

**DRAFT ORDINANCE TO BE CONSIDERED
BY THE CITY COUNCIL ON FEBRUARY 18, 2025**



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE (MMC) TITLE 19 ZONING ORDINANCE FOR THE PURPOSE OF REMOVING THE PROHIBITION ON VARIANCES TO MAXIMUM DENSITY (PRIMARY FILE #ZA-2024-002).

WHEREAS it is the intent of the city to promote and support residential development to meet housing production goals; and

WHEREAS the proposed code amendments provide an opportunity to build more than the maximum density of housing on a site; and

WHEREAS legal and public notices have been provided as required by law, and multiple opportunities for public review and input have been provided; and

WHEREAS on January 28, 2025, the Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the amendments; and

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

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

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

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

Section 3. Effective Date. The amendments shall become effective immediately on the date of adoption.

Read the first time on _____ and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

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**EXHIBIT A-1.
Findings in Support of Approval
File #ZA-2024-002
Oregon Senate Bill 1537 Code Amendments**

Sections of the Milwaukie Municipal Code (MMC) 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 make code amendments to MMC Title 19 related to Oregon Senate Bill 1537 (SB 1537) and variances to maximum density. The land use application file number is ZA-2024-002.
2. The proposed amendments relate to compliance with the collection of required variances in SB 1537, which include allowing residential developments to exceed maximum density. The zoning code does not permit variances to maximum density; the proposed amendments would allow a Type III variance for developments seeking to exceed maximum density. This would provide additional opportunities for much needed residential development.
3. Amendments are proposed in the municipal code, as follows:
 - Chapter 19.900 – LAND USE APPLICATIONS
 - Section 19.911 Variances
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures
5. Sections of the MMC not addressed in these findings are found to be not applicable to the decision on this land use application.
6. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on January 28, 2025 and February 18, 2025 as required by law.
7. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Manager, or any individual.

The amendments were formally initiated by the Planning Manager on December 17, 2024.
 - 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 as follows:

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The City Council had a work session on October 15, 2024. The current version of the draft amendments has been posted on the application webpage since December 23, 2024.

- (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 January 28, 2025 hearing was posted as required on December 23, 2024. A notice of the City Council's February 18, 2025 hearing was posted as required on January 14, 2025.

- (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 proposed amendments will apply to all zones that permit residential development. Therefore, notices were not sent.

- (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 December 23, 2024.

- (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on December 23, 2024.

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

The proposed amendments will apply to properties in zones that permit residential development and do not affect the already permitted uses on those properties.

- (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 January 28, 2025 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on February 18, 2025 and approved the amendments.

8. 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.

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The Planning Commission held a duly advertised public hearing on January 28, 2025 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on February 18, 2025 and approved the amendments. 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 coordinate and are consistent with other provisions of the Milwaukie Municipal Code.

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

The goals and policies of the Comprehensive Plan support the amendments to permit additional residential density subject to Type III variance approval.

- (c) Section 7 – Housing:

Provide safe, affordable, stable housing for Milwaukie residents of every socioeconomic status and physical ability within dwellings and neighborhoods that are entirely equitable, delightfully livable, and completely sustainable.

- (a) Policy 7.1.2

Establish development standards that regulate size, shape, and form and are not exclusively focused on regulating density.

The proposed amendments remove the prohibition on seeking variances that have the effect of allowing a development to exceed maximum density. The proposed amendments include a Type II variance to increase maximum density by 25%. Any requests over 25% would be processed as a Type III variance. Under the current code, only single detached dwellings and multi-unit dwellings are subject to maximum density limitations. While the city works to review overall maximum density regulations, the proposed amendments would allow applicants to seek a variance to this standard. The code already has development standards that would regulate the size and overall massing of a development; the variance would allow the number of units within a development to increase providing more housing opportunities.

- (d) 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.

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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. The proposed code amendments are in compliance with Metro's Functional Growth Management Plan.

- (e) 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. The DLCD did not identify any areas where the proposed amendments were inconsistent with State statutes and administrative rules.

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

The City Council finds that the Federal Fair Housing Amendments Act of 1988 is relevant to the proposed amendments. The proposed amendments provide a clear and objective review process for middle housing development in the residential zones.

EXHIBIT A-2.

Statewide Findings for Milwaukie Code Amendments – Maximum Density

This memo summarizes the consistency of the proposed code amendments with the following statewide goals, as well as key Oregon Revised Statutes (ORSs) and Oregon Administrative Rules (OARs):

- Goal 10: Housing

Other Statewide Planning Goals are not directly applicable to the proposed code amendments.

Consistency with the applicable goals is a requirement for any amendment to a City's land use ordinances.

Based on the findings described below, the proposed code amendments comply with the applicable Statewide Goals and associated ORS and OAR provisions.

Goal 10: Housing

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Goal 10: To provide for the housing needs of citizens of the state.

Finding: Goal 10 requires the City to maintain and plan for an adequate land supply to accommodate at least 20 years of future growth, providing flexibility in housing location, type, and density to ensure the availability and prices of housing units are commensurate with the needs and financial capabilities of Oregon households. Comprehensive plans are required to include an analysis of community housing needs by type and affordability, an assessment of housing development potential, and an inventory of residential land; contain policies for residential development and supportive services based on that analysis that increase the likelihood that needed housing types will be developed; and provide for an adequate supply of a variety of housing types consistent with identified policies and meeting minimum density and housing mix requirements (established by OAR 660, Division 007).

