



CITY OF MILWAUKIE

AGENDA

October 8, 2019

PLANNING COMMISSION

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

1.0 Call to Order - Procedural Matters — 6:30 PM

2.0 Information Items

3.0 Audience Participation — This is an opportunity for the public to comment on any item not on the agenda

4.0 Public Hearings — Public hearings will follow the procedure listed on the reverse side

4.1 Summary: Continuation of NR-2018-005, Elk Rock Estates

Applicant: Matthew Gillis, Gillis Properties

Address: 12205/12225 SE 19th Ave

File: NR-2018-005

Staff: Vera Kolas, Associate Planner

5.0 Worksession Items

5.1 Summary: Planning Commission Work Program

Staff: Dennis Egner, Senior Planner

6.0 Planning Department Other Business/Updates

7.0 Planning Commission Committee Updates and Discussion Items — This is an opportunity for comment or discussion for items not on the agenda.

8.0 Forecast for Future Meetings

October 15, 2019 1. Worksession Item: Joint Session with City Council: Planning Commission Work Program

October 22, 2019 1. Hearing Item: MLP-2019-002, Two-Lot Partition of 5084 SE King Rd
2. Hearing Item: VR-2019-009, Driveway Variance at 8949 SE 32nd Ave
3. Hearing Item: S-2018-001, SE 55th Ave & SE Railroad Ave Subdivision

4. Worksession Item: Comprehensive Plan Update- Comment on Final Versions of Policies

November 12, 2019 1. Hearing Item: Interim ADU Code Amendments to Comply with House Bill 2001

2. Worksession Item: Joint Session with City Council to Review Draft Comprehensive Plan

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

- 1. PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@milwaukieoregon.gov. Thank you.
- 2. PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
- 3. FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
- 4. TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

- 1. STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
- 2. CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
- 3. APPLICANT'S PRESENTATION.**
- 4. PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
- 5. NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
- 6. PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
- 7. QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
- 8. REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
- 9. CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
- 10. COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
- 11. MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Kim Travis, Chair
John Henry Burns, Vice Chair
Adam Argo
Joseph Edge
Greg Hemer
Lauren Loosveldt
Robert Massey

Planning Department Staff:

Denny Egner, Planning Director
David Levitan, Senior Planner
Brett Kelder, Associate Planner
Vera Koliass, Associate Planner
Mary Heberling, Assistant Planner
Dan Harris, Administrative Specialist II
Alicia Martin, Administrative Specialist II



CITY OF MILWAUKIE

M E M O R A N D U M

To: Planning Commission

Through: Dennis Egner, Planning Director

From: Vera Koliass, Associate Planner

Date: October 1, 2019, for October 8, 2019, continued Public Hearing

Subject: Recommended Findings for Denial

File: NR-2018-005 (master)

Applicant: Gillis Properties, LLC

Owner(s): Same

Address: 12205-12225 SE 19th Ave

Legal Description (Map & Tax Lot): 11E35DD 03200 & 03300

NDA: Island Station

Attached please find recommended findings for denial of land use application #NR-2018-005 (master file), to support the tentative decision reached at the September 10, 2019 public hearing.

**Recommended Findings for Denial
File #NR-2018-005, Elk Rock Estates**

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, Matthew Gillis of Gillis Properties LLC, has applied for approval of a natural resources cluster development at 12205-12225 SE 19th Ave. This site is in the R-5 Zone. The land use application file number is NR-2018-005.
2. The applicant seeks approval for a Natural Resources Cluster Development with a total of 12 single family detached homes (10 new and 2 existing homes to be remodeled) on a site located between 19th Ave and the Willamette slough adjacent to Elk Rock Park. The site includes 100-yr floodplain, mapped natural resource areas, and the Willamette Greenway. Variances are requested to a side yard setback, a front yard setback, building height for the homes not adjacent to 19th Ave, and to allow garage doors to exceed 50% of the building width.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12.16 Access Management
 - MMC 12.24 Clear Vision at Intersections
 - MMC 18.04 Flood Hazard Area
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.401 Willamette Greenway Zone
 - MMC 19.402 Natural Resources
 - MMC 19.504 Site Design Standards
 - MMC 19.505 Building Design Standards
 - MMC 19.600 Off-Street Parking and Loading
 - MMC 19.700 Public Facility Improvements
 - MMC 19.911 Variances
 - MMC 19.1006 Type III Review

Only the sections relevant to the decision for denial of the application are addressed below.

4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. Public hearings were held on July 23, September 10, and October 8, 2019 as required by law.
5. MMC 18 Flood Hazard Regulations
 - a. MMC 18.04 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations established in MMC Title 18 do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development that may increase flood

damage; and preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards in other areas. As per MMC Section 18.04.100, a development permit is required prior to any construction or development within the flood management area.

The project site is located in an area of “special flood hazard” – an area subject to a 1% or greater chance of flooding in a given year. The applicant states within the application materials that they acknowledge the inherent risks of building within the floodplain and will construct the project in accordance with current federal and local requirements for construction of homes within a floodplain through obtaining all relevant permits. The Planning Commission notes that evidence has not been provided demonstrating that all permits can be obtained.

The Planning Commission finds that MMC 18 applies to the proposed development.

(1) MMC 18.04.150 General Standards

MMC 18.04.150 establishes the required standards for development in a flood hazard area.

(a) Anchoring

- (i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (ii) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement to the structure, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, over-the-top and frame ties to ground anchors (reference FEMA’s “Manufactured Home Installation in Flood Hazard Areas” guidebook for additional techniques).

The applicant proposes that all new structures in this development will be securely anchored to properly designed foundations to prevent flotation, lateral movement or collapse in accordance with accepted engineering practices. The Planning Commission notes that it is unclear, based on a lack of definitive data related to the velocity of floodwater, what standards will apply for the foundation design.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

(b) Construction Materials and Methods

- (i) All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.

- (ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (iii) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

The applicant proposes that all new structures would be constructed with concrete foundations extending above the 100-year flood elevation with flood vents to allow for unrestricted flow of flood water. Electrical, heating, ventilation and plumbing systems would be elevated above flood elevation or designed to be watertight per local and federal design guidelines for “floodproof” construction. These standards must also apply to substantially improved structures.

The proposed development is in an area of likely high flood velocity. The applicant has insisted in communication with city staff on utilizing foundation designs that are discouraged by federal guidance. The applicant did not consider minimizing flood damages through utilizing pier, post, or piling foundations. The applicant is not proposing these foundation types, even though they are preferred by FEMA guidance and are approved alternatives for minimizing disturbances in natural resource areas (MMC 19.402.12.B.1.b.(2).(a)).

