



CITY OF MILWAUKIE

AGENDA

January 12, 2021

PLANNING COMMISSION

milwaukieoregon.gov

Zoom Video Meeting: due to the governor's "Stay Home, Stay Healthy" order, the Planning Commission will hold this meeting through Zoom video. The public is invited to watch the meeting online through the City of Milwaukie YouTube page (https://www.youtube.com/channel/UCRFbfae3OnDWLQKSB_m9cAw) or on Comcast Channel 30 within city limits.

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time.

To speak during the meeting, visit the meeting webpage (<https://www.milwaukieoregon.gov/bc-pc/planning-commission-meeting>) and follow the Zoom webinar login instructions.

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

2.0 Planning Commission Minutes – Motion Needed

2.1 November 24, 2020

3.0 Information Items

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

5.0 Hearing Items

5.1 PD-2020-001 Waverly Woods Continued Public Hearing

Summary: Waverly Woods Planned Development

Applicant: Walker Ventures, LLC

Address: 10415 SE Waverly Ct

File: PD-2020-001

Staff: Senior Planner Vera Koliias

5.2 ZA-2020-002 Proposed Amendments to Title 18 (Flood Hazard Regulations)

Summary: Recommendation Hearing

File: ZA-2020-002

Staff: Associate Planner Brett Kelter

6.0 Work Session Items

6.1 Summary: Comprehensive Plan Implementation Project Update – Code Concepts

Staff: Senior Planner Vera Koliias

6.2 Summary: Planning Commission Bylaws Update

Staff: Planning Manager Laura Weigel

7.0 Planning Department Other Business/Updates

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

9.0 Forecast for Future Meetings

January 26, 2021 No items scheduled at this time.

February 9, 2021 No items scheduled at this time.

February 16, 2021 Joint meeting with City Council workplan and bylaws

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 register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
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 MEETINGS.** 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 attend the Zoom meeting posted on the city website, state their name and address for the record, and remain available 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.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:

Robert Massey, Chair
Lauren Loosveldt, Vice Chair
Joseph Edge
Greg Hemer
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Planning Department Staff:

Laura Weigel, Planning Manager
Vera Kolias, Senior Planner
Brett Kolver, Associate Planner
Mary Heberling, Assistant Planner
Janine Gates, Assistant Planner
Tempest Blanchard, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

Meeting held online via Zoom
www.milwaukieoregon.gov

November 24, 2020

Present: Robert Massey, Chair
Lauren Loosveldt, Vice Chair
Greg Hemer
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Staff: Laura Weigel, Planning Manger
Vera Koliass, Senior Planner

(00:04:38)

1.0 Call to Order – Procedural Matters*

Chair Massey called the meeting to around 6:30 pm and read the conduct of meeting format into the record.

Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.

(00:05:3)

2.0 Planning Commission Minutes

2.1 Commissioner Hemer had a correction to the work session item 6.1. He would like the ordinance to be called “Emergency Evacuation Shelter Plan.”
Chair Massey had a few corrections to the worksession as well. He would first replace the first sentence with the following text, “Commissioner Massey observed the code change specifically addressed natural disaster self-evacuees bringing their own shelter. While the other issues discussed are important, trying to solve all those problems would delay a quick resolution of the issue at hand.” The last sentence should read, “A footprint standard should be used to determine the number of vehicles allowed for a given area rather than a set number of vehicles for all locations regardless of area.”

Commissioner Sherman motioned to approve the minutes as amended.
Commissioner Loosveldt seconded the motion. The amended minutes were approved.

(00:08:20)

3.0 Information Items

3.1 No public testimony was presented for this portion of the meeting.

(00:08:32)

4.0 Audience Participation

4.1 No public testimony was presented for this portion of the meeting.

(00:09:08)

5.0 Public Hearings

5.1 Summary: The purpose of this discussion was to correct the review process going forward for PD-2020-001 Waverly Woods.

Vera Kalias explained that corrections were needed because the previous timeline did not allow for an updated staff report, findings, conditions, and an opportunity for the public to respond to the new information.

The proposed corrections were as follows:

- 11/10: deadline for new information/submittal of written testimony
- 11/17: deadline for responses to information submitted by November 10; notice sent for 11/24 Planning Commission meeting to consider a new schedule order
- 11/24: Planning Commission meeting; agenda to include a brief staff report to explain that the Planning Commission should establish a new order for the schedule of this land use review
- 12/8: continued Planning Commission hearing to include written and oral testimony regarding the information submitted to date, including the staff report, findings, and conditions
- 12/15: deadline for applicant's last written argument
- 1/12/21: continued Planning Commission hearing for deliberations

Chair Massey asked Ms. Kalias when would the 120 days expire?