In 2017 the City adopted its Community Vision which includes the following statement about housing:

“Milwaukie invests in housing options that provide affordability, high quality development and good design, promoting quality living environments. It maintains the small neighborhood feel through creative use of space with housing options that embrace community inclusion and promotes stability.”

In order to realize the full vision for the community the next step was to complete a full overhaul of its Comprehensive Plan which was adopted in 2020. The housing component of the plan is critical to realizing the vision and Council has made housing a top priority of the City for the last several years.

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In addition to the updated Comprehensive Plan policies supporting housing affordability, equity and choices, the City has conducted several recent planning efforts aimed at addressing similar goals, including the following.

The City’s 2023 [Housing Capacity Analysis \(HCA\)](#), Housing Needs Analysis (HNA), included findings that demonstrate that Milwaukie currently has a range of housing types, including single-family detached and attached homes, duplexes, multi-family, and mixed-use developments, and has sufficient capacity to provide for needed housing during the next 20 years. Over that timeframe, the need for new housing developed in Milwaukie will generally include a wider range of housing types and housing that is more affordable. Milwaukie needs a broader range of housing types with a wider range of price points than are currently available in Milwaukie’s housing stock. This includes providing opportunity for the development of housing types across the affordability spectrum, such as single-dwelling detached housing (e.g., small-lot single-dwelling detached units, cottages, accessory dwelling units, and “traditional” single-dwelling homes), town houses, duplexes, triplexes, quadplexes, and multi-dwelling buildings with five or more units. The forecast for new dwelling units needed over the next 20 years is a total of 1,670.

The 2023 **Milwaukie [Housing Production Strategy \(HPS\)](#)** is a blueprint for providing equitable housing opportunities and is intended to help increase the amount of housing in the City. It identifies and describes possible steps to support development of new affordable housing, preserve existing affordable housing, stabilize households at risk of displacement, and help address houselessness. The HPS is intended to provide the City with additional options to support affordable housing development and preservation. Individually, these actions may not result in a large change in the availability of affordable housing, but they provide the City with policies to support development proposals that can create substantial change in the availability of affordable housing. The actions in the HPS are intended to encourage the development of more affordable and diverse housing types; grow partnerships with housing providers, developers, and agencies involved in housing issues; and increase housing stability for Milwaukie residents. Increasing capacity, particularly in the high density residential zone, is a key strategy involving increasing density to allow for more development of multi-unit housing.

While the city works on an initiative to increase residential densities, the proposed code amendments are targeted toward increasing density via variances. Maximum density standards generally apply only to single detached and multi-unit dwellings. The existing code prohibits variances that would have the effect of exceeding maximum density. The proposed amendments remove that prohibition and include a Type II variance when increasing density up to 25% over the maximum density. By allowing density increases beyond the maximum, housing choice and opportunities to expand housing options are made possible.

The city’s Community Development Department will continue to work on ways to assist in the development of housing, provide incentives for regulated affordable housing development,

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provide incentives for the retention or conversion of existing affordable housing supply, and provide incentives and reduce barriers within the development code.

Based on the findings above, the Comprehensive Plan Amendment is consistent with Statewide Planning Goal 10.

Underline/strikeout Amendments

CHAPTER 19.900 LAND USE APPLICATIONS

19.911 Variances

19.911.2 Applicability

B. Ineligible Variances

A variance may not be requested for the following purposes:

1. To eliminate restrictions on uses or development that contain the word "prohibited."
2. To change a required review type.
3. To change or omit the steps of a procedure.
4. To change a definition.
- ~~5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.~~
- ~~6. 5.~~ To justify or allow a Building Code violation.
- ~~7. 6.~~ To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.

19.911.3 Review Process.

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

1. A variance of up to 40% to a side yard width standard.
2. A variance of up to 25% to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 ft through a Type II review.
3. A variance of up to 10% to lot coverage or minimum vegetation standards.
4. A variance of up to 10% to lot width or depth standards.
5. A variance of up to 10% to a lot frontage standard.
6. A variance to compliance with Subsection 19.505.1.C.4 Detailed Design, or with SubSection 19.901.1.E.4.c.(1) in cases where a unique and creative housing design merits flexibility from the requirements of that subsection.
7. A variance to compliance with Subsection 19.505.7.C Building Design Standards in cases where a unique design merits flexibility from the requirements of that subsection.
8. A variance to fence height to allow up to a maximum of 6 ft for front yard fences and 8 ft for side yard, street side yard, and rear yard fences. Fences shall meet clear vision standards provided in Chapter 12.24.
9. A variance of up to a 25% increase in the size of an Accessory Dwelling Unit as identified in Subsection 19.910.1.E.4.
10. A variance to interior height of a garage in a cottage cluster to allow up to a maximum of 15 ft for cases that would use space saving parking technology (e.g., interior car stacking) that might require additional interior height.
11. For any middle housing development, except townhouses and cottage clusters, that includes at least one dwelling unit that is affordable that meets the exemption standards as defined in Section 3.60.050, the minimum setbacks in Table 19.301.4 may be reduced to the following:
 - a. Front yard: 10 ft
 - b. Rear yard: 10 ft
 - c. Side yard: 5 ft

d. Street side yard: 10 ft

12. A variance of up to a 25% increase to the maximum density standard in residential and mixed-use zones.

Clean Amendments

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6. To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.

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