(c) Utilities

- (i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- (iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

The applicant proposes that all new water supply and sanitary sewer systems would be designed to minimize or eliminate infiltration of floodwaters. The Planning Commission notes that there is an inherent risk associated with locating water supply and sanitary sewer systems in areas that are susceptible to flooding.

(d) Subdivision Proposals

- (i) All subdivision proposals shall be consistent with the need to minimize flood damage.

- (ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- (iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (iv) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

No subdivision is proposed with this application. This application is for a 12-unit condominium development. This criterion does not apply.

(e) Review of Building Permits

Where elevation data are not available, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

Federally established flood elevation data is available for the site. The applicable Flood Insurance Rate Map (FIRM) is 41005C0017D. The flood elevation of the 1996 areas of inundation has been established by MMC 18.04.030.

(f) Balanced Cut and Fill

The displacement of flood storage area by the placement of fill or structures (including building foundations) shall conform to the following standards for balanced cut and fill:

- (i) The placement of fill or structures that displaces ten (10) cubic yards or less of flood storage area is exempt from the requirements of subsection 2 below.
- (ii) The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area shall comply with the following standards:
 - 1. No net fill in any floodplain is allowed.
 - 2. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
 - 3. Any excavation below bankfull stage shall not count toward compensating for fill.
 - 4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation may be located in the

same drainage basin and as close as possible to the fill site subject to the following:

- a. The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;
- b. The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
- c. Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill shall be approved by the City.

The applicant proposes each new building will have a flow through below grade foundation to act as floodplain storage. The applicant provided a letter that estimated the average cut for each new building will be 40 cubic yards. This assumed that each new building will have a stem wall foundation for the entire first floor (approximately 800 sqft). This is likely an overestimation. It would be more typical for the portion of the first floor that is a garage to have a slab on grade foundation, which would not provide flood storage or cut.

Even with the over estimation, it has not been established that enough cut is possible to offset the required fill for grading the private street to one foot above base flood elevation.

Additionally, it has not been sufficiently proven that the proposed foundation type is feasible to use in this floodplain zone. Crawlspace below grade on all sides are considered basements by the National Flood Insurance Program (NFIP) and must be raised one foot above the Base Flood Elevation (BFE).

5. Temporary fills permitted during construction shall be removed at the end of construction.

Any temporary fills needed for construction will need to be removed at the end of construction. No temporary fills have been proposed.

6. New culverts, stream crossings, and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood

elevation. Such projects shall be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

No new culverts, stream crossings or transportation projects are proposed. This criterion does not apply.

7. Excavation and fill required for the construction of detention facilities or structures, and other facilities, shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

A stormwater facility has been proposed inside the area that is being excavated. It is intended to balance floodplain cut and fill. No levees have been proposed.

(g) Crawlspace Construction

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 1101, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas.

- (i) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B of FEMA Technical Bulletin 1101. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

The proposed development is in FEMA zone AE where high flow velocities are likely. The development is intersected by mapped floodplain cross section E of Flood Insurance Study (FIS) number 41005CV001A. Table 5 of the study lists a mean flooding velocity of 5.9 ft/s at the floodway located at cross section E. The applicant proposes that all new structures would be constructed with flow through, enclosed foundations with crawl spaces or garages below the BFE. The applicant is required to have all enclosed areas below the BFE reviewed by a design professional for hydrodynamic loading. Design documentation has not been provided.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (ii) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

The applicant has proposed all crawlspaces and garages located below the BFE will have appropriately sized automatic flood vents properly installed. Hydrodynamic forces in addition to hydrostatic forces are expected in high velocity floodzones. Additional design review is required by a licensed professional to verify the feasibility of using crawlspaces in this floodzone. A crawlspace below grade on all sides is considered a basement by the NFIP. All basements must be raised one foot above BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (iii) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

The applicant proposes that all wood joists, insulation and other building components would be located above the BFE. The applicant proposes garages and building entry areas located below BFE will have concrete floors and walls.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

The applicant's proposed design relies on the absence of hydrodynamic loads that are likely in this flood zone. The flood-hazard data on file with the city indicates hydrodynamic loads are likely.

- (iv) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

The applicant has proposed that all building utility systems within the crawlspaces of the proposed homes would be designed so that floodwaters cannot enter the systems. The applicant proposes all ductwork and HVAC units would be located above the BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

Utility systems not located above the BFE, such as water or wastewater lines, would be inundated during the 100-year flood. The development is proposed in a high velocity flood zone. These utilities would be susceptible to significant hydrodynamic forces.

- (v) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

The applicant proposes that all crawlspaces would be less than two feet below lowest adjacent grade to allow for drainage.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (vi) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

The applicant proposes that no crawlspace foundation walls would have more than 4 feet of unbalanced fill as proposed. The applicant has not established the feasibility of crawlspaces within this flood zone.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (vii) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity, or mechanical means.

No specific drainage system has been proposed by the applicant.

- (viii) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

The development is in flood zone AE where FEMA considers high velocity floods as likely. The FIS table for the nearest cross-section lists 5.9 ft/s as the mean flood velocity. The FIS must be revised in order to allow crawlspace

construction. The applicant has not demonstrated that proposed foundation types are feasible.

The Planning Commission finds that the standards in MMC 18.04.150 are not met.

(2) 18.04.160 Specific Standards

MMC 18.04.160 establishes specific required provisions and standards for development in special flood hazard and flood management areas where base flood elevation data has been provided.

(a) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot above base flood elevation.

The applicant proposes that all new structures would be constructed with concrete foundations extending above the 100-year flood elevation with finished floors at least one foot above the BFE. The applicant must also meet these requirements for substantial improvements of the existing buildings. The NFIP defines a "basement" as any area that is below-grade on all sides. The regulations do not allow basements to extend below the BFE.

(b) Miscellaneous Provisions

(i) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one (1) foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The applicant proposes that automatic flood vents would be installed at all areas below the BFE. These flood vents may not appropriately address the expected hydrodynamic loadings. The applicant is proposing extensive closed space in a high velocity flood zone.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

(3) MMC 18.04.170 Floodways

MMC 18.04.107 establishes the standards and requirements for development in floodways, which are areas located within areas of special flood hazard. These standards are established since the floodway is an extremely hazardous area due to the velocity of floodwaters.

The applicant has proposed a dock in the floodway. This will require state authorization after city planning approval is obtained. The applicant will need a no rise certificate for work in the floodway.

As proposed, the Planning Commission finds that the development does not meet MMC 18.

6. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.402 Natural Resources

Note: ESA, the City's environmental consultant, reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

(1) MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

The project site is bisected by the Willamette Slough. The City's NR Administrative Map shows WQR and HCA designations on the majority of site and portions of these natural resource areas will be disturbed by the proposed development.

As presented in the applicant's submittal materials, the proposed development will temporarily or permanently disturb approximately 38,500 sq ft of WQR and/or HCA area. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4.

The Planning Commission finds that the requirements of MMC 19.402 are applicable to the proposed activity.

(2) MMC Subsection 19.402.8 Activities Requiring Type III Review

MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA are subject to Type III review in accordance with MMC 19.1006. As per MMC 19.402.8.A.1, this includes activities allowed in the base zone that are not otherwise exempt or permitted as a Type I or II activity.

The level of disturbance proposed within the designated WQR and HCA areas on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As such, the activity is subject to Type III review and the discretionary process established in MMC 19.402.12.

Further, the applicant has elected to propose a residential cluster development subject to MMC 19.402.14.C, a discretionary review process. This section establishes the standards for developments that are clustered so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. The intent of a residential cluster development is to encourage creative and flexible site design to protect environmentally sensitive areas and preserve open space and natural features. It also permits single-family attached dwellings, multifamily dwellings, and townhouses that might not otherwise be permitted in order to avoid or minimize impacts to mapped natural resources. A residential cluster development may be permitted in any residential or mixed-use zoning district, subject to Type III review and approval by the Planning Commission. Because the applicant has chosen a discretionary pathway rather than one of the clear and objective pathways provided by the city, discretionary criteria were applied to this application for a residential cluster development.

The Planning Commission finds that the proposed activity is subject to Type III review.

(3) MMC Subsection 19.402.11 Development Standards

MMC 19.402.11 establishes development standards for projects that impact a designated natural resource, including requirements to protect natural resource areas during development and general standards for required mitigation (e.g., plant species, size, spacing, and diversity).

MMC Subsection 19.402.11.D establishes mitigation requirements for disturbance within HCAs. Because the proposed development will not result in the removal of any trees, and the few trees on the site are on the margins, the applicant proposes to calculate required mitigation via Option 2. Mitigation Option 2 calculates required mitigation based on the size of the disturbance area and assigns required trees and shrubs based on this area.

Using the mitigation planting ratio provided in MMC Subsection 19.402.11.D.2.b as a guide, for the total WQR and HCA disturbance of approximately 38,500 sq ft, the applicant proposes to plant 385 native trees and 1,925 native shrubs. The mitigation areas have been identified as the 41,708 sq ft “island” west of the slough. Mitigation on the “island” includes removal of invasive species and soil remediation to support the new plantings. As proposed, the mitigation plantings will meet the minimum requirements established in MMC Subsection 19.402.11.B. Mitigation trees will be of at

least ½-in caliper (measured at 6 ft above the ground level after planting) and shrubs will be of at least 1-gallon size and at least 12-in height. A full planting list was submitted identifying the proposed mix of species.

However, the “island” is subject to periodic flooding and the mitigation plantings will be susceptible to damage during any future flooding event. In addition, the applicant did not provide information about how the mitigation area will be accessed to perform the required work. Because this area is separated from the development portion of the site by the slough, a detailed plan that shows access points is necessary.

Even with the risk of periodic flooding, the Planning Commission finds that the mitigation area is appropriate and therefore the development standards of MMC 19.402.11 are met.

(4) MMC Subsection 19.402.12 General Discretionary Review

MMC 19.402.12 establishes the discretionary review process for activities that substantially disturb designated natural resource areas.

(a) Impact Evaluation and Analysis

MMC Subsection 19.402.12.A requires an impact evaluation and alternatives analysis in order to determine compliance with the approval criteria for discretionary review and to evaluate alternatives to the proposed development. A technical report prepared by a qualified natural resource professional is required and should include the following components:

(i) Identification of ecological functions

The application concludes that the proposed development area is “degraded” based on the low cover of shrubs and trees and the high percentage of weeds in the groundcover. This characterization is assumed to meet the Class C “Poor” category per Table 19. 402.11.C. The application does not provide a detailed discussion of ecological functions of riparian habitat.

(ii) Inventory of vegetation

The applicant’s submittal materials include a technical report prepared by Environmental Technology Consultants, a private firm providing a range of environmental consulting services including natural resource assessment, wetland delineation, and environmental restoration. The technical report includes an impact evaluation and alternatives analysis, as well as an inventory of existing vegetation. The natural resource documentation concludes that the WQR of the slough is “degraded,” which appears accurate based on the lack of shrub and tree cover on-site. An assessment of the condition of the natural resources west of the slough was also provided.

(iii) Assessment of water quality impacts

Four sample plots were established by the applicant to characterize vegetation and investigate the presence of potential wetlands (no wetlands were found). ESA agrees with the determination that no wetlands conditions occur in the proposed mitigation area, although the area is presumed to experience flooding during high flows of the Willamette River.

(iv) Alternatives analysis

The application materials consider various alternatives to the proposed development: an alternative with 23 dwelling units, an alternative with 18 units, and two alternatives with 16 dwelling units. These alternatives would result in significantly more disturbance to the WQR and HCA. The applicant’s materials conclude that the proposed development is the most practicable alternative that results in the least impact to designated natural resources on the site. Retaining the two existing structures (buildings 10 and 12) at the east end of the project site also limits layout and roadway options.

<i>Alternative</i>	<i>WQR/HCA impacts (combined)</i>	<i>Wetland fill</i>	<i>Below OHWM of the Willamette River</i>
<i>Preferred – 12 units</i>	<i>38,500 ft²</i>	<i>0</i>	<i>Repair to existing dock, no new structure</i>
<i>#2 – 23 units</i>	<i>57,213 ft²</i>	<i>3,363 ft²</i>	<i>Proposed Dock plus possible additional fill</i>
<i>#3 – 16 units</i>	<i>>38,500 ft²; less impact than #2 but more than #4 and the preferred because the private drive would extend further south into the buffer of Wetland A.</i>	<i>0</i>	<i>Proposed Dock</i>
<i>#4 – 18 units</i>	<i>>38,500 ft²</i>	<i>0</i>	<i>Proposed Dock</i>
<i>#5 – 16 units¹</i>	<i>Unknown – includes units on the “island” west of the slough and an access bridge</i>	<i>unknown</i>	<i>Proposed Dock</i>

In addition to the alternatives presented above, ESA suggested that the applicant consider a proposal that clustered units closer to 19th Ave. The applicant dismissed the suggestion in an email stating that ESA’s suggestion

¹ Alternative #5 submitted as a site plan on July 12, 2019 to illustrate another development alternative. No mitigation, floodplain evaluation, etc. was provided for this alternative.

was below minimum density and did not provide adequate parking. The ESA proposal was merely a suggested concept to allow the applicant to develop and consider an alternative that was a serious attempt at avoiding the HCA to the extent practicable and clustering development close to 19th Ave. The applicant did not generate such an alternative.

