments was sent to DLCD on October 4, 2016.
 - (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 45 days prior to the first evidentiary hearing.
Notice of the proposed amendments was sent to Metro on September 21, 2016.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments generally do not further restrict the use of property. In general, the proposed amendments implement current interpretation or add flexibility. Notice to individual property owners and individual properties in the C-L zone was provided.

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

The Planning Commission held a duly advertised public hearing on December 13, 2016, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on February 7, 2017, and approved the amendments.

7. MMC 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.

- (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held a duly advertised public hearing on December 13, 2016. A public hearing before City Council is tentatively scheduled for February 7, 2017. Public notice was provided in accordance with MMC Subsection 19.1008.3.

- (2) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.

- (a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code. The amendments are clarifying in nature and are not intended to affect policy.

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

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

The Goal statement of the Open Spaces, Scenic Areas, and Natural Resources Element reads as follows:

To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

Objective #2 – Natural Resources states:

To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and re-charge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.

The proposed amendments:

- *Clarify definitions and include a list of minor projects in the Willamette Greenway Zone in order to provide clearer direction for applicability of the code provisions.*
- *Clarify various aspects of the Natural Resources code language in order to provide clearer direction for applicability of the code provisions.*

The Goal statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

Objective #2 – Employment Opportunity states:

To continue to support a wide range of employment opportunities for Milwaukie citizens.

The proposed amendments:

- *Add home occupations to the list of permitted uses in the Commercial Mixed-Use zones.*

Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

The proposed amendments:

- *Add restaurants as permitted uses to the Limited Commercial CL Zone.*
- *Add contractor related businesses as permitted uses to the Business Industrial BI Zone.*

The Goal statement of the City Growth Element reads as follows:

To identify the City's future planning and service area, establish the respective responsibilities for reviewing and coordinating land use regulations and actions within the area, and determine the most cost-effective means to provide the full range of urban services within the area.

Objective #4 – Coordinating Land Use and Development states:

To establish, in conjunction with the County, a method for coordinating land use and development decisions within the unincorporated area adjacent to the City.

The City's expedited annexation process assigns zoning and Comprehensive Plan land use designations that are similar in nature to the existing County zoning. The intent of the proposed amendments is to correct and clarify Table 19.1104.1.E to ensure consistency between the County and City zoning and land use designations.

- (c) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (d) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that the amendments are clarifying in nature and do not create the opportunity for any more vehicle trips than are currently allowed by other similar uses in each respective zone.

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

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore, the proposal is found to be consistent with federal regulations that are relevant to local government planning.

Underline/Strikeout Amendments

Title 19 Zoning

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

“Utility facilities” means buildings, structures, or any constructed portion of a system which provides for the production, transmission, conveyance, delivery, or furnishing of services, including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone, and cable television. Utility facilities do not include stormwater facilities (such as wetlands, swales, and ponds that are maintained as stormwater facilities) but do include pipes, culverts, and similar enclosed structures that convey protected water features.

CHAPTER 19.300 BASE ZONES

19.303.2 Uses

Table 19.303.2 CONTINUED Uses Allowed in Commercial Mixed-Use Zones			
Uses and Use Categories	GMU	NMU	Standards/Additional Provisions
Institutional			
Community service uses	CSU	CSU	Section 19.904 Community Service Uses
<u>Accessory and Other</u>			
<u>Accessory use</u>	<u>P</u>	<u>P</u>	Section 19.503 Accessory Uses
<u>Home occupation</u>	<u>P</u>	<u>P</u>	Section 19.507 Home Occupation Standards

19.306 LIMITED COMMERCIAL ZONE C-L

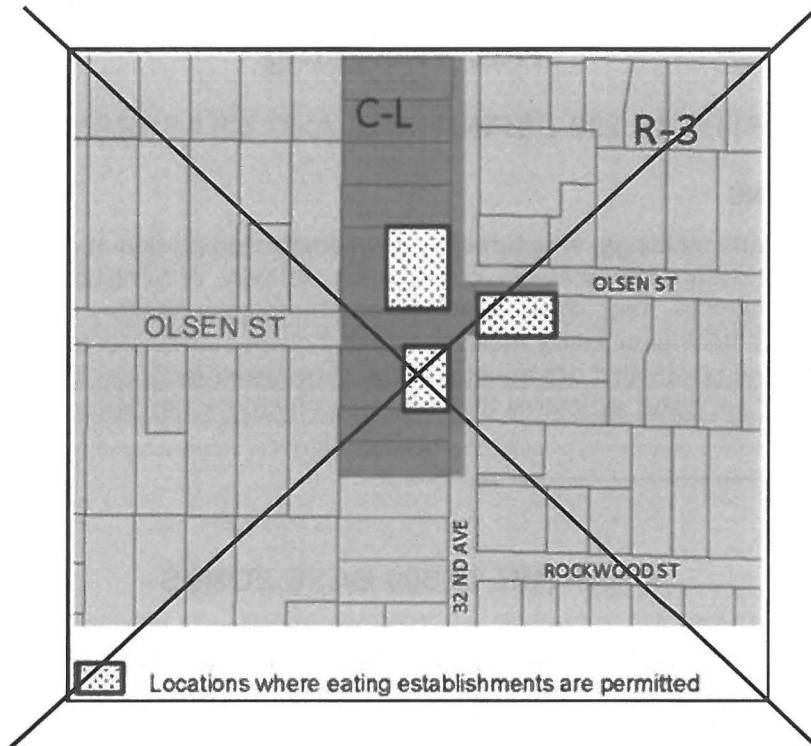
In a C-L Zone the following regulations shall apply:

19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- E. Eating establishments, ~~when located on a site depicted in Figure 19.306.1.E,~~ and provided the floor area does not exceed 3,250 sq ft and the use does not include drive-through facilities.

Figure 19.306.1.E
Eating Establishment Locations in the C-L Zone



19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- O. Eating establishments that exceed 3,250 sq ft in floor area;
- ~~P.Q.~~ Any other use similar to the above and not listed elsewhere.

19.310 BUSINESS INDUSTRIAL ZONE BI

19.310.2 Uses Permitted Outright

- D. Contractors and Related Businesses. Businesses whose primary activity is performing specific building or other construction-related work, on- or offsite. Examples include: residential and nonresidential building construction, utility/civil engineering construction, specialty trade contractors, and moving companies.
- ~~DE.~~ Any other use similar to the above uses but not listed elsewhere.

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.401 WILLAMETTE GREENWAY ZONE WG

19.401.4 Definitions

“Change of use” means making a different use of the land or water which requires construction; alterations of the land, river bed, bank, water, or other areas outside of existing buildings or structures; and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios) shall not be considered a change of use.

“Intensification” means any change of use; or action which increases or expands the area or amount of an existing use or the level of activity, including remodeling the exterior of a structure if the remodeling substantially alters the appearance of the structure. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the WG Zone includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios) shall not be considered an intensification of use.