Ms. Kalias responded, January 9, 2021 would be the 120th day. The Planning Commission needed an extension from the applicant and would seek one during the next Planning Commission hearing, which was scheduled for December 8, 2020. It was impossible to continue the hearing without an extension. The extension must account for the City Council hearing as well. The applicant was aware of the need for an extension.

Chair Massey asked, Ms. Koliass what outreach actions were conducted to ensure the community was aware of the changes mentioned above?

Ms. Koliass responded, the Planning Department sent a memo to all abutters within 400 ft of the project site and all identified interested parties. Also, the department emailed a memo to anyone who submitted comments orally or written during the October 27th hearing and individuals who submitted comments in the last several weeks. Every abutter within 400 feet of the property received a hard copy of the memo. Those were the same individuals who received the original public hearing notice.

Chair Massey responded, he appreciated the Planning Department's outreach to ensure the public was aware of the changes.

Commissioner Hemer motioned to update the motion that was approved on October 27th regarding the review process for land use application master file PD-2020-01 and its associated applications.

Commissioner Khosroabadi seconded the motion.

All Commissioner in attendance approved the motion.

(00:15:18)

6.0 Work Session Items

6.1 Summary: The purpose of this discussion was for Ms. Koliass to present an update about the Comprehensive Plan Implementation Project.

Activities with the Consultant: The consultant had submitted a draft of the code audit to staff for review. The code audit report was a detailed analysis that identified any conflicts or any issues with the current code and regulations. The report was related to the Planning Department's policy directives, opportunities to create more housing, House Bill 2001, tree preservation and protection, and residential off-street parking requirements.

The Comprehensive Plan Implementation Committee meetings: A copy of the draft was sent to the Comprehensive Plan Implementation Committee in time for their December 17th meeting. The committee had two weeks to review the draft prior to discussing the document. The consultant and staff completed over 30 stakeholder interviews. During those interviews, they

discussed key livability issues. On November 19th, the Comprehensive Plan Implementation Committee had their third meeting. The topics covered in the meeting were middle housing issues, key findings about the code audit, and barriers that were previously identified in the zoning code. Each member of the Comprehensive Plan Implementation Committee shared their housing experiences throughout the course of their lives to inspire the group to think of the different housing needs the community may be interested in. The next Comprehensive Plan Implementation meeting was on December 17th with the Design and Landmarks Committee and Tree board. The topic was initial code concepts and different approaches to discussing the code changes. The committee had an ongoing event that went live virtually on November 12th and closed on November 29th. There were various stations related to housing, tree preservation and trees in general and off-street parking. Also, there was a survey for individuals to complete.

Stakeholder Interviews Key Themes: The stakeholder interviewees included various residents, NDA representatives, builders and developers, neighborhood activists, housing advocates, and some representatives from the school department who were working with families of color and underrepresented communities. We asked the various stakeholders about housing, trees, and parking. The feedback we received were people loved the neighborhoods in Milwaukie and there was a general acceptance of the benefits of middle housing, concerns about affordability and integration in the neighborhoods, and the desire to be bold in our approach. Individuals wanted us to think outside of the box.

Outreach: Our outreach was primarily related to the virtual open house and the community survey. There was an article in the November Pilot and postings on the City's social media sites. The schools posted on their social media accounts and sent emails to their families. The Planning Department sent emails to our various listservs, which included the Neighborhood District Associations, the City's boards and committees, Comprehensive Plan email list, and the Black, Indigenous, People of Color (BIPOC) community. The Planning Department placed hard copies of all materials, which included the survey, flyers, and virtual materials in English and Spanish at the Library, Wichita Center, Hillside, and the Farmers Market.

Virtual House Attendance: On the English site, we have had 53 individuals complete the survey, 260 people who had visited the main page, 137 people who had clicked through the stations, and 54 people who had provided feedback. On the Spanish site, no had completed the survey, 2 people had opened it, 25 people had visited the main page, and 3 people had clicked through the stations. The survey closed on November 29.

Materials discussed during the Comprehensive Plan Implementation

Committee meeting: The consultants shared their analysis of existing conditions of every neighborhood in the city. They took pictures of the neighborhoods to take an inventory and to get a sense of what was happening on the ground before discussing possible code changes. The consultant created working sheets of the different neighborhoods. The consultant discussed zoning, lot sizes, and street conditions. After taking inventory of the various neighborhoods, the consultants created a diagram to better understand parking, trees, and middle housing and created goals for each subject. Below are key findings for the parking, trees, and middle housing.