Based on the alternatives presented, it is unclear if the preferred design impacts the least amount of natural resources because the materials do not include an alternative, or alternatives, that emphasizes fewer homes, duplexes, or multifamily units clustered in a way that attempts to avoid impacts to the HCA. A set of duplexes or triplexes fronting on 19th Ave with parking tucked underneath via a common driveway in the Sparrow St ROW may offer a viable option for minimizing impacts to the HCA and the floodplain. An alternative, or alternatives, that emphasizes fewer homes, duplexes, or multifamily units outside of the HCA/WQR was not provided and should have been considered.

The Planning Commission finds that the applicant's impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (v) Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable

As identified above, the Planning Commission finds that the applicant's impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (vi) Mitigation plan

The applicant's submittal materials include a mitigation plan for permanent and temporary impacts to the WQR and HCA.

ESA has evaluated the proposed mitigation plan and concluded that it is sufficient. The applicant proposes to mitigate for natural resource impacts in the western portion of the parcels west of the slough. The overall concept is to plant a wide variety of native shrubs, trees and groundcover with the aim that suitable species will establish and others may not. As noted by ESA, the proposed mitigation site appears suitable but is anticipated to be challenging because of its position in the Willamette River floodplain, periodic flooding, the existing extent of weeds, and presence of shallow bedrock in some areas. Despite the potential challenges, several of the native shrubs and trees are anticipated to establish given adequate irrigation and maintenance.

The soils seem suitable on-site, although site preparation and weed control will need to be thorough and will require several site visits and treatments. The fact that there are Oregon ash and black cottonwood saplings/trees on-site means that there are suitable conditions for these native plants. Floodplains can support wooded areas and the species that generally thrive in floodplains include Oregon ash, black cottonwood, willows, and red alder. Oak trees can also handle winter flooding as long as the soils dry out in the summer. Some plant loss and mortality should be expected due to flooding and would be part of the 80% survival criterion.

As identified above, the Planning Commission finds that the applicant's impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

(b) Approval Criteria

MMC Subsection 19.402.12.B provides the approval criteria for discretionary review as follows:

Note: ESA reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

- (i) Avoid – The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable, and has less detrimental impact to the natural resource areas than other practicable alternatives.

The Willamette Slough bisects the site and the 100-year floodplain covers nearly all of the site, resulting in significant areas of designated WQR and HCA. Site development that avoids any impacts to the WQR and HCA at permitted densities is not possible. The applicant has proposed a development of 12 single family homes and a private drive for access and concentrates impacts in the eastern portion of the site. However, the buildings and associated roadway and stormwater facilities would intrude into the WQR and HCA and disturb approximately 0.88 acres of natural resource area. As noted in the discussion of alternatives noted in Finding 6-f(1) above, consideration must be given to an alternative that makes a serious attempt to avoid impacts to the HCA by clustering development near 19th Ave.

- (ii) Minimize – If the applicant demonstrates that there is no practicable alternative to avoid disturbance of the natural resource, then the proposed activity shall minimize detrimental impacts to the extent practicable.

As noted in the above discussion of avoiding impacts, there must be serious consideration given to an alternative that truly minimizes impacts. The preferred alternative impacts the entire site with development of the portion

east of the slough and intensive site work to prepare the area west of the slough for mitigation plantings.

- (iii) Mitigate – If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. The applicant shall present a mitigation plan that demonstrates compensation for detrimental impacts to ecological functions, with mitigation occurring on the site of the disturbance to the extent practicable, utilization of native plants, and a maintenance plan to ensure the success of plantings.

As noted in Finding 6-b(5), the applicant's submittal includes a mitigation plan for the WQR and HCA disturbance that will accompany the proposed development. The applicant has proposed to plant 385 native trees and 1,925 native shrubs and to remove nuisance plants and noxious material and debris. The proposed mitigation appears to meet the code requirements with significant management.

Although, the proposal may be able to meet code requirements for mitigation, the Planning Commission finds that the proposed development does not meet the approval criteria for discretionary review as established in MMC 19.402.12.B.

The Planning Commission finds that the proposed development does not meet the applicable discretionary review standards of MMC 19.402.12.

7. The application was referred to the following departments and agencies on February 28, 2019:
- Milwaukie Building Division
 - Milwaukie Engineering Department
 - Milwaukie Public Works Department
 - Clackamas County Fire District #1
 - Island Station Neighborhood District Association Chairperson and Land Use Committee
 - Oregon Marine Board
 - Oregon Department of Fish and Wildlife
 - Division of State Lands – Wetlands and Waterways
 - Oregon Parks and Recreation Department
 - North Clackamas Parks and Recreation District

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on May 8, 2019.

The public hearing was opened on July 23, 2019 for the staff report, applicant's presentation, and public testimony; the Commission did not deliberate. The Commission closed the public hearing but left the written record open as follows:

1. until August 6 for anyone to submit argument and evidence;
2. until August 13 for anyone to rebut the first open record period submittals; and
3. until September 3 for applicant only to submit final written argument without new evidence.

Agency and NDA comments received are summarized as follows:

- **Chris Stevenson, Jurisdiction Coordinator, Oregon Department of State Lands:**
The Department concurs with the wetland and waterway boundaries as mapped for the site. The letter included information regarding permitting for fill or removal of material from the site.
- **Sarah Hartung, Senior Biologist, ESA (City's on-call Natural Resource consultant):**
ESA has provided three memos serving as peer review of the applicant's Natural Resource Review report.
- **Dalton Vodden, Associate Engineer, City of Milwaukie Engineering Department:**
Comments related to the proposal's compliance with MMC Title 12 Streets, Sidewalks, and Public Places; MMC Chapter 13.14 Stormwater Management; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements.
- **Izak Hamilton, Fire Inspector, CFD#1:** Standard comments related to fire access and water supply.
- **Island Station NDA Land Use Committee:** comments related to the impacts on views, traffic on 19th Ave, provide additional on-street parking in the development, and concern that the proposed development not be gated.