19.401.5 Procedures

- A. In the WG Zone, all uses and their accessory uses are permitted subject to the provisions of Section 19.905, except as noted in Subsection 19.401.5.B and Subsection 19.401.5.D.
- B. Willamette Greenway review is not required for any of the activities listed below:
1. Changes to the interior of a building or alterations of buildings or accessory structures that do not increase the size or alter the configuration of the building or accessory structure footprint;
 2. Normal maintenance and repair as necessary for an existing development;
 3. Removal of plants listed as nuisance species on the Milwaukie Native Plant List;
 4. Addition or modification of existing utility lines, wires, fixtures, equipment, circuits, appliances, and conductors by public or municipal utilities;
 5. Flood emergency procedures, and maintenance and repair of existing flood control facilities;
 6. Placement of signs, markers, aids, etc., by a public agency to serve the public;
 7. Establishment of residential accessory uses, such as lawns, gardens, and play areas, subject to the vegetation buffer requirements of Subsection 19.401.8;
 8. Ordinary maintenance and repair of existing buildings, structures, parking lots, or other site improvements;
 9. Minor repairs or alterations to existing structures for which no building permit is required;

Proposed Code Amendment

- 10. A change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated;
- 11. Construction of driveways;
- 12. Reasonable emergency procedures as necessary for the safety or protection of property; and
- 13. Other activities similar to those listed in "1," through "12," above. Such Director determinations, including a finding of consistency with Goal 15, shall be made in accordance with Section 19.903.

~~B.C. The Oregon Department of Transportation~~ The Oregon Department of Parks and Recreation shall be notified of a hearing on a conditional use in the WG Zone. The notice shall be sent via "certified mail, return receipt requested."

~~C. The provisions of the WG Zone in Section 19.401 shall apply until adoption of the Willamette Greenway Design Plan.~~

19.402 NATURAL RESOURCES NR

19.402.3 Applicability

- I. Those portions of streams, creeks, and other protected water features that appear on the NR Administrative Map but are enclosed in pipes, culverts, or similar structures are not subject to the provisions of Section 19.402, except where a proposed activity will expose or directly disturb the protected water feature, such as with excavation. For WQRs, the underground portion of the protected water feature is not considered a protected water feature for purposes of determining the WQR location as outlined in MMC Table 19.402.15. For HCAs, the boundary verification options provided in MMC 19.402.15 may be used as necessary to determine whether the aboveground characteristics of the underground portion of the protected water feature affects the representation of HCA on the NR Administrative Map.

Table 19.402.3.K Types of Process Review for Various Activities			
Activity (and applicable code sections)	Type of Review Process		
	Type I (19.1004)	Type II (19.1005)	Type III (19.1006)
Construction management plans (Subsection 19.402.9)	✓		

- L. Where WQRs and HCAs overlap, the WQR overlap area is not included in any calculations of the HCA area for purposes of determining whether HCA-only exemptions are allowed or for calculating allowable HCA disturbances.

19.402.4 Exempt Activities

A. Outright Exemptions

The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

6. Removal of trees under any of the following circumstances:
 - e. Major pruning of trees ~~and shrubs~~ within 10 ft of existing structures.
18. Installation and maintenance of erosion control measures that have been reviewed and approved by the City.

19.402.6 Activities Requiring Type I Review

Within either WQRs or HCAs, the following activities and items are subject to Type I review per Section 19.1004:

~~A.~~ Construction Management Plans

~~Construction management plans, as outlined in Subsection 19.402.9, are subject to Type I review.~~

BA. Limited Tree Removal

1. The Planning Director may approve an application for limited tree removal or major pruning within WQRs and HCAs, ~~subject to~~ except where exempted by SubSection 19.402.6.AB.2, under any of the following circumstances:
2. The provisions of Subsection 19.402.6.AB.1 do not apply to tree removal proposed in association with development or other activities regulated by Section 19.402, for which other approval criteria and mitigation standards may apply.
3. The Planning Director shall require the application to comply with all of the following standards:
 - c. Any tree that is removed in accordance with Subsection 19.402.6.AB shall be replaced with a new tree, of at least ½-in caliper or at least 6-ft overall height after planting. An exception to this requirement may be granted if the applicant demonstrates that a replacement tree has already been planted, in anticipation of tree removal, or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons).

~~CB.~~ Activities within HCAs in Compliance with Nondiscretionary Standards

Within HCAs, but outside of WQRs, nonexempt development that is not listed in Subsections 19.402.7 or 19.402.8, and that is in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D, is subject to Type I review.

~~DC.~~ Natural Resource Management Plans

Natural resource management plans that meet the standards outlined in Subsection 19.402.10.A are subject to Type I review. These are typically plans that have already been approved by a qualified agency.

~~ED.~~ Maintenance of Existing Utility Facilities

Routine repair and maintenance of existing utility facilities, accesses, streets, driveways, and/or parking improvements that disturbs a WQR and/or HCA is subject to Type I review, provided such activities can meet the general standards for special uses established in Subsection 19.402.11.E.1. These include, but are not limited to, the requirement to provide a mitigation plan and to restore the disturbed area.

FE. Utility Connections

Unless they are exempt per Subsection 19.402.4, connections to existing or new utility lines that involve disturbance to a WQR and/or HCA are subject to Type I review against the following criteria:

1. The activities required to establish the connection shall not disturb a protected water feature. Utility connections that will disturb a protected water feature are subject to the review procedures for special uses established in Subsection 19.402.11.E.
2. The activities required to establish the connection shall not disturb an area greater than 10 ft wide.
3. The connection can meet the general standards for special uses established in Subsection 19.402.11.E.1.

GE. Nuisance Abatement

Measures to remove or abate nuisances; or any other violation of State statute, administrative agency rule, or City or County ordinance; shall be subject to Type I review of a construction management plan, to be approved by the Planning Director prior to the abatement activity. The person or agency undertaking the action shall repair any impacts to the designated natural resource resulting from the nuisance or violation (e.g., restore disturbed soils, restore hydrologic connections, replant disturbed areas with native vegetation, etc.) unless subsequent development has been approved.

HG. Boundary Verification

Boundary verifications that propose minor corrections will be processed in accordance with Subsection 19.402.15.A.1 and are subject to Type I review.

19.402.7 Activities Requiring Type II Review

D. Other Uses and Activities with Minimal Impacts to WQRs

3. Routine repair and maintenance, alteration, and/or total replacement of existing legal buildings or structures that increases the existing disturbance area by no more than 150 sq ft within the WQR.
4. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that increases the existing disturbance area ~~disturbs~~ by no more than 150 sq ft within the WQR. Activities approved under this subsection shall be subject to the following requirements:
 - a. Restore the disturbed portion of the WQR.
 - b. Within the disturbed portion of the WQR, remove any vegetation categorized as a nuisance species on the Milwaukie Native Plant List and replace it with native vegetation from the list.

19.402.8 Activities Requiring Type III Review

Within either WQRs or HCAs, the following activities are subject to Type III review and approval by the Planning Commission under Section 19.1006, unless they are otherwise exempt or permitted as a Type I or II activity.

- A. The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.402.12:
 - 10. Routine repair and maintenance, alteration, and/or total replacement, ~~and/or change of use~~ of existing legal buildings or structures that ~~that~~ increases the existing disturbance area by more than 150 sq ft within the WQR.