- Parking: manage parking inventory, curbless street design, alley-ends, alleys, long driveways, and permeable paving parking lots that avoid tree root areas.
- Trees: large planting strip on-street, maintaining trees on private property, new tree planting, in streets and on private property, and narrow, queuing streets with trees and parking alternately occupying the same street zone (Island Station Neighborhood Greenway).
- Middle Housing: context-sensitive forms for different lot sizes and conditions and attached vs detached housing types: DLCDC (Department of Land Conservation and Development) flexibility definition.

The goal was to understand what was currently happening to influence changes that will serve multiple situations and individuals.

The code audit will be about 20 pages of a summary report with overall findings and corrective actions. The report will discuss current issues with the code and different solutions the city can implement.

Timeline: The committee had almost completed reviewing the code audit that was submitted by the consultant. The committee started discussing the concept development and the community's review of the code concepts would start in the new year. The committee's next meeting is December 17th.

Chair Massey wondered, about the virtual turnout and if the numbers were good or not.

Ms. Kalias responded, the Planning Department was hoping for more public participation and would connect with the public via email and social media to increase participation before the survey closes.

Commissioner Erdt asked, are there any studies to understand which trees may withstand fires, especially as we considered climate change?

Ms. Koliass responded, two arborists are on the consultant team, the city arborist, and the tree board were working together to determine appropriate climate change species. The City's Urban Forester created a tree recommendation list to encourage residents to plant trees that were responsive to climate change.

Commissioner Loosveldt shared she was concerned about the feedback the City has received thus far and wondered what were the City's plans for moving forward?

Ms. Koliass responded, at the end of the participation period, the team would discuss the statistics and outcomes of the information already received. There was a possibility that the committee may extend the survey to ensure they had useful feedback.

Commissioner Sherman encouraged staff and the consultant team to think about future vehicles, such as electric vehicles and how the City is planning for that.

Ms. Koliass agreed.

Commissioner Sherman asked if there was an incentive for community members who completed the survey?

Ms. Koliass responded, the City was offering great prizes for participation.

(00:37:28)

6.2 Summary: The purpose of this discussion was for Laura Weigel to share the Planning Commissioner's 2020 Annual Work Plan and the revised bylaw proposal.

The Planning Commission and staff had a robust year, which included:

- Hosting over six public meetings regarding the Comprehensive Plan and participating in a tremendous amount of public outreach.
- Creating the Central Milwaukie Webpage, which is a webpage about projects taking place in Central Milwaukie.
- Designing the Pre-Application information webpage to share about new developments in the different neighborhoods around the city.
- Conducting several development reviews, including a subdivision that had four hearings, community service uses, conditional uses, a variance request, and a planned development that is still under the way.

Ms. Weigel shared the Planning Commission's 2020/2021 workplan, which included implementing the Comprehensive Plan Implementation Phase 1. During Phase 1, the Planning Commission was evaluating the housing, parking, and tree codes and is scheduled to complete this phase by June

2021. Phrase 2 would examine the commercial and industrial designations, as well as, update the transportation system plan, which would be another multi-year project between the Planning and Engineering Departments. The Planning Commission will be involved as well. Phrase 3 would primarily focus on updates to the Willamette Greenway and the City's historic and natural resources. The Planning Commission would also assist with the Central Milwaukie Bikeway Project, floodplain code updates, park institution zones, and the town center activities. The above projects are projected for completion in 2025.

Commissioner Hemer shared, the Milwaukie Museum would like to partner with the City of Milwaukie on their historic planning activities.

Ms. Weigel responded, she would like to get those individuals involved.

Commissioner Sherman asked, about the timeline and its relationship to available resources. He asked if there any areas that Council should give the Planning Department additional resources to complete some of the projects?

Ms. Weigel responded, if the Planning Department had more staff that may help. The Planning Department's consultant budget would assist in accomplishing some of the goals. With the size of the department and outside resources there was only so much the department could accomplish within a certain time frame which was why the timeline was over a 5-year time period.

Commissioner Sherman asked, besides head count was there a project you wish you could do right now?

Ms. Weigel responded, she was confident in the work plan as it was written and wants the Planning Department to complete the most important assignments first.

Ms. Kalias added, this was the work plan outside of development review. She also shared that we needed to be aware of outreach fatigue and hoped we could continue to move forward with our community without asking for too much.

Commissioner Sherman shared, at work we are leaning on past public participation to assist with new plans. This was useful when considering outreach fatigue.

Ms. Kalias and Ms. Weigel thanked, Commissioner Sherman for the suggestion.