The following individuals submitted comments in opposition to the project:

- Christopher Roberts
- Kary King
- Jana Tracy
- Steve Gerken
- Joanne Tracy
- Mary Neustadter
- Theresa Silver
- Michele Bertaus-Zabaglio
- John Clinton
- Charlene Toman
- Tienieke Pavesic
- Lura Lee

- Carol Timper
- Serafine Lilien
- Beth Mills
- David Peters
- Victoria Mendez
- Marco Clark
- Rebecca Banyas
- Robert Murakami
- Howard Lanoff
- Kate Morrison
- Priscilla Elliott
- Gavin Bondy
- Sean Garmire
- Douglas Musgrove
- Mary Weick
- Beth Lorio
- Sharon Smith
- Carla Maria Buscaglia
- Mary Weick

The submitted comments can be reviewed here:

<https://www.milwaukieoregon.gov/planning/nr-2018-005>.



Memorandum

To: Milwaukie Planning Commission

From: Dennis Egnor, Planning Director

Date: September 17, 2019

Re: Joint Worksession with the City Council on October 15

On October 15 at 4:30 PM the Planning Commission is scheduled to meet with the City Council in a joint worksession to discuss the planning work program for the next year and to consider any changes to the Planning Commission bylaws. Staff has prepared a Council staff report and has attached that report to this memorandum. Attached to the Council report is a proposed work schedule that focuses on tasks to complete unfinished elements of the comprehensive plan and to begin work on the code amendments necessary to implement the comprehensive plan. The Commission bylaws and the related section from the Municipal Code are also attached. No changes to these documents are proposed at this time.

For the Commission meeting on October 8, it is proposed that the Commission hold a preliminary discussion regarding the work schedule. This will give the Commission an opportunity to discuss whether they would like to recommend any changes to the program in advance of the joint meeting. Those changes can be presented orally on October 15. Please focus on whether there are items missing and whether the priorities and timelines are appropriate.

Attachments:

1. Draft City Council Staff Report for October 15 Meeting
2. Proposed Work Schedule 2020-2022
3. Planning Commission Bylaws
4. MMC Chapter 2.16 Planning Commission



COUNCIL STAFF REPORT

OCR USE ONLY

To: Mayor and City Council

Date Written: September 17,
2019

Ann Ober, City Manager

Reviewed: Ann Ober, City Manager
Leila Aman, Community Development Director

From: Dennis Egner, Planning Director

Subject: **Joint Meeting — Planning Commission Work Program/Bylaws Review**

ACTION REQUESTED

Council review and comment on the draft Planning Commission work program and bylaw recommendations for 2020.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The Planning Commission has a yearly, joint meeting with the City Council to discuss the Planning Commission's work program and bylaws.

On October 8, 2019, the Planning Commission discussed its draft work program for 2020.

The Planning Commission bylaws were established in 2010 and were revised in 2017. The bylaws are attached to discuss any future amendments, if necessary.

DISCUSSION

Attached to this report is a three-year work schedule for future City plan and code work. The majority of the entries on the schedule are related to tasks and projects that are necessary for implementation of the Comprehensive Plan. In addition, the schedule includes a few projects that are outside of the planning process, but they do require adoption of an ordinance by the City Council. These are included primarily for Council scheduling purposes. The plan implementation tasks are broken down into three groups and are briefly described below:

- **Comprehensive Plan Map/Zoning Map Changes** - As the Comprehensive Plan Advisory Committee, the Planning Commission, and the Council worked through the draft comprehensive plan policies, it became apparent that some comprehensive plan and zoning map adjustments would be necessary. These include:
 - Designate park and school sites with a new Parks/Institutions zone.
 - Eliminate outdated commercial designations – C-CS, C-G, C-L, and C-N and rezone the sites with NMU and GMU mixed use zones and a new neighborhood hub zone.
 - Consolidate of some residential districts: R-7 and R-10; R-3, R-2.5, and R-2.
 - Eliminate the current Town Center Plan and replace it with the downtown and central Milwaukee plans.

▪ **Comprehensive Plan – Phase 2 -**

These are projects that are elements of the Comprehensive Plan that were deferred so that work could focus on completing the policy element. These projects include:

- Prepare a new transportation systems plan.
- Update key elements of the public facilities plan – water and wastewater components.
- Update the natural resources inventory.
- Expand the historic resources inventory.
- Prepare a plan to connect the 29th Ave and Monroe St neighborhood greenways.

▪ **Code Amendments**

New comprehensive plan policies call for a wide range of code amendments. These include:

- Amend zoning text related to cottage clusters and ADUs, comply with HB 2001, and implement a form-based approach for regulation of housing type and density.
- Revise downtown design guidelines and code standards.
- Adopt new urban forestry regulations to protect forest canopy on private property in addition to public property.
- Amend the floodplain code section to comply with policy direction and to better comply with FEMA requirements.
- Revise the Willamette Greenway zone to establish two tiers of review and create a clear and objective path for housing.
- Revise the sign code to better regulate and eliminate large illuminated billboards.
- Update the Urban Growth Management Agreement and develop an annexation program.
- Conduct regular code housekeeping.

In addition to these planning-focused projects, there are additional ordinances that will be brought to the City Council over the next 12 months. These include code updates related to business registrations, public records, board and commission make-up, and dangerous structures. While those four projects do not involve the planning staff or the Planning Commission, the projects will occupy time before the City Council.

Another big planning project that is expected to come before the Planning Commission and Council in the coming year is the Hillside Master Plan and zone change. This project will require hearings before both the Planning Commission and Council.

The purpose of the joint meeting on October 15 between the Planning Commission and City Council is to provide an opportunity for discussion and to build a mutual understanding of goals and priorities. Suggested topics for discussion include:

- Project List – Is the project list complete? Are there other projects that should be included or dropped?
- Priorities – Do the City Council and the Planning Commission have the same priorities for 2019? How should priorities be adjusted?
- Are there any changes to the bylaws that should be considered?

BUDGET IMPACTS

The work program requires a commitment of fiscal resources. The proposed budget for fiscal years 2020-22 will need to provide budget resources to support the work program.

WORKLOAD IMPACTS

The Planning Department will prioritize its work to support the fulfillment of City Council Goals and the Planning Commission’s work to accomplish the priorities listed in the attached schedule. Staff work on applications and planning projects will be balanced with on-going efforts to provide timely and clear information to the public, support the overall work program and other City Council goals, and serve the City’s public involvement processes. Current staffing levels appear to be adequate to carry out the work program. If development activity increases dramatically, project work may need to be delayed. An alternative would be to bring in outside help to assist with development review.







COORDINATION, CONCURRENCE, OR DISSENT

The list of projects was distributed to City department heads.