19.402.9 Construction Management Plans

- A. Construction management plans are not subject to Type I review per Section 19.1004 but shall be reviewed in similar fashion to an erosion control permit (MMC Chapter 16.28).

19.402.11 Development Standards

- B. General Standards for Required Mitigation
 - 3. Plant Size

~~Replacement~~ Required mitigation trees shall average at least a ½-in caliper—measured at 6 in above the ground level for field-grown trees or above the soil line for container-grown trees—unless they are oak or madrone, which may be 1-gallon size. Required mitigation ~~S~~shrubs shall be at least 1-gallon size and 12 in high.
- D. Nondiscretionary Standards for HCAs
 - 1. Disturbance Area Limitations in HCAs

To avoid or minimize impacts to HCAs, activities that are not otherwise exempt from the requirements of Section 19.402, and that would disturb an HCA, are subject to the following disturbance area limitations, as applicable:

 - b. All Other Uses

A maximum net disturbance area of 10% of the HCA on the site is allowed by right, subject to the mitigation requirements described in Subsection 19.402.11.D.2

19.402.12 General Discretionary Review

- C. Limitations and Mitigation for Disturbance of HCAs
 - 1. Discretionary Review to Approve Additional Disturbance within an HCA

An applicant seeking discretionary approval to disturb more of an HCA than is allowed by Subsection 19.402.11.D.1 shall submit an Impact Evaluation and Alternatives Analysis, as outlined in Subsection 19.402.12.A, and shall be subject to the approval criteria provided in Subsection 19.402.12.B.

An applicant may use the nondiscretionary mitigation options presented in Subsection 19.402.11.D.2 as a guide for proposing mitigation measures that will then be evaluated against the approval criteria provided in Subsection 19.402.12.B.

19.402.15 Boundary Verification and Map Administration

A. Boundary Verification

3. Type III or V Boundary Verification

Corrections to mapped WQRs or HCAs that are not subject to processing according to the provisions outlined in either of Subsections 19.402.15.A.1 or A.2, such as in cases where the City initiates the change without property owner authorization and/or where the changes involve more properties than for which it is practicable to obtain all property owners' authorization, shall be processed in accordance with the procedures for zoning map amendments as provided in Subsection 19.902.6. Such corrections shall be processed with either Type III or Type V review, accordingly, but do not constitute amendments to the zoning map itself, only to the NR Administrative Map.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.502 ACCESSORY STRUCTURES

19.502.2 Specific Provisions for Accessory Structures

- A. The following standards apply for residential accessory structures on single-family detached, duplex, rowhouse, and cottage cluster properties. The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios.

The purpose of these standards is to allow accessory structures that accommodate the typical needs of a single-family residence, while protecting the character of single-family neighborhoods.

1. Development Standards

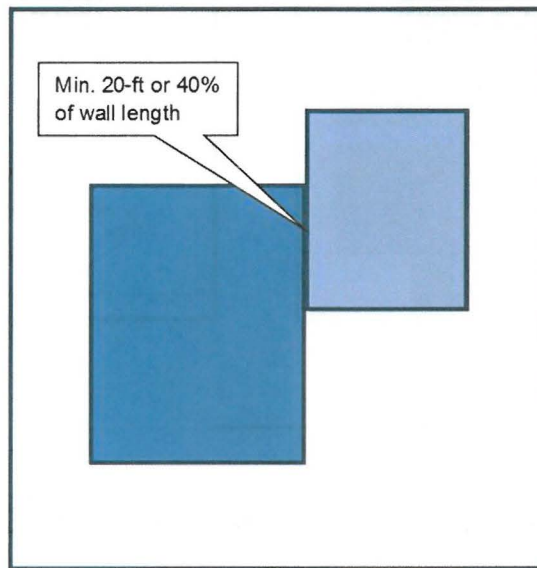
b. Other Development Standards

- (1) Maximum accessory structure footprint allowance is subject to lot coverage and minimum vegetation standards of the base zone. Multiple accessory structures are allowed on a lot, subject to lot coverage and minimum vegetation standards of the base zone.
- (2) The yard exceptions in Subsection 19.501.2 are applicable for accessory structures.
- (3) A minimum of 5 ft is required between the exterior wall of an accessory structure and any other structure on a site, excluding a fence or similar structure.
- (4) A covered walkway or breezeway is allowed between a primary structure and accessory structure. Such connection shall not exempt the accessory structure from compliance with the standards of this section, unless the connection is fully enclosed and meets the building code definition of a

conditioned space, and is all of the following, which results in an addition and is not an accessory structure:

- (a) Fully enclosed and meets the building code definition of a conditioned space; and
- (b) Provides a shared wall with the primary structure with the common wall being the longer of either 20 ft in length or 40% of the overall length of the wall of the primary structure (see Figure 19.502.2.A.1.b); and
- (c) Provides for interior passage between the primary structure and the new structure.

Figure 19.502.2.A.1.b
Primary Structure with Addition



CHAPTER 19.600 OFF-STREET PARKING AND LOADING

19.607 OFF-STREET PARKING STANDARDS FOR RESIDENTIAL AREAS

19.607.1 Residential Driveways and Vehicle Parking Areas

Subsection 19.607.1 is intended to preserve residential neighborhood character by establishing off-street parking standards. The provisions of Subsection 19.607.1 apply to passenger vehicles and off-street parking areas for rowhouses, cottage clusters, duplexes, single-family detached dwellings, and residential homes in all zones, unless specifically stated otherwise

E. Additional Driveway Standards

1. Parking areas and driveways on the property shall align with the approved driveway approach and shall not be wider than the approved driveway approach within ~~40~~ 5 ft of the right-of-way boundary (Option 1—see Figure 19.607.1.E.1). Alternately, a gradual widening of the onsite driveway is allowed to the 10-ft point at a ratio of 1:1 (driveway

width:distance onto property), starting 2 ft behind the front property line (Option 2—see Figure 19.607.1.E.2).