There were not any additional questions. Weigel presented the revised bylaws.

An addition to the bylaws was "The commission shall serve as the Community Involvement Advisory Committee (CIAC) for the City until a separate CIAC is formed by the City Council." The other addition was about

the duties of the Commission, which was "At least once per year, the Commission shall hold a meeting between the Commission and the Neighborhood District Association (NDA) leaders (e.g., the NDA chair and the chair of the land use committee)". If the Planning Commission agreed with revisions in principle, the Planning Department would share with City Council for recommended adoption. I would like to have a discussion in the spring regarding what the CIAC would do, the Committee's role, and understand when and how the meetings would operate.

Commissioner Loosveldt shared, during the Comprehensive Plan activities the Planning Commission received feedback that they were not the ideal group to be responsible for this work. There were concerns about giving the Planning Commission additional responsibilities due to their current workload. Another concern was regarding if the Commission represented the community because it felt like the Commission was policing their own. This did not appear to be an equitable way to move forward. She wondered if we could place a milestone on this assignment to ensure it was temporary.

Commissioner Hemer added, he wanted to echo Vice Chair Loosveldt's comments. This was introduced as part of goal one, which fell under the Planning Commission. What were the responsibilities of the Commission? Is the Commission community focused which was not the intent of goal one. A definition and a set of accomplishments for the Commission would be useful. The Planning Commission was at capacity and CIAC would require more meetings. He hoped we would really think about this a little more and add a sunset clause.

Chair Massey added, his remembrance of this discussion was the City Council was concerned about creating a new organization and believed the Planning Commission could temporarily take this on. They believed the Planning Commissioner had more interface with the public than the other commissions. They defaulted to that, which was understandable. He liked the idea of a sunset clause. Otherwise, this would become the way it is. There should be some parameters on the responsibilities and the times the Commission was scheduled to meet. The Commission needed to understand the expectations and role of the CIAC. The CIAC was expected to meet a requirement of the State's, which was more than land use and the broader issues needed to be discussed.

Commissioner Hemer suggested, the Planning Commission and NDA leaders were part of the CIAC. This would allow the Planning Commission to meet with the Neighborhood District Association. There was an assumption the Planning staff would oversee the CIAC.

Ms. Weigel responded, there were different ways the committees were structured in other cities. She expressed the need to understand what was discussed during the Comprehensive Plan and the thoughts of the City Council and Planning Commission. She also expressed the need to understand exactly what the group was created to accomplish. The mission

of the CIAC was very unclear and a discussion was needed to better understand the role of the CIAC and the Planning Commission.

Chair Massey asked, who on the city staff would be the point of contact?

Ms. Weigel responded, she assumed that the Planning Department would be the contact person. However, that was not discussed.

Commissioner Sherman shared, he was not present for the discussion and does not feel comfortable approving the revised bylaws. He would like to get better clarity on some of the functions before entertaining a bylaws amendment.

Ms. Weigel agreed and shared, she had captured the conversation from tonight and will share the group's thoughts with City Council and suggest a meeting between the Council and Commission to better understand the expectations of the CIAC.

Commissioner Hemer suggested, before the meeting with the City Council there should be worksession to assist with the flow of conversation.

Ms. Weigel agreed, that was a great suggestion to have more clarity before City Council and the Planning Commission met.

Commissioner Loosveldt seconded what Commissioner Hemer said. She asked, Commissioner Hemer to help her remember the Planning Commissioner meeting where this was discussed at length. This would help Laura understand what was discussed and an idea regarding how to proceed.

Commissioner Hemer added, this was one of the first discussions regarding goal one.

Ms. Weigel shared, she was not aware of the meeting and will go back and review it.

Commissioner Loosveldt added, gaining clarity will help us understand how to proceed and accomplish the CIAC's goals.

Commissioner Hemer added, his concern was the CIAC may get ignored because the Planning Commission thinks it too difficult to accomplish and that is not fair to the residents of Milwaukie.

Ms. Weigel shared, the new Equity Manager may be able to add his expertise and assist us with moving forward.

Commissioner Sherman asked, was it okay to pivot to and discuss the second point? This may be an opportunity to engage the NDAs, the Land Use Chairs, and the Equity Manager.

Ms. Weigel explained, the second bylaw, which said, once a year the commission holds a meeting inviting the NDA leaders to discuss land use issues and community outreach.

Chair Massey thought it was a valuable session. It was a listening session more than anything else. He thought it was good.

Commissioner Loosveldt wondered, if once a year was enough. Maybe it should be biannually.