ATTACHMENTS






1. Proposed Work Schedule 2020-2022
2. Planning Commission Bylaws
3. MMC Chapter 2.16 Planning Commission

Work Schedule 2020-2022 - Focus on Plan Implementation

Task	Team	Consultant Needed	2020	2021	2022
A. Comprehensive Plan Map Zoning Map Changes/Related code changes					
1. Neighborhood Hubs - Create a new NH-Neighborhood Hub zone and zone the hub sites; Change CN to NH	Lead: Planning Support: CD + Outreach: CMO	No			
2. Commercial Zones – Change the C-CS zone to GMU; Change the CG and CL zones to NIMU or GMU	Lead: Planning Support: None	No			
3. Industrial Zones - Modify the BI zone text; adjust map – GC to BI on 37th	Lead: Planning Support: None	No			
4. Housing – Comp Plan: Merge Moderate Density and Medium Density – redo as Low, Medium, and High // Zoning: Merge R-7 and R-10; Merge R-3, R-2.5 and R-2; Consider changes to R-1 (up the density), R1-B (Rename), R-5 (Is it Low or Medium density?)	Lead: Planning Support: CD + Outreach: CMO	Maybe			
5. Parks and Institutions Zone – Create a new PI-Parks and Institutions Zone. Apply to parks, schools, city facilities, the hospital, and similar large facilities that may be subject to a master plan and/or the CSU process. Adjust Comp Plan map as needed.	Lead: Planning Support: None	Maybe			
6. Town Center – Replace the current Town Center Plan with a new document that consolidates the Downtown/Riverfront and the Central Milwaukie Plans as the two components of the Town Center Plan, add a section for the residential neighborhoods. Adopt as an Ancillary Document	Lead: Planning Support: None	Maybe			








Priority: High     Low

Work Schedule/Plan Implementation – Continued

Task	Team	Consultant Needed	2020	2021	2022
B. Comprehensive Plan - Part 2					
1. Transportation Systems Plan – Update the TSP - this will be a major effort over 18 months	Lead: Planning Support: Engineering + Outreach: CMO	Yes			
2. Public Facilities Plan – Update the public facilities section of the comp plan with new ancillary documents – water master plan and wastewater master plan	Lead: Public Works Support: Planning & Engineering	Yes (Public Works)			
3. Natural Resources Inventory Update – Update the inventory and the code to address deficiencies and make it consistent with new plan policies. Update maps as needed.	Lead: Planning Support: None + Outreach: CMO	Yes			
4. Historic Resources Inventory Update – Conduct a new survey and inventory of buildings constructed prior to 1970. Update the code and maps as needed.	Lead: Planning Support: CMO + Outreach: CMO	Yes			
5. 29 th Ave to Monroe St Neighborhood Greenway Connection – TSP and Central Milwaukee Plan Amendment	Lead: Planning Support Engineering	Yes – Grant Funded			







Priority: High      Low

Work Schedule/Plan Implementation – Continued

Task	Team	Consultant Needed	2020	2021	2022
C. Other Planning-Related Code Amendments					
1. Cottage Cluster and ADU amendments – Make code changes based on concepts and recommendations from the consultant report; Conduct extensive outreach.	Co-Lead: CD & Planning Support: None + Outreach: CMO	Maybe			
2. HB 2001 – Adjust residential use tables and add Form Based Code provisions to implement HB 2001 and new Comprehensive Plan policies. Ensure a clear and objective path is available for all needed housing.	Co-Lead: CD & Planning Support: None + Outreach: CMO	Yes			
3. Downtown Design Guidelines and Code – Finalize and adopt new design standards and guidelines for downtown.	Lead: Planning Support: None	Maybe			
4. Tree Code/Urban Forestry Code – Adopt tree protection and planting requirements on private property. Revise Title 17 and 19 as needed.	Lead: Public Works Support: Planning + Outreach: CMO	No			
5. Flood Protection – Update floodplain code section – Title 18. Consider creating a zoning overlay for added protection.	Lead: Engineering Support: Planning	No			
6. Willamette Greenway – Update the Willamette Greenway code section as described in Comprehensive Plan policies. Update maps.	Lead: Planning Support: None	Maybe			
7. Sign Code Fix – Eliminate provisions for electronic billboards or significantly reduce light intensity permitted from signs	Lead: Planning Support: None	Maybe			

Priority: High     Low

Work Schedule/Plan Implementation – Continued

Task	Team	Consultant Needed	2020	2021	2022
8. Urban Growth Management Agreement – Prepare and adopt a new agreement with the County	Lead: Planning Support: Public Works, Engineering, & CMO	No			
9. Annexation Incentive Program – Develop an incentive program tied to the new UGMA; adjust code to be at least as permissive as county development standards	Lead: Planning Support: CD, CMO, and Engineering	No			
10. Housekeeping Code Amendments	Lead: Planning Support: None	No			
D. Other Non-Planning Code Amendments					
1. Public Records Update	Lead: City Recorder	No			
2. Boards and Commissions Update	Lead: City Recorder	No			
3. Business Registration Program MMC - Title 5	Lead: Finance	No			
4. Dangerous Structures	Lead: Building	No			

Priority: High



Low

MILWAUKIE PLANNING COMMISSION BYLAWS

ARTICLE I NAME

The name of this commission is the Planning Commission (Commission).

ARTICLE II PURPOSE, AUTHORITY, AND OBJECTIVE

- A. **Purpose.** The purpose of the Commission is to serve as an advisory body to, and a resource for, the City Council in land use matters. In addition, the Commission shall carry out the roles and responsibilities as assigned under Milwaukie Municipal Code (MMC) Section 2.16.010.
- B. **Authority.** The Commission is authorized by ORS 227 and MMC Chapter 2.16.
- C. **Objective.** The Commission's objectives include articulating the community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan.
- D. **Open Meetings.** All meetings of the Commission are open to the public. The Commission has the authority to conduct an executive session under ORS 192.660.

ARTICLE III MEMBERSHIP

- A. **Appointment.** Each Commission member shall be appointed by the Mayor with the consent of Council, consistent with MMC 2.10.030 G. Members shall serve at the pleasure of the Council.
- B. **Term of Office.** Terms are for a period of four years. Commission members may serve no more than two consecutive full terms, unless there is an interval of at least one term prior to reappointment. The Council may waive this limitation if it is in the public interest to do so.
- C. **Membership.** The Commission consists of seven members. No more than two members may be non-residents, and no more than two members shall be engaged in the same kind of occupation, business, trade, or profession. No member may be a City of Milwaukie officer, agent, or employee; and no more than two voting members of the Commission may engage principally in the buying, selling, or developing of real estate for profit as individuals; or members of any partnership, or officers or employees of any corporation that engages principally in the buying, selling, or developing of real estate for profit.
- D. **Vacancies and Removal.** Vacancies are filled in the same manner as the original appointments. A member of the Commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.
- E. **Attendance.** Upon failure of any member to attend three consecutive meetings, the Commission may recommend termination of that appointment to the Council, and the Council may remove the incumbent from the Commission and declare the position vacant to be filled in the manner of a regular appointment.