Figure 19.607.1.E.1
Driveway Widening Limitation—Option 1

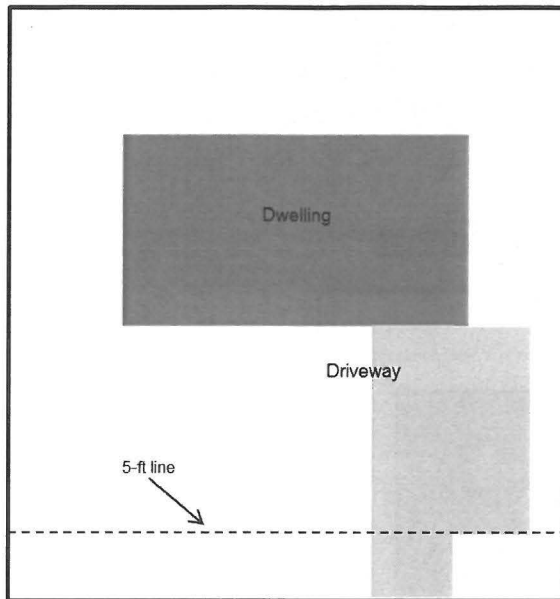
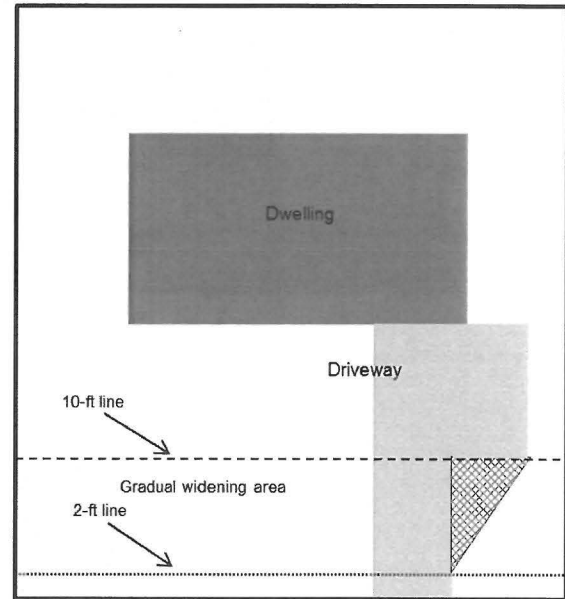


Figure 19.607.1.E.2
Driveway Widening Limitation—Option 2



CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

19.702 APPLICABILITY

19.702.1 General

Chapter 19.700 applies to the following types of development in all zones:

- A. Partitions.
- B. Subdivisions.
- C. Replats that increase the number of lots.

19.702.4 Exemptions

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

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

B. Construction or expansion of nonhabitable residential detached accessory structures. Garage and carport construction or expansions are only partially exempt. See Subsection 19.702.2.E above.

~~C. Replats that do not increase the number of lots and that access and improved street.~~

~~D.~~ Property line adjustments.

~~E.~~D. Redevelopment of a structure following partial or total accidental destruction when all of the following criteria are met:

1. The redeveloped structure has a gross floor area no larger than the structure that was destroyed.
2. The use of the structure remains the same as the use that existed before the structure was destroyed.
3. A building permit is submitted and approved by the City within 2 years of the date of accidental destruction.

If redevelopment of a structure following accidental destruction does not meet all three of these criteria, the redeveloped structure shall be subject to Subsections 19.702.1 and 2 as applicable. Redevelopment of a structure following nonaccidental destruction shall constitute new construction and is not exempt from Chapter 19.700.

~~F.~~E. Operation, maintenance, and repair of existing public facilities.

~~G.~~F. Public capital improvement projects.

19.703 REVIEW PROCESS

19.703.3 Approval Criteria

B. Transportation Facility Improvements

Development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per Section 19.705 Rough Proportionality, except as allowed by Chapter 13.32 Fee in Lieu of Construction. ~~Section 19.706 Fee in Lieu of Construction.~~

19.703.4 Determinations

D. Fee in Lieu of Construction (FILOC)

If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The Engineering Director will approve or deny such requests using the criteria for making FILOC determinations found in Chapter 13.32 Fee in Lieu of Construction. ~~Subsection 19.706.1.~~

19.706 ~~RESERVED FEE IN LIEU OF CONSTRUCTION~~

If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The fee in lieu of construction (FILOC) program ensures that opportunities to improve public transportation facilities are maximized and that the goals and requirements of this chapter are met. This section provides criteria for making FILOC determinations and administering the FILOC program.

19.706.1 ~~FILOC Criteria~~

The City may accept a fee in lieu of construction of required transportation facility improvements if one or more of the following conditions exist.

- A. ~~Required improvements are not feasible due to the inability to achieve proper design standards.~~
- B. ~~Required improvements would create a safety hazard.~~
- C. ~~Required improvements are part of a larger approved capital improvement project that is listed as a funded project in the City's Capital Improvement Program (CIP) and is scheduled for construction within 3 years of the City's approval of the proposed development.~~

19.706.2 ~~FILOC Findings~~

If the Engineering Director determines that a fee in lieu of construction satisfies one of the criteria in Subsection 19.706.1 above, the City will accept a fee upon the Engineering Director finding that deferring construction of transportation facility improvements will not result in any safety hazards. If the Engineering Director cannot make such a finding, then the City will not accept a fee and will require construction of the improvements.

19.706.3 ~~FILOC Fees~~

If determined by the Engineering Director that required transportation facility improvements are eligible for FILOC, the applicant shall pay to the City an amount equal to the estimated cost to construct the required improvements. The amount of the fee shall be determined by the Engineering Director and shall be based on the average cost of the most recent capital improvement project itemized bid prices. All fees shall be paid to the City prior to the issuance of any development permits.

- A. ~~If full transportation facility improvements have been assessed with previous development(s) on the development property and the proposed development has additional impacts, the City may only assess additional FILOC fees when there has been a change to the City's street design standards.~~
- B. ~~If partial transportation facility improvements have been assessed with previous development(s) on the development property and the proposed development has additional impacts, the City may assess additional FILOC fees for the balance of the improvements.~~

19.706.4 ~~FILOC Administration~~

Fees collected by the City may be used to construct public transportation facility improvements or to leverage additional grant money for larger transportation facility improvement projects. An accounting of fees collected and expended will be made available by the City to the public on an annual basis at the end of the fiscal year. Expenditure of fees is subject to the following:

- A. ~~Fees shall be used for construction of public transportation facility improvement projects that benefit the development site and that are within the same Neighborhood District Association (NDA) boundary as the development site, with the following two exceptions.~~
 - 1. ~~For development within a downtown zone, fees shall be used for construction of transportation facility improvements that benefit the development site and are within one or more of the downtown zones.~~
 - 2. ~~For development within the Historic Milwaukie NDA and not within a downtown zone, fees shall be used for construction of transportation facility improvements that benefit the development site and that are within the Historic Milwaukie NDA and not within a downtown zone. Fees collected in the Historic Milwaukie NDA may be spent in one or more of the downtown zones with the approval of the Historic Milwaukie NDA.~~
- B. ~~Fees shall be used within 10 years of the date on which they were collected. Fees that have not been used within 10 years of collection will be returned to the owner of the development property at the time the refund is issued.~~
- C. ~~Staff shall identify the transportation facility improvement projects that meet the requirement of benefiting the development site per Subsection 19.706.4.A and that can be constructed within the 10-year time period per Subsection 19.706.4.B. Staff shall coordinate with the neighborhood district associations to prioritize the project lists for each neighborhood.~~

CHAPTER 19.900 LAND USE APPLICATIONS

19.901 INTRODUCTION

Table 19.901 Land Use Applications		
Application Type	Municipal Code Location	Review Types
Natural Resource Review	Section 19.402	I, II, III, IV

19.904 COMMUNITY SERVICE USES

19.904.11 Standards for Wireless Communication Facilities

C. Application Process

1. Type I Review

For the purposes of this section, a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 ft, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 ft, whichever is greater;

- b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 ft, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 ft;
- c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- d. It entails any excavation or deployment outside the current site;
- e. It would defeat the concealment elements of the eligible support structure; or
- f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment.

2. Type II Review

Placement, construction, or modification of WCFs not involving the construction of a new monopole, other than those activities described in Subsection 19.904.11.C.1, are subject to 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.