Commissioner Hemer shared, one thing that was written in the bylaws at some point in time was the Commission was supposed to meet with the Design and Landmark Committee (DLC). He noticed that clause was no longer in the bylaws. The Commission tried to meet with the DLC annually and only met with the committee every 18 months or two years. If the Commission recommends biannually it may only happen once a year which is fine. The meeting needed a purpose and a specific subject matter to give the meeting some purpose. The last meeting was great because the Planning Department developed a project list. If the Commission decided to meet twice a year that worked for him if they had two purposes to meet.

Chair Massey agreed, with an annual meeting. He wanted to make sure the Commission accomplished its goals and meeting biannually may be difficult to do.

Commissioner Loosveldt added, what if there was an option for the second meeting and a vote was taken to determine if a meeting was needed?

Chair Massey responded, bylaws could say meet at a minimum of once a year and on an as needed basis.

Commissioner Hemer added, back to Commissioner Sherman's point regarding the Equity Manager and this was a great suggestion. He added, maybe the Community Development person, the person in charge of the NDAs, and the BIPOC group could attend the meeting too.

Chair Massey responded, he had one bylaw discussion item that was more administrative than anything else. He said that when the minutes were approved by the Commission, the City staff sent them to him by mail. Then he signed them and sent them back to the City. He thought this did not seem necessary. His proposal was once the minutes were approved by the Commission the person who took the minutes should sign and post them online. This would save money on postage and paper. Some of the other Boards and Commissioner were doing this. He looked up the Robert's Rules of Order and this was the way they preferred the committee to do things. That would be his proposal and would require a couple of changes to the bylaws. Changes needed are to eliminate "the chair signing all documents memorializing the commissions" and add a section about the minutes to read "upon approval of the minutes by the Commission a staff representative would sign the minutes and make available to the public to at a reasonable time."

Ms. Weigel had checked with staff and agreed, it was fine for that revision to be made.

Commissioner Loosveldt asked, can the Commission make suggestions for new bylaws?

Ms. Weigel responded, sure.

Commissioner Loosveldt asked, would the Commission ever consider a bylaw that would allow a virtual component for individuals to engage with the Planning Commission year-round no matter pandemic or not.? She

expressed her desire to see the Planning Commission meetings virtually from here on out.

Commissioner Sherman added, he wanted to discuss this further. Zoom allowed individuals to engage and was the way of the future.

Commissioner Khosroabadi added, he was interested in discussing this further.

Commissioner Hemer added, with today's technology the Commission could have this. If there was public testimony, he certainly wanted to be the one on the diocese. He thought it was rude not to be there when someone came to speak. The Commission was supposed to be there for the people who wanted to talk to them. With that, one tv screen could be used for Zoom so that members who do not want to come in could interact virtually.

Commissioner Loosveldt responded, this opened the door for other Commissioners and future Commissioners who were single parents or working multiple jobs to participate. The Commission could utilize the diocese as much as possible which would allow the public an opportunity to engage in an avenue that was not previously available. In the future, people would not have to be present in person to participate.

Commissioner Sherman added, he had sat in more City Council meetings in the last six months than in the previous years prior because Council was on Zoom. He added that Commissioner Loosveldt's point was well taken.

Commissioner Massey agreed with the discussion to provide more opportunities for Commissioners and the public to participate. He also agreed with Commissioner Hemer that some people would not be comfortable participating online. When someone from the public comes in, he wanted them to see a commissioner, or two, or three. There needs to be a Commissioner in person for them to see. He asked if this needed to be in the bylaws.

Commissioner Hemer responded, this was something the Commission should ask the Council about. When former Councilor Powers was pregnant and could not attend meetings, she participated over the phone. This option was availability to other Councilors who could not attend in person meetings. The Council knew that was legal or within some parameters of legality. And it could work for individuals to participate via Zoom. He added it would be a great conversation for Justin Gericke, the City Attorney and City Council.

Gericke responded, the City tried a hybrid meeting at Council and it was a dismal failure. While the technology was great, it was not perfect. Currently, the law did not cover this specifically and this may change overtime. The Commission may want to be careful because there may be times when the technology may be unavailable.

Ms. Weigel responded, the city and Commission also needed to understand how this would work with some of the Commissioners attending the meeting

virtually and others in person. She added, another conversation would be needed to understand how this would look and function.

Commissioner Hemer asked, may the Commission make this a goal for 2021?