- F. **Compensation.** Commission members shall receive no compensation for their service, but shall be fully reimbursed for all duly authorized expenses.

ARTICLE IV OFFICERS AND STAFFING

- A. **Officers.** The officers consist of a Chair and a Vice Chair who shall be selected by the membership and who shall serve at the pleasure of the membership for one year. Nominations and election of new officers shall be taken from the floor at the Commission's first meeting of the calendar year. Officers may be re-elected. In the event that an officer is unable to complete the specified term, a special election shall be held for the completion of the term.
- B. **Chair.** The Chair shall preside at all deliberations and meetings of the Commission and call special meetings in accordance with these Bylaws and review Commission agendas with the staff liaison. The Chair shall sign all documents memorializing Commission actions in a timely manner after action by the Commission.
- C. **Vice Chair.** During the absence, disability, or disqualification of the Chair, the Vice Chair shall exercise or perform all duties and be subject to all the responsibilities of the Chair. In the absence of the Chair and Vice Chair, the remaining members present shall elect an acting Chair.
- D. **Staff.** The City of Milwaukie Planning Department will provide staff support to the Commission for: land use issues, meeting notifications, postponements, final disposition of matters, and other steps taken or acts performed by the Commission, which include administrative housekeeping functions such as word processing, minutes preparation, copying, and information gathering to the extent the budget permits.

ARTICLE V ORGANIZATIONAL PROCEDURES

- A. **Meetings.** The Commission shall hold meetings as necessary at a time and place designated by staff consistent with Oregon Public Meetings Law. Typically, the Commission meets at least once a month on the second and/or fourth Tuesday at 6:30 p.m. at City Hall. Commission meetings shall end no later than 10:00 p.m., unless extended by majority vote of the Commissioners present and participating in the Agenda item that is under consideration at that time. An extension to 10:30 p.m. is allowed by Commission action. If a meeting has not concluded at 10:30 p.m., the Commission may vote on the Agenda item, consider another extension of up to 30 minutes, or vote to continue the item to the next available meeting.
- B. **Quorum.** A quorum is four of the voting membership of the Commission. The concurrence of a majority of the Commission members present shall be required to decide any matter. In the case of a tie vote, the matter is not complete. One new motion may be made. If a majority vote is not obtained on that motion the agenda item fails. If a quorum is not attained fifteen minutes following the scheduled time of call to order, the meeting shall be cancelled. In the event it is known by the Director prior to a meeting that a quorum will not be present at any meeting, the Director shall notify the Commission members. All items scheduled for the meeting shall be automatically continued to a regularly scheduled meeting unless the Director determines that a special meeting is needed. The Director shall post notice of the continuance on the exterior

doors of City Hall notifying the public of the continuance and specifying the date and time when the continued items will be before the Commission. The Notice shall remain through the evening on which the meeting is originally scheduled.

C. Order of Business. The Chair shall have the authority to arrange the order of business as is deemed necessary to achieve an orderly and efficient meeting. In general, the order of business will be as follows:

1. Call to order – Procedural Matters
2. Minutes
3. Information Items
4. Audience Participation
5. Public Hearings
6. Worksession Items
7. Planning Department Other Business/Updates
8. Planning Commission Discussion Items
9. Forecast for Future Meetings.

D. Voting. All members who are present at a Commission Meeting, including the Chair and Vice Chair, are allotted one vote each on all motions. A motion may be made by any Commissioner with the exception of the presiding officer. All Commissioners, when a vote is taken, shall vote unless he or she abstains from voting and cites the reason for the record. Staff shall call the roll, altering the order of members called. The Chair shall vote last.

E. Reconsideration of Actions Taken. A member who voted with the majority may move for a reconsideration of an action at the same meeting only. The second of a motion may be a member of the minority. Once a matter has been reconsidered, no motion for further reconsideration shall be made without unanimous consent of the Commission.

F. Minutes. A staff representative or designee shall be present at each meeting and shall provide for a sound, video, or digital recording, or written minutes of each meeting. The record of the meeting, whether preserved in written minutes or sound, video, or digital recording, shall include at least the following information:

- Names of the Commission members present;
- All motions and proposals, and their disposition;
- The results of all votes and the vote of each Commission member by name;
- The substance of any discussion on any matters; and,
- A reference to any document discussed at the meeting;

Written minutes need not be a verbatim transcript, but give a true reflection of the matters discussed at the meeting and the views of the participants.

Written minutes of a meeting will be made available to the public within a reasonable time after the meeting.

Minutes shall be reviewed and voted upon by the Commission at a regular meeting.

- G. **Repeal or Amendments.** The Commission may review these bylaws periodically and forward suggested revisions to the Council for approval. These bylaws may be repealed or amended, or new bylaws may be adopted by a majority vote of the Council on its own initiative, or upon a recommendation from the Commission.
- H. **Meeting Conduct.** The meeting conduct for this Commission is these bylaws except where superseded by or local, state, or federal law.
- I. **Statement of Economic Interest.** Commissioners are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission.

ARTICLE VI DUTIES OF OFFICERS

- A. **Duties of the Chair.** The Chair or Vice Chair, in addition to the duties in Article IV, shall preserve the order and decorum of the meeting.
 1. The Chair may assess the audience at the beginning of the meeting, and, with the consent of the Commission, announce reasonable time limits.
 2. The Chair will direct the planning staff to summarize the issues to be addressed and the criteria to be applied by the Commission during its deliberations, following the conclusion of public hearing testimony.
 3. The Chair will summarize the hearing results and state the appeal process at the conclusion of the public hearing.
- B. **Requesting Response and Opinion.** The Chair will ask for response and opinion from the members of the Commission.
- C. **Appointments to Specific Projects on Committees.** The Chair may appoint Commissioners to specific projects or committees, and may select a Commissioner to be spokesperson for the Commission when the Chair or Vice Chair is unavailable.
- D. **Confer with Director.** The Chair or Vice Chair shall confer with the Planning Director (Director) on a regular basis outside scheduled meetings concerning the direction each expects of the Commission.
- E. **Orientation of New Members.** The Chair, in conjunction with the Director, shall orient new members.