3. Type III Review

All proposed new monopole towers are subject to Section 19.1006 Type III Review. Also see Table 19.904.11.C.

**Table 19.904.11.C
Wireless Communication Facilities—Type and Review Process**

Towers		WCFs Not Involving New Tower		
Zones	New Monopole Tower 100 Feet	Building Rooftop or Wall Mounted Antenna ¹	Water Towers, Existing Towers, and Other Stealth Designs	On Existing Utility Pole in Row with or w/out Extensions ²
BI	P4 III	P2 P/II	P2 P/II	P2 P/II
M	P4 III	P2 P/II	P2 P/II	P2 P/II
M-TSA	P4 III	P2 P/II	P2 P/II	P2 P/II
C-N	N	P2 P/II	P2 P/II	P2 P/II
C-G	N	P2 P/II	P2 P/II	P2 P/II
C-L	N	P2 P/II	P2 P/II	P2 P/II
C-CS	N	P2 P/II	P2 P/II	P2 P/II
OS	N	P2 P/II	P2 P/II	P2 P/II
DMU	N	P2 P/II	P2 P/II	P2 P/II
GMU	N	P2 P/II	P2 P/II	P2 P/II
NMU	N	P2 P/II	P2 P/II	P2 P/II
R-1-B	N	P2 P/II	P2 P/II	P2 P/II
R-1	N	N	P2 P/II	P2 P/II
R-2	N	N	P2 P/II	P2 P/II
R-2.5	N	N	P2 P/II	P2 P/II
R-3	N	N	P2 P/II	P2 P/II
R-5	N	N	P2 P/II	P2 P/II
R-7	N	N	P2 P/II	P2 P/II
R-10	N	N	P2 P/II	P2 P/II

¹ III = Type III review—requires a public hearing in front of the Planning Commission

² II = Type II review—provides for an administrative decision

P = Permitted—Type I review N = Not Permitted

E. Use of Existing Tower or Antenna Support Structure

2. New towers shall not be approved unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission Director that no existing towers or alternative antenna support structure can accommodate the applicant's need for the placement of an antenna in the vicinity of the applicant's proposed location. Evidence demonstrating that use of an existing or alternative support structure is not possible shall be submitted to the Planning Commission Director and shall include one or more of the following:
 - a. That no existing antenna support structures are located within the geographic area which meet the applicant's engineering requirements in regards to location, size, and structural strength and that alternative antenna support structures are not feasible.
 - b. That use of any existing structure would cause electromagnetic interference with the existing antennas and electronic and other radio frequencies.
 - c. That co-locating on an existing antenna support structure would violate RF emissions standards set by the FCC.

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- d. That fees, costs, or contractual provisions required by the owner in order to use an existing antenna support structure are unreasonable. A refusal by the owner to allow co-location shall be considered an unreasonable provision.
 3. Evidence demonstrating that alternative support structures were considered, but determined to be technologically insufficient, submitted to the Planning Commission Director for review must be verified and stamped by an engineer licensed in the State of Oregon.
- H. Expiration of Approval
- Authorization under Section 19.904 shall be void after 6 months unless substantial construction has taken place. If substantial construction has not taken place and the approval becomes void, the facility must be completely removed and the site must return to its preexisting condition. Extensions to an existing approval may be requested per Section 19.908.

19.907 DOWNTOWN DESIGN REVIEW

19.907.2 Applicability

A. Exemptions

Downtown design review does not apply to the following projects:

8. Minor site improvements, including but not limited to installation of benches, trash cans, bicycle racks, informational kiosks, site lighting, signs, and other similar improvements as determined by the Planning Director. A guide for determining whether a proposed improvement is exempt shall be the consideration of whether there are any applicable design standards provided in Section 19.508.
9. In City parks, improvements that are consistent with an approved master plan.

19.911 VARIANCES

19.911.3 Review Process

B. Type II Variances

8. A variance to fence height to allow up to a maximum of 6 ft for front yard fences and 8 ft for side yard, street side yard, and rear yard fences. Fences shall meet clear vision standards provided in Chapter 12.24.
-

CHAPTER 19.1100 ANNEXATIONS AND BOUNDARY CHANGES

19.1104 EXPEDITED PROCESS

19.1104.1 Administration and Approval Process

- E. The City zoning and Comprehensive Plan designation for an expedited annexation request shall be automatically applied based on the existing Clackamas County zoning designation in accordance with Table 19.1104.1.E, provided below:

Table 19.1104.1.E Zoning and Land Use Designations for Boundary Changes		
County Zoning Designation	Assigned City Zoning Designation	Assigned Comprehensive Plan Land Use Designation
MR1	R-5 <u>R-2</u>	Moderate <u>Medium</u> density residential
I2L	MBI	Industrial
I3G	M	Industrial

Underline/Strikeout Amendments

Title 19 Zoning

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

“Utility facilities” means buildings, structures, or any constructed portion of a system which provides for the production, transmission, conveyance, delivery, or furnishing of services, including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone, and cable television. Utility facilities do not include stormwater facilities (such as wetlands, swales, and ponds that are maintained as stormwater facilities) but do include pipes, culverts, and similar enclosed structures that convey protected water features.

CHAPTER 19.300 BASE ZONES

19.303.2 Uses

Table 19.303.2 CONTINUED			
Uses Allowed in Commercial Mixed-Use Zones			
Uses and Use Categories	GMU	NMU	Standards/Additional Provisions
Institutional			
Community service uses	CSU	CSU	Section 19.904 Community Service Uses
Accessory and Other			
Accessory use	P	P	Section 19.503 Accessory Uses
Home occupation	P	P	Section 19.507 Home Occupation Standards

19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- E. Eating establishments, provided the floor area does not exceed 3,250 sq ft and the use does not include drive-through facilities.

19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- O. Eating establishments that exceed 3,250 sq ft in floor area;
- P. Any other use similar to the above and not listed elsewhere.

19.310 BUSINESS INDUSTRIAL ZONE BI

19.310.2 Uses Permitted Outright

- D. Contractors and Related Businesses. Businesses whose primary activity is performing specific building or other construction-related work, on- or offsite. Examples include: residential and nonresidential building construction, utility/civil engineering construction, specialty trade contractors, and moving companies.
- E. Any other use similar to the above uses but not listed elsewhere.

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.401 WILLAMETTE GREENWAY ZONE WG

19.401.4 Definitions

“Change of use” means making a different use of the land or water which requires construction; alterations of the land, river bed, bank, water, or other areas outside of existing buildings or structures; and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios) shall not be considered a change of use.

“Intensification” means any change of use; or action which increases or expands the area or amount of an existing use or the level of activity, including remodeling the exterior of a structure if the remodeling substantially alters the appearance of the structure. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the WG Zone includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios) shall not be considered an intensification of use.

19.401.5 Procedures

- A. In the WG Zone, all uses and their accessory uses are permitted subject to the provisions of Section 19.905, except as noted in Subsection 19.401.5.B and Subsection 19.401.5.D.