Commissioner Sherman added, as things come back to normal life, he imagined this was something that would be expected. He added that this would be a great goal for 202. A place to integrate this would be on page 10 of the packet, which had a description of what Commission meetings were and the definition of quorum. For a quorum the text only talked about Commissioners being present. It did not say present in person. The Commission could work through that and have Zoom available for emergencies for Commissioners. All of this was to say, continued dialogue was needed prior to making any changes.

Ms. Weigel responded, the Commission needed to continue to talk about it and she would research what other governmental entities were doing.

8.0 Planning Commission Committee Updates and Discussion

Commissioner Hemer shared, Happy Birthday everyone. The Planning Commission was established on November 28, 1938. He wanted to say Happy Birthday and asked the Commission to think about what the 100th year celebration would be like in 2038. Also, he mentioned the Blue-Ribbon Committee website launched last week and everyone should visit the website and spread the word.

9.0 Forecast for Future Meetings

- December 8, 2020: Waverly Woods
- December 8, 2020: Emergency Housing Code
- December 8, 2020: Central Milwaukie Bikeway Concept Plan and Title 18
- January 12: Comp Plan Implementation project update – code concepts

Meeting adjourned at approximately 8:15 PM

Respectfully submitted,
N. Janine Gates
Assistant Planner

Robert Massey, Chair



CITY OF MILWAUKIE

To: Planning Commission

Through: Laura Weigel, Planning Manager

From: Vera Kalias, Senior Planner

Date: January 5, 2021, for January 12, 2021, Public Hearing

Subject: **File:** PD-2020-001
Applicant/Owner: Walker Ventures, LLC
Address: 10415 SE Waverly Ct
Legal Description (Map & Tax Lot): 11E26DC 02100, 02200, 02400
NDA: Historic Milwaukie

ACTION REQUESTED

This is a continued public hearing. Open the hearing, review and deliberate on the application, and forward a recommendation to City Council based on the recommended Findings, Conditions of Approval, and Other Requirements found in Attachments 1- 3. This action would recommend approval of the application and final development plan by the City Council and allow the development of a 100-unit multifamily apartment planned development.

BACKGROUND INFORMATION

Extensive public input was received during the first and second public hearings, and additional information has been submitted by both the applicant and the public in response to that testimony. This includes the applicant's final written argument (see Attachment 4). All written testimony received after the October 27, 2020 public hearing was posted, as required, on the [application webpage](#). This staff report identifies and discusses the key issues raised during the hearing and subsequent comment period. Please refer to the [October 20, 2020 staff report](#) and the [December 8, 2020 staff report](#) for detailed background and supplementary information, including analysis of key issues for the Commission's consideration.

The proposed development is an addition to the existing Waverly Greens Apartment communities. The 10.8-acre subject property at 10415 SE Waverly Ct is made up of three parcels and is currently developed with the Dunbar Woods apartments. As part of this proposal, the applicant is adjusting the boundaries of the site to establish Dunbar Woods on its own lot, use 6.77 acres for the planned development, and establish a third parcel for a future development (see Figure 1). The proposal is for Waverly Woods, which would be the phased construction of

four multifamily apartment buildings with a total of 100 dwelling units. The project would be phased so that Building A.1 (32 units) will be built along the Ridge in Phase 1 and Building A.2 (32 units) and the associated community room will occur in Phase 2. The two Gardens Buildings B.1 (18 units) and B.2 (18 units) and the community center with pool would be developed in Phase 3 (see Figure 2).

