



COUNCIL ORDINANCE No. 2170

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19 ZONING TO MAKE CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF CLARIFICATION AND IMPROVED EFFECTIVENESS (FILE #ZA-2018-004).

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 November 13, 2018, the Milwaukie Planning Commission conducted a public hearing, as required by Milwaukie Municipal Code (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.

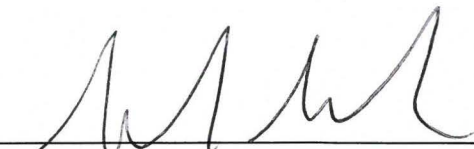
Section 2. Amendments. The (MMC) is amended as described in Exhibit B (Title 19 Zoning underline/strikeout version), and Exhibit C (Title 19 Zoning clean version).

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

Read the first time on 3/19/19, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 3/19/19

Signed by the Mayor on 3/19/19



Mark F. Gamba, Mayor

APPROVED AS TO FORM:

ATTEST:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

Recommended Findings in Support of Approval
File #ZA-2018-004, Code Fix 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-2018-004.
2. The purpose of the proposed code amendments is clarifications 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 the municipal code as follows:
 - MMC 19.304 – Downtown Zones – correct a mathematical error in Table 19.304.2 regarding building height; correct an inconsistency between the table of standards and Figure 19.304-4.
 - MMC 19.510 – Green Building Standards - create a new section related to green building standards for height bonuses. Reference corrections are made to correspond to this new section.
 - MMC 19.911 – Variances – clarify that a building height variance in the DMU would not be an option for developments that are proposed to exceed the allowed building height without height bonuses, or that do not elect to use height bonuses
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.1000 Review Procedures
4. 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 November 13 and December 20, 2018, as required by law.
5. 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 November 13, 2018. A public hearing before City Council is scheduled for March 19, 2019. 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 minor adjustments to 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.

(i) Energy Conservation Element – Goal statement:

To conserve energy by encouraging energy efficient land use patterns and transportation systems, and by encouraging the construction industry and private homeowners to participate in energy conservation programs.

Objective #3 – Construction states:

To encourage the construction industry to construct energy efficient residential, commercial and industrial facilities.

The intent of the proposed amendment to green building standards is to require a higher level of sustainable design and construction in new developments that seek height bonuses. Buildings that are more efficient and perform better than required by the building code are encouraged, using a height bonus as an incentive.

(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.

6. MMC 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 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 June 20, 2018.

- 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 City Council had a worksession on the proposed amendments on July 17, 2018 and August 21, 2018. The Planning Commission had a worksession about the proposed amendments on August 28, 2018. The current version of the draft amendments has been posted on the City's website since October 12, 2018. On October 12, 2018 staff emailed 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 November 13, 2018, hearing was posted as required on October 12, 2018. A notice of the City Council's December 18, 2018 hearing was posted as required on November 16, 2018.

- (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 the proposal affects a large geographic area.

- (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 9, 2018.

- (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 28, 2018.

- (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.

Notice to individual property owners in the North Milwaukie Industrial Area, the Downtown Mixed Use Zone, and the General Mixed Use Zone regarding the new Green Building Standards in MMC 19.510 was sent on October 8, 2018.

- (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 November 13, 2018 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on March 19, 2019 and approved the amendments.

Underline/Strikeout Amendments

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.303 COMMERCIAL MIXED-USE ZONES

19.303.3 Development Standards

Table 19.303.3 Commercial Mixed Use Zones—Summary of Development Standards			
Standard	GMU	NMU	Standards/ Additional Provisions
B. Development Standards			
1. Minimum floor area ratio	0.5:1	0.5:1	Subsection 19.303.4.A Floor Area Ratio
2. Building height (ft)			Subsection 19.303.4.B Building Height
a. Base maximum	45	45	Section 19.510 Green Building Standards
b. Maximum with height bonus	57–69	Height bonus not available	Subsection 19.911.7 Building Height Variance in the General Mixed Use Zone

19.303.4 Detailed Development Standards

The following detailed development standards describe additional allowances, restrictions, and exemptions related to the development standards of Table 19.303.3.

B. Building Height

1. Intent

Maximum building height standards promote a compatible building scale and relationship of one structure to another.

2. Standards

- a. The base maximum building height in the GMU Zone is 3 stories or 45 ft, whichever is less. Height bonuses are available for buildings that meet the standards of Subsection 19.303.4.B.3.
- b. Buildings in the GMU Zone shall provide a step back of at least 15 ft for any street-facing portion of the building above the base maximum height as shown in Figure 19.303.4.B.2.b.
- c. The maximum building height in the NMU Zone is 3 stories or 45 ft, whichever is less. No building height bonuses are available in the NMU Zone.