- B. Willamette Greenway review is not required for any of the activities listed below:
1. Changes to the interior of a building or alterations of buildings or accessory structures that do not increase the size or alter the configuration of the building or accessory structure footprint;
 2. Normal maintenance and repair as necessary for an existing development;
 3. Removal of plants listed as nuisance species on the Milwaukie Native Plant List;
 4. Addition or modification of existing utility lines, wires, fixtures, equipment, circuits, appliances, and conductors by public or municipal utilities;
 5. Flood emergency procedures, and maintenance and repair of existing flood control facilities;
 6. Placement of signs, markers, aids, etc., by a public agency to serve the public;
 7. Establishment of residential accessory uses, such as lawns, gardens, and play areas, subject to the vegetation buffer requirements of Subsection 19.401.8;
 8. Ordinary maintenance and repair of existing buildings, structures, parking lots, or other site improvements;
 9. Minor repairs or alterations to existing structures for which no building permit is required;
 10. A change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated;
 11. Construction of driveways;
 12. Reasonable emergency procedures as necessary for the safety or protection of property; and
 13. Other activities similar to those listed in "1," through "12," above. Such Director determinations, including a finding of consistency with Goal 15, shall be made in accordance with Section 19.903.
- C. The Oregon Department of Parks and Recreation shall be notified of a hearing on a conditional use in the WG Zone. The notice shall be sent via "certified mail, return receipt requested."
-

19.402 NATURAL RESOURCES NR

19.402.3 Applicability

- I. Those portions of streams, creeks, and other protected water features that appear on the NR Administrative Map but are enclosed in pipes, culverts, or similar structures are not subject to the provisions of Section 19.402, except where a proposed activity will expose or directly disturb the protected water feature, such as with excavation. For WQRs, the underground portion of the protected water feature is not considered a protected water feature for purposes of determining the WQR location as outlined in MMC Table 19.402.15. For HCAs, the boundary verification options provided in MMC 19.402.15 may be used as necessary to determine whether the aboveground characteristics of the underground portion of the protected water feature affects the representation of HCA on the NR Administrative Map.

- L. Where WQRs and HCAs overlap, the WQR overlap area is not included in any calculations of the HCA area for purposes of determining whether HCA-only exemptions are allowed or for calculating allowable HCA disturbances.

19.402.4 Exempt Activities

A. Outright Exemptions

The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

- 6. Removal of trees under any of the following circumstances:
 - e. Major pruning of trees within 10 ft of existing structures.
- 18. Installation and maintenance of erosion control measures that have been reviewed and approved by the City.

19.402.6 Activities Requiring Type I Review

Within either WQRs or HCAs, the following activities and items are subject to Type I review per Section 19.1004:

A. Limited Tree Removal

- 1. The Planning Director may approve an application for limited tree removal or major pruning within WQRs and HCAs, except where exempted by Subsection 19.402.6.A.2, under any of the following circumstances:
- 2. The provisions of Subsection 19.402.6.A.1 do not apply to tree removal proposed in association with development or other activities regulated by Section 19.402, for which other approval criteria and mitigation standards may apply.
- 3. The Planning Director shall require the application to comply with all of the following standards:
 - c. Any tree that is removed in accordance with Subsection 19.402.6.A shall be replaced with a new tree, of at least ½-in caliper or at least 6-ft overall height after planting. An exception to this requirement may be granted if the applicant demonstrates that a replacement tree has already been planted, in anticipation of tree removal, or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons).

B. Activities within HCAs in Compliance with Nondiscretionary Standards

Within HCAs, but outside of WQRs, nonexempt development that is not listed in Subsections 19.402.7 or 19.402.8, and that is in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D, is subject to Type I review.

C. Natural Resource Management Plans

Natural resource management plans that meet the standards outlined in Subsection 19.402.10.A are subject to Type I review. These are typically plans that have already been approved by a qualified agency.

D. Maintenance of Existing Utility Facilities

Routine repair and maintenance of existing utility facilities, accesses, streets, driveways, and/or parking improvements that disturbs a WQR and/or HCA is subject to Type I review, provided such activities can meet the general standards for special uses established in Subsection 19.402.11.E.1. These include, but are not limited to, the requirement to provide a mitigation plan and to restore the disturbed area.

E. Utility Connections

Unless they are exempt per Subsection 19.402.4, connections to existing or new utility lines that involve disturbance to a WQR and/or HCA are subject to Type I review against the following criteria:

1. The activities required to establish the connection shall not disturb a protected water feature. Utility connections that will disturb a protected water feature are subject to the review procedures for special uses established in Subsection 19.402.11.E.
2. The activities required to establish the connection shall not disturb an area greater than 10 ft wide.
3. The connection can meet the general standards for special uses established in Subsection 19.402.11.E.1.

F. Nuisance Abatement

Measures to remove or abate nuisances; or any other violation of State statute, administrative agency rule, or City or County ordinance; shall be subject to Type I review of a construction management plan, to be approved by the Planning Director prior to the abatement activity. The person or agency undertaking the action shall repair any impacts to the designated natural resource resulting from the nuisance or violation (e.g., restore disturbed soils, restore hydrologic connections, replant disturbed areas with native vegetation, etc.) unless subsequent development has been approved.

G. Boundary Verification

Boundary verifications that propose minor corrections will be processed in accordance with Subsection 19.402.15.A.1 and are subject to Type I review.

19.402.7 Activities Requiring Type II Review

D. Other Uses and Activities with Minimal Impacts to WQRs

3. Routine repair and maintenance, alteration, and/or total replacement of existing legal buildings or structures that increases the existing disturbance area by no more than 150 sq ft within the WQR.
4. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that increases the existing disturbance area by no more than 150 sq ft within the WQR. Activities approved under this subsection shall be subject to the following requirements:
 - a. Restore the disturbed portion of the WQR.

- b. Within the disturbed portion of the WQR, remove any vegetation categorized as a nuisance species on the Milwaukie Native Plant List and replace it with native vegetation from the list.

19.402.8 Activities Requiring Type III Review

Within either WQRs or HCAs, the following activities are subject to Type III review and approval by the Planning Commission under Section 19.1006, unless they are otherwise exempt or permitted as a Type I or II activity.

- A. The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.402.12:
 - 10. Routine repair and maintenance, alteration, and/or total replacement of existing legal buildings or structures that increases the existing disturbance area by more than 150 sq ft within the WQR.

19.402.9 Construction Management Plans

- A. Construction management plans are not subject to Type I review per Section 19.1004 but shall be reviewed in similar fashion to an erosion control permit (MMC Chapter 16.28).

19.402.11 Development Standards

- B. General Standards for Required Mitigation

- 3. Plant Size

- Required mitigation trees shall average at least a ½-in caliper—measured at 6 in above the ground level for field-grown trees or above the soil line for container-grown trees—unless they are oak or madrone, which may be 1-gallon size. Required mitigation shrubs shall be at least 1-gallon size and 12 in high.