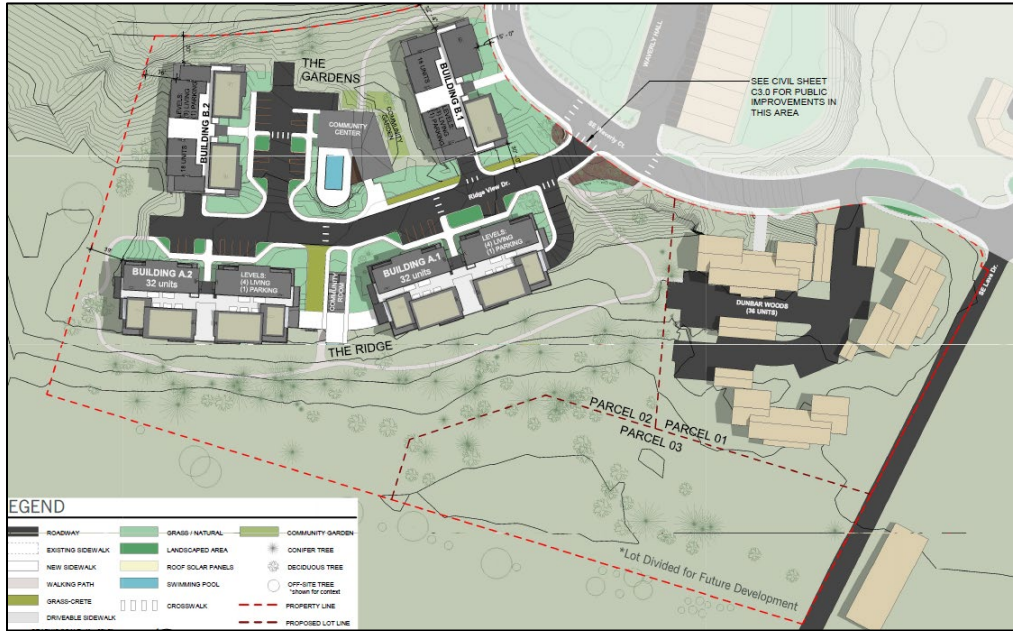


Figure 1. Development Plan

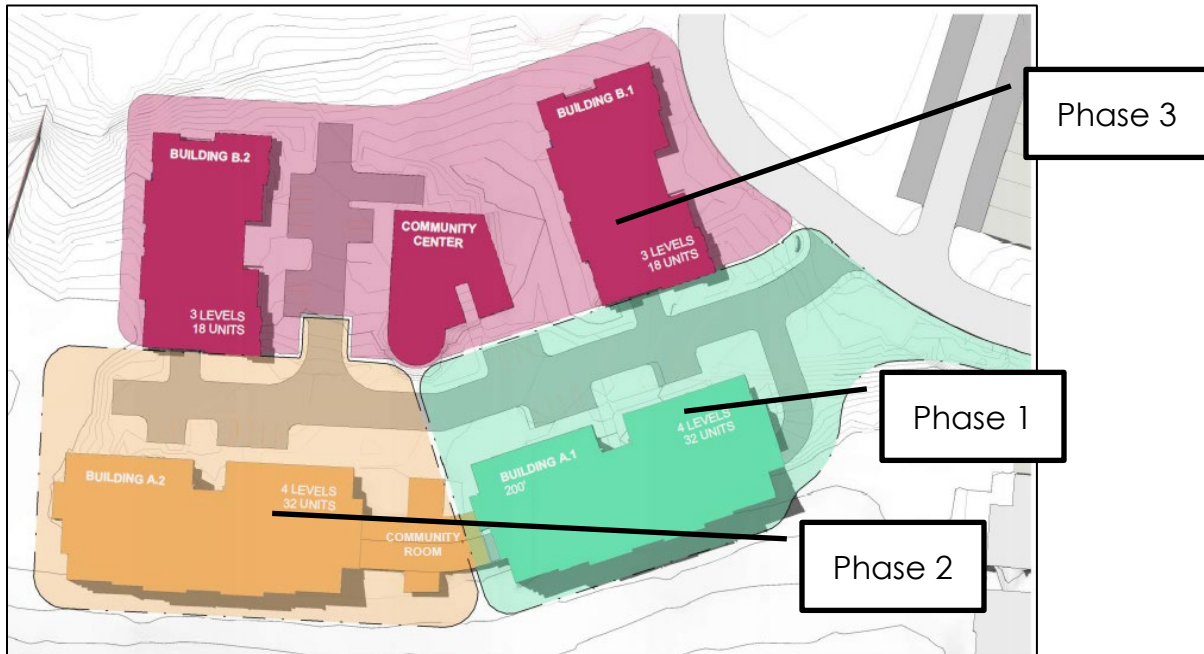


Figure 2. Phasing Plan

Proposal

The applicant is seeking land use approval to develop a 100-unit apartment community. The applicant is using the Planned Development (PD) process, which allows greater flexibility in design that would otherwise be possible through the standards of the underlying zone in the Willamette Greenway.

The project requires approval of the following applications:

1. Planned Development (master file #PD-2020-001)

The Planned Development process allows for adjustments in lot sizes, lot dimensions, and some development standards, including building height; and a potential increase in density (up to 20% above the maximum normally allowed).

2. Zoning Map Amendment (ZC-2020-001)

The City's Zoning Map would be changed, adding the PD designation to the existing R-2 designation for the site.

3. Willamette Greenway review (WG-2020-001)

Much of the site is located in the Willamette Greenway Overlay zone. Development in the WG requires conditional use approval.

4. Property Line Adjustment (PLA-2020-001)

As part of this proposal, the applicant is adjusting the boundaries of the site to establish Dunbar Woods on its own lot, use 6.77 acres for the Waverly Woods planned development, and establish a third parcel for a future development. The number of lots is not changing.