ARTICLE VII DUTIES OF THE COMMISSION

- A. **Duty of Commissioner.** Commissioners shall address all those who come before the Commission in a formal and courteous manner.
- B. **Absence From a Meeting.** If a Commissioner is unable to attend a meeting, it is that Commissioner's responsibility to inform the Community Development staff and/or the Commission Chair of that fact prior to the meeting to be missed.

- C. **Site Visits.** Prior to Commission meetings, Commissioners are encouraged to visit sites that are subjects for land use actions. If a Commissioner visits a site, he or she shall report on the record any information gained from the site visit that is not consistent with the information included in the application or staff report.
- D. **Method of Handling Conflicts by Members.** In accordance with ORS 244.135: (1) A member of the Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest:
1. The Commission or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the Commissioner;
 2. Any business in which the Commissioner is then serving or has served within the previous two years; or
 3. Any business with which the Commissioner is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
 4. Any actual or potential interest shall be disclosed at the meeting of the Commission where the action is being taken.
- E. **Meeting Preparation.** Commissioners shall prepare for participation at a meeting by fully reviewing the staff report and materials provided by the Director. If a Commissioner is unable to attend a hearing on a quasi-judicial application that is continued to another hearing, the Commissioner shall not take part in the continuance hearing unless the Commissioner:
1. Reviews the staff report and materials provided by the Director as well as:
 - a. all materials submitted at the hearing, and
 - b. any additional materials prepared by the planning staff applicable to the application, and
 - c. either the audio recording of the hearing or the draft minutes of the hearing.
 2. Declares that they are prepared to participate.
- F. **Duties Assigned by Council.** The Commission shall carry out the duties assigned to it by Council relating to development, updating, and general maintenance of the Milwaukie Zoning Ordinance and the Milwaukie Comprehensive Plan.

ARTICLE VIII GOALS AND OBJECTIVES

- A. **Annual Goal Review.** The Commission shall review the Council goals annually for establishment of Commission goals which enhance and augment those of the Council.
- B. **Establishment of Commission Goals.** The Commission shall establish goals, at a minimum, annually.

CHAPTER 2.16

PLANNING COMMISSION*

Sections:

2.16.010 Established—Purpose

2.16.020 Membership—Qualifications

2.16.030 Statement of Economic Interest

* Prior ordinance history: Ords. 1606 and 1726.

2.16.010 ESTABLISHED—PURPOSE

- A. The Planning Commission is lawfully established for the purpose of reviewing and advising on matters of planning and zoning according to the provisions of the Comprehensive Plan, Zoning Ordinance, and other planning implementation documents. The Commission shall be responsible for, but is not limited to, the following activities:
1. Keeping current the Comprehensive Plan and implementing ordinances for the City and Urban Growth Boundary as applicable;
 2. Preparing as necessary legislation that will implement the purposes of the Comprehensive Plan;
 3. Recommending to the City Council plans for regulating future growth, development, and beautification of the City, and to review and recommend on regional issues and concerns;
 4. Recommending and making suggestions to the Council concerning:
 - a. The laying out, widening, extending, and locating of public thoroughfares, parking of vehicles, and relief of traffic congestion,
 - b. Betterment of housing and sanitation conditions,
 - c. Establishment of districts for limiting the use, height, area, bulk, and other characteristics of buildings and structures related to land development,
 - d. Protection and assurance of access to incident solar radiation, and
 - e. Protection and assurance of access to wind for potential future electrical generation or mechanical application;
 5. Recommending to the City Council plans for regulating the future growth, development, and beautification of the City in respect to its public and private buildings and works, streets, parks, grounds, and vacant lots, and plans consistent with future growth and development of the City in order to secure to the City and its inhabitants sanitation, proper service of public utilities, and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping, and transportation facilities;
 6. Recommending to the City Council plans for promotion, development, and regulation of industrial and economic needs of the community with respect to business and industrial pursuits;

7. Considering and conducting public hearings on the Comprehensive Plans and zoning ordinances and similar matters which may include, but are not limited to, zone changes, condition uses, subdivisions, and partitions;
8. Performing all other acts and things necessary to properly carry out the provisions of ORS Chapter 227 that are not specifically addressed by local ordinances and procedures;
9. The Commission shall be responsible for the following historic preservation activities:
 - a. Carry out the duties described for it in this section and otherwise assist the City Council on historic preservation matters,
 - b. Review and make recommendations on all partitions and subdivisions of historic properties designated in Comprehensive Plan Appendix 1—Historic Resources Property List,
 - c. Disseminate information to educate the public as to State and federal laws protecting antiquities and historic places,
 - d. Act as a coordinator for local preservation groups such as the Milwaukie Historical Society, educational workshops, signing and monumentation projects, and other similar programs,
 - e. Assist the Milwaukie Historical Society in advising interest groups, agencies, boards, commissions and citizens on matters relating to historic preservation within the City,
 - f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance Subsection 19.403.4,
 - g. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance Subsection 19.403.4,
 - h. Review all development, which proposes to alter a landmark, subject to the procedures and criteria set forth in this section,
 - i. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance Subsection 19.403.7,
 - j. Review and make recommendation on all conditional use applications related to landmarks,
 - k. Maintain an historic and cultural resources inventory and map of landmarks,
 - l. Develop regulations for the protection of landmarks, such as design guidelines for adoption by the City Council;
10. Reviewing the Historic Resources Element of the Comprehensive Plan;
11. Providing decisions and/or recommendations to the City Council regarding compliance with applicable design guidelines for development projects subject to design review under the Zoning Ordinance;
12. Reviewing and recommending appropriate design guidelines and design review processes and procedures to the City Council; and
13. Such other activities as the Council may assign.

B. Coordination with the Design and Landmarks Committee

The Planning Commission shall meet at least twice annually with the Design and Landmarks Committee for reviewing prospective work program tasks related to urban design, architecture and design guidelines, historic preservation, and other areas of responsibility assigned to the Committee in Section 2.18.010.A. (Ord. 2025 § 3, 2011; Ord. 1936 § 2 (Exh. 1), 2004; Ord. 1802 § 1, 1996)

2.16.020 MEMBERSHIP—QUALIFICATIONS

- A. The Commission shall consist of seven (7) members appointed by the Council, no more than two (2) of whom may be nonresidents. No more than two (2) members shall be engaged in the same kind of occupation, business, trade, or profession. No more than one (1) individual from a household may be appointed to serve on the committee at one time.
- B. No more than two (2) voting members of the Commission may engage principally in the buying, selling or developing of real estate for profit as individual, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. (Ord. 2034 § 1, 2011; Ord. 1802 § 1, 1996)

2.16.030 STATEMENT OF ECONOMIC INTEREST

Commissioners are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission. (Ord. 1802 § 1, 1996)