- D. Nondiscretionary Standards for HCAs

- 1. Disturbance Area Limitations in HCAs

- To avoid or minimize impacts to HCAs, activities that are not otherwise exempt from the requirements of Section 19.402, and that would disturb an HCA, are subject to the following disturbance area limitations, as applicable:

- b. All Other Uses

- A maximum net disturbance area of 10% of the HCA on the site is allowed by right, subject to the mitigation requirements described in Subsection 19.402.11.D.2

19.402.12 General Discretionary Review

- C. Limitations and Mitigation for Disturbance of HCAs

- 1. Discretionary Review to Approve Additional Disturbance within an HCA

- An applicant seeking discretionary approval to disturb more of an HCA than is allowed by Subsection 19.402.11.D.1 shall submit an Impact Evaluation and Alternatives

Analysis, as outlined in Subsection 19.402.12.A, and shall be subject to the approval criteria provided in Subsection 19.402.12.B.

An applicant may use the nondiscretionary mitigation options presented in Subsection 19.402.11.D.2 as a guide for proposing mitigation measures that will then be evaluated against the approval criteria provided in Subsection 19.402.12.B.

19.402.15 Boundary Verification and Map Administration

A. Boundary Verification

3. Type III or V Boundary Verification

Corrections to mapped WQRs or HCAs that are not subject to processing according to the provisions outlined in either of Subsections 19.402.15.A.1 or A.2, such as in cases where the City initiates the change without property owner authorization and/or where the changes involve more properties than for which it is practicable to obtain all property owners' authorization, shall be processed in accordance with the procedures for zoning map amendments as provided in Subsection 19.902.6. Such corrections shall be processed with either Type III or Type V review, accordingly, but do not constitute amendments to the zoning map itself, only to the NR Administrative Map.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.502 ACCESSORY STRUCTURES

19.502.2 Specific Provisions for Accessory Structures

- A. The following standards apply for residential accessory structures on single-family detached, duplex, rowhouse, and cottage cluster properties. The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios.

The purpose of these standards is to allow accessory structures that accommodate the typical needs of a single-family residence, while protecting the character of single-family neighborhoods.

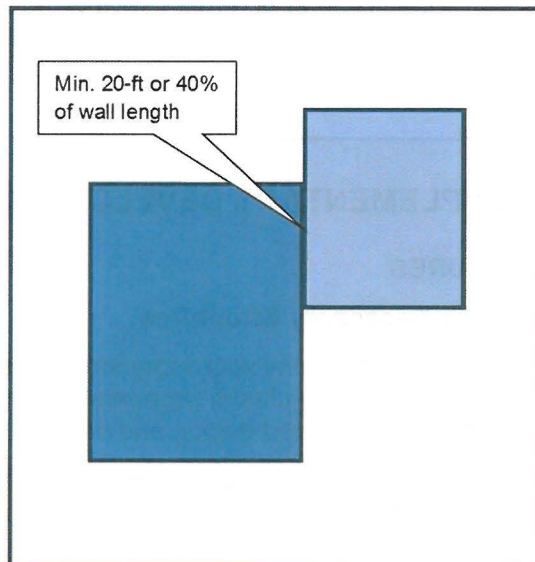
1. Development Standards

b. Other Development Standards

- (1) Maximum accessory structure footprint allowance is subject to lot coverage and minimum vegetation standards of the base zone. Multiple accessory structures are allowed on a lot, subject to lot coverage and minimum vegetation standards of the base zone.
- (2) The yard exceptions in Subsection 19.501.2 are applicable for accessory structures.
- (3) A minimum of 5 ft is required between the exterior wall of an accessory structure and any other structure on a site, excluding a fence or similar structure.

- (4) A covered walkway or breezeway is allowed between a primary structure and accessory structure. Such connection shall not exempt the accessory structure from compliance with the standards of this section, unless the connection is fully enclosed and meets the building code definition of a conditioned space, and is all of the following, which results in an addition and is not an accessory structure:
- (a) Fully enclosed and meets the building code definition of a conditioned space; and
 - (b) Provides a shared wall with the primary structure with the common wall being the longer of either 20 ft in length or 40% of the overall length of the wall of the primary structure (see Figure 19.502.2.A.1.b); and
 - (c) Provides for interior passage between the primary structure and the new structure.

**Figure 19.502.2.A.1.b
Primary Structure with Addition**



CHAPTER 19.600 OFF-STREET PARKING AND LOADING

19.607 OFF-STREET PARKING STANDARDS FOR RESIDENTIAL AREAS

19.607.1 Residential Driveways and Vehicle Parking Areas

Subsection 19.607.1 is intended to preserve residential neighborhood character by establishing off-street parking standards. The provisions of Subsection 19.607.1 apply to passenger vehicles and off-street parking areas for rowhouses, cottage clusters, duplexes, single-family detached dwellings, and residential homes in all zones, unless specifically stated otherwise

E. Additional Driveway Standards

1. Parking areas and driveways on the property shall align with the approved driveway approach and shall not be wider than the approved driveway approach within 5 ft of the right-of-way boundary (Option 1—see Figure 19.607.1.E.1). Alternately, a gradual widening of the onsite driveway is allowed to the 10-ft point at a ratio of 1:1 (driveway width:distance onto property), starting 2 ft behind the front property line (Option 2—see Figure 19.607.1.E.2).

Figure 19.607.1.E.1
Driveway Widening Limitation—Option 1

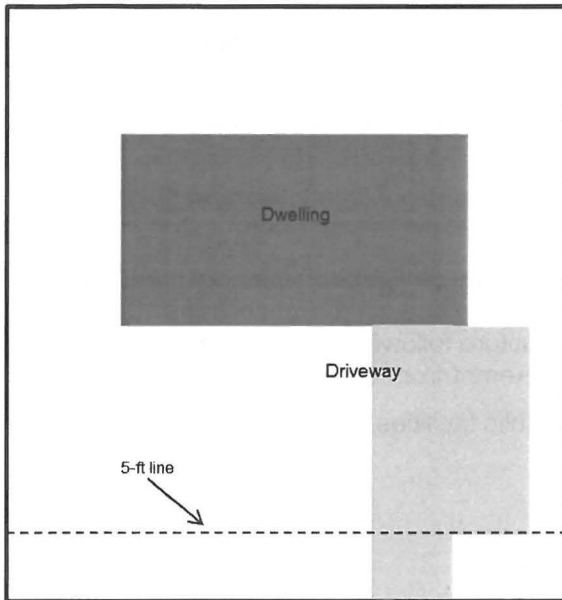
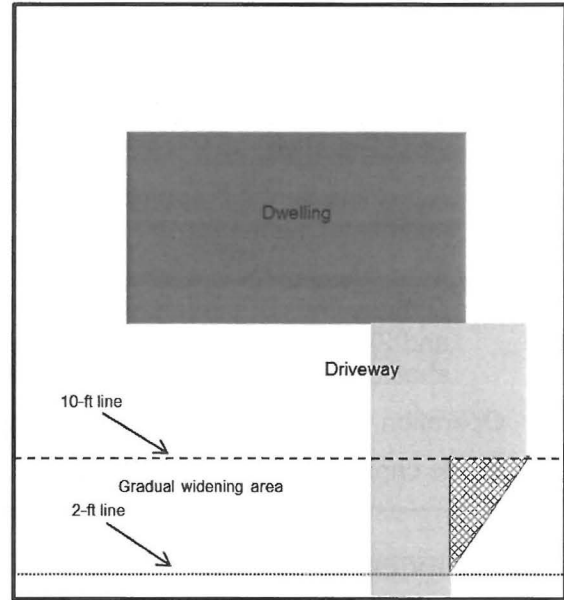


Figure 19.607.1.E.2
Driveway Widening Limitation—Option 2



CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

19.702 APPLICABILITY

19.702.1 General

Chapter 19.700 applies to the following types of development in all zones:

- A. Partitions.
- B. Subdivisions.
- C. Replats.