3. Height Bonuses

To incentivize the provision of additional public amenities or benefits beyond those required by the baseline standards, height bonuses are available for buildings that include desired public amenities or components, increase area vibrancy, and/or help meet sustainability goals.

A building in the GMU Zone can utilize up to 2 of the development incentive bonuses in Subsection 19.303.4.B.3.a. and ~~3-b~~ Section 19.510, for a total of 2 stories or 24 ft of additional height, whichever is less. Buildings that elect to use both height bonuses for a 5-story building are subject to Type III review per Subsection 19.911.7 Building Height Variance in the General Mixed Use Zone.

a. Residential

New buildings that devote at least 1 story or 25% of the gross floor area to residential uses are permitted 1 additional story or an additional 12 ft of building height, whichever is less.

b. Green Building

Project proposals that receive approvals and certification as identified in Section 19.510 are permitted 1 additional story or an additional 12 ft of building height, whichever is less.

~~Project proposals that receive certification (any level) under an ANSI-approved green building rating system (e.g., LEED, Green Globes, or Earth Advantage) are permitted 1 additional story or an additional 12 ft of building height, whichever is less.~~

19.304 DOWNTOWN ZONES

19.304.4 Development Standards

Table 19.304.4 Downtown Zones—Summary of Development Standards			
Standard	DMU	OS	Standards/ Additional Provisions
B. Development Standards			
1. Building height (ft)			
a. Minimum	25	None	Subsection 19.304.5.B Building Height Figure 19.304-4 Base Maximum Building Heights Subsection 19.304.5.I Transition Measures Subsection 19.304.5.B.3 Height Bonuses <u>Section 19.510 Green Building Standards</u> <u>Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone</u>
b. Maximum	45-69 35-65 (height bonus available)	15	

19.304.5 Detailed Development Standards

The following detailed development standards describe additional allowances, restrictions, and exemptions related to the development standards of Table 19.304.4.

B. Building Height

3. Height Bonuses

c. Green Building

Project proposals that receive approvals and certification as identified in Section 19.510 are permitted 1 additional story or an additional 12 ft of building height, whichever is less.

New buildings that receive certification (any level) under an ANSI-approved green building rating system (e.g., LEED, Earth Advantage, or Green Globes-certified) are permitted 1 additional story or an additional 12 ft of building height, whichever is less.

Height bonus eligibility shall be verified at the time of building permit submittal and shall be contingent upon submittal of green building certification. The height bonus may be binding under a development agreement and height bonus awards may be revoked, and/or other permits or approvals may be withheld, if the project fails to achieve certification.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.510 Green Building Standards

Green building is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's life cycle from siting to design, construction, operation, maintenance, renovation, and deconstruction. For the purposes of height bonuses and/or meeting the local criteria for the Milwaukie Vertical Housing Development Zone Program (MMC Chapter 3.65), a green building shall be defined as a building that will achieve certification or similar approval documentation, as applicable, at any level of one of the following programs:

1. Living Building Challenge;
2. LEED;
3. Earth Advantage;
4. Passive House;
5. Enterprise Green Communities; or
7. Energy Trust of Oregon's New Buildings program confirming participation in the Path to Net Zero program offering.

Height bonus eligibility shall be verified at the time of building permit submittal and shall be contingent upon a green building certification submittal. The height bonus may be binding under a development agreement and height bonus awards may be revoked, and/or other permits or

approvals may be withheld, if the project fails to achieve the required energy reduction and/or certification.

CHAPTER 19.900 LAND USE APPLICATIONS

19.911 VARIANCES

19.911.6 Building Height Variance in the Downtown Mixed Use Zone

B. Applicability

The Type III building height variance is an option for proposed buildings that exceed the base maximum building heights or stories allowed through the bonuses specified in Figure 19.304-4, ~~and do not elect to use the height bonuses in Subsection 19.304.5.B.3, and~~ Section 19.510.

Clean Amendments

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B. Building Height

3. Height Bonuses

c. Green Building

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CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.510 Green Building Standards

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Height bonus eligibility shall be verified at the time of building permit submittal and shall be contingent upon a green building certification submittal. The height bonus may be binding under a development agreement and height bonus awards may be revoked, and/or other permits or approvals may be withheld, if the project fails to achieve the required energy reduction and/or certification.

CHAPTER 19.900 LAND USE APPLICATIONS

19.911 VARIANCES

19.911.6 Building Height Variance in the Downtown Mixed Use Zone

B. Applicability

The Type III building height variance is an option for proposed buildings that exceed the maximum heights or stories allowed through the bonuses specified in Figure 19.304-4, Subsection 19.304.5.B.3, and Section 19.510.