19.702.4 Exemptions

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

Proposed Code Amendment

- A. Modifications to existing single-family residential structures that do not result in an increase in gross floor area.
 - B. Construction or expansion of nonhabitable residential detached accessory structures. Garage and carport construction or expansions are only partially exempt. See Subsection 19.702.2.E above.
 - C. Property line adjustments.
 - D. Redevelopment of a structure following partial or total accidental destruction when all of the following criteria are met:
 - 1. The redeveloped structure has a gross floor area no larger than the structure that was destroyed.
 - 2. The use of the structure remains the same as the use that existed before the structure was destroyed.
 - 3. A building permit is submitted and approved by the City within 2 years of the date of accidental destruction.

If redevelopment of a structure following accidental destruction does not meet all three of these criteria, the redeveloped structure shall be subject to Subsections 19.702.1 and 2 as applicable. Redevelopment of a structure following nonaccidental destruction shall constitute new construction and is not exempt from Chapter 19.700.
 - E. Operation, maintenance, and repair of existing public facilities.
 - F. Public capital improvement projects.
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19.703 REVIEW PROCESS

19.703.3 Approval Criteria

- B. Transportation Facility Improvements

Development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per Section 19.705 Rough Proportionality, except as allowed by Chapter 13.32 Fee in Lieu of Construction.

19.703.4 Determinations

- D. Fee in Lieu of Construction (FILOC)

If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The Engineering Director will approve or deny such requests using the criteria for making FILOC determinations found in Chapter 13.32 Fee in Lieu of Construction.

19.706 RESERVED

CHAPTER 19.900 LAND USE APPLICATIONS

19.901 INTRODUCTION

Table 19.901 Land Use Applications		
Application Type	Municipal Code Location	Review Types
Natural Resource Review	Section 19.402	I, II, III, V

19.904 COMMUNITY SERVICE USES

19.904.11 Standards for Wireless Communication Facilities

C. Application Process

1. Type I Review

For the purposes of this section, a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 ft, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 ft, whichever is greater;
- b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 ft, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 ft;
- c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- d. It entails any excavation or deployment outside the current site;
- e. It would defeat the concealment elements of the eligible support structure; or
- f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment.

2. Type II Review

Proposed Code Amendment

Placement, construction, or modification of WCFs not involving the construction of a new monopole, other than those activities described in Subsection 19.904.11.C.1, are subject to 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.

3. Type III Review

All proposed new monopole towers are subject to Section 19.1006 Type III Review. Also see Table 19.904.11.C.

Table 19.904.11.C Wireless Communication Facilities—Type and Review Process				
Towers		WCFs Not Involving New Tower		
Zones	New Monopole Tower 100 Ft	Building Rooftop or Wall Mounted Antenna	Water Towers, Existing Towers, and Other Stealth Designs	On Existing Utility Pole in Row with or w/out Extensions
BI	III	P/II	P/II	P/II
M	III	P/II	P/II	P/II
M-TSA	III	P/II	P/II	P/II
C-N	N	P/II	P/II	P/II
C-G	N	P/II	P/II	P/II
C-L	N	P/II	P/II	P/II
C-CS	N	P/II	P/II	P/II
OS	N	P/II	P/II	P/II
DMU	N	P/II	P/II	P/II
GMU	N	P/II	P/II	P/II
NMU	N	P/II	P/II	P/II
R-1-B	N	P/II	P/II	P/II
R-1	N	N	P/II	P/II
R-2	N	N	P/II	P/II
R-2.5	N	N	P/II	P/II
R-3	N	N	P/II	P/II
R-5	N	N	P/II	P/II
R-7	N	N	P/II	P/II
R-10	N	N	P/II	P/II

III = Type III review—requires a public hearing in front of the Planning Commission

II = Type II review—provides for an administrative decision

P = Permitted—Type I review N = Not Permitted

E. Use of Existing Tower or Antenna Support Structure

2. New towers shall not be approved unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission that no existing towers or alternative antenna support structure can accommodate the applicant's need for the placement of an antenna in the vicinity of the applicant's proposed location. Evidence demonstrating

that use of an existing or alternative support structure is not possible shall be submitted to the Planning Commission and shall include one or more of the following:

- a. That no existing antenna support structures are located within the geographic area which meet the applicant's engineering requirements in regards to location, size, and structural strength and that alternative antenna support structures are not feasible.
 - b. That use of any existing structure would cause electromagnetic interference with the existing antennas and electronic and other radio frequencies.
 - c. That co-locating on an existing antenna support structure would violate RF emissions standards set by the FCC.
 - d. That fees, costs, or contractual provisions required by the owner in order to use an existing antenna support structure are unreasonable. A refusal by the owner to allow co-location shall be considered an unreasonable provision.
3. Evidence demonstrating that alternative support structures were considered, but determined to be technologically insufficient, submitted to the Planning Commission for review must be verified and stamped by an engineer licensed in the State of Oregon.

H. Expiration of Approval

Authorization under Section 19.904 shall be void after 6 months unless substantial construction has taken place. If substantial construction has not taken place and the approval becomes void, the facility must be completely removed and the site must return to its preexisting condition. Extensions to an existing approval may be requested per Section 19.908.

19.907 DOWNTOWN DESIGN REVIEW

19.907.2 Applicability

A. Exemptions

Downtown design review does not apply to the following projects:

8. Minor site improvements, including but not limited to installation of benches, trash cans, bicycle racks, informational kiosks, site lighting, signs, and other similar improvements as determined by the Planning Director. A guide for determining whether a proposed improvement is exempt shall be the consideration of whether there are any applicable design standards provided in Section 19.508.
9. In City parks, improvements that are consistent with an approved master plan.

19.911 VARIANCES

19.911.3 Review Process

B. Type II Variances

8. A variance to fence height to allow up to a maximum of 6 ft for front yard fences and 8 ft for side yard, street side yard, and rear yard fences. Fences shall meet clear vision standards provided in Chapter 12.24.

CHAPTER 19.1100 ANNEXATIONS AND BOUNDARY CHANGES

19.1104 EXPEDITED PROCESS

19.1104.1 Administration and Approval Process

- E. The City zoning and Comprehensive Plan designation for an expedited annexation request shall be automatically applied based on the existing Clackamas County zoning designation in accordance with Table 19.1104.1.E, provided below:

Table 19.1104.1.E Zoning and Land Use Designations for Boundary Changes		
County Zoning Designation	Assigned City Zoning Designation	Assigned Comprehensive Plan Land Use Designation
MR1	R-2	Medium density residential
LI	BI	Industrial
GI	M	Industrial