5. Transportation Facilities Review (TFR-2020-002)

The project's impacts on transportation (vehicular, bicycle, and pedestrian) must be evaluated to determine whether improvements to the transportation system are warranted.

CONCLUSION

Staff recommendation to the Planning Commission is as follows:

1. Recommend that the City Council approve the final development plan for the Waverly Woods Planned Development. This action would allow for development of a 100-unit multifamily apartment planned development in the Willamette Greenway Zone.
2. Recommend that the City Council adopt the attached Findings, Conditions of Approval, and Other Requirements.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC 19.302 - Medium and High Density Residential Zones
- MMC 19.311 - Planned Development Zone
- MMC 19.401 - Willamette Greenway Zone
- MMC 19.505.3 - Multifamily Housing
- MMC 19.600 - Off Street Parking and Loading
- MMC 19.700 - Public Facility Improvements
- MMC 19.902 – Amendments to Maps and Ordinances
- MMC 19.905 – Conditional Uses
- MMC 19.1007 - Type IV Review
- MMC 17 - Land Division (Property Line Adjustment)
- MMC 12.16 - Access Management

Key Approval Criteria

MMC 19.311.9 – Planned Development Zone

The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:

- A. Substantial consistency with the proposal approved with Subsection 19.311.6;
- B. Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;
- C. The proposed amendment is compatible with the surrounding area based on the following factors:
 1. Site location and character of the area.
 2. Predominant land use pattern and density of the area.
 3. Expected changes in the development pattern for the area.
- D. The need is demonstrated for uses allowed by the proposed amendment;
- E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment;
- F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700;

- G. Compliance with all applicable standards in Title 17 Land Division;
- H. Compliance with all applicable development standards and requirements; and
- I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

MMC 19.401.6 – Willamette Greenway

The following shall be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintain or increase views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Advice and recommendations of the Design and Landmark Committee, as appropriate;
- J. Conformance to applicable Comprehensive Plan policies;
- K. The request is consistent with applicable plans and programs of the Division of State Lands;
- L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

MMC 19.902.6 – Zoning Map Amendments

Changes to the Zoning Map shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
 - a. Site location and character of the area.
 - b. Predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.
2. The need is demonstrated for uses allowed by the proposed amendment.

3. The availability is shown of suitable alternative areas with the same or similar zoning designation.
4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.
7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

This application is subject to Type IV review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above and make a recommendation to City Council for a final decision. In Type IV reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing, in order to determine what recommendation to forward to the Council.

A waiver of the 120-day clock was necessary to accommodate the review schedule. In accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance, the applicant agreed to a waiver of the 120-day clock through February 18, 2021 to accommodate a tentative public hearing with the City Council on February 16, 2021. It is possible that further extensions will be required to complete the review process.

The Commission has four decision-making options as follows:

- A. Continue the hearing, to allow for additional public testimony and/or the provision of additional information from the applicant. The Commission may be able to identify specific information needs or suggested revisions to the proposed development plan. The applicant may need to provide another waiver to the 120-day clock.
- B. Recommend to City Council that the application be approved subject to the recommended Findings and Conditions of Approval.
- C. Recommend to City Council that the application be approved with minor modifications to the recommended Findings and Conditions of Approval. Such modifications need to be read into the record.
- D. Recommend denial of the application upon finding that it does not meet approval criteria.

COMMENTS

The applicant's final written argument was received by the deadline of close of business on December 15, 2020 (see Attachment 4). This document was posted on that date so that it was available for review by the public.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early Web Posting	Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Recommended Other Requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Applicant's Final Written Argument (received on December 15, 2020)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early Web Posting = Materials posted to the land-use application webpage at the time of public notice 20 days prior to the hearing.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-meeting>.

**Recommended Findings for Approval
File #PD-2020-001, Waverly Woods**

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, Scott Wyse, representing Walker Ventures LLC, has applied for approval of a Planned Development in the Willamette Greenway Overlay Zone at 10415 SE Waverly Ct. This site is in the R-2 Zone. The land use application file number is PD-2020-001.
2. The proposal is for a multi-unit dwelling development consisting of four (4) residential buildings, a community center with swimming pool, and a community room built over three (3) phases totaling 100 dwelling units. The proposed development is being submitted as a Planned Development application to provide more flexibility related to development standards, such as building height in the Willamette Greenway Zone. The site is in the Willamette Greenway Zone and is also subject to Willamette Greenway review.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Title 12 Streets, Sidewalks, and Public Places
 - MMC Section 19.1007 Type IV Review
 - MMC Section 19.311 Planned Development Zone (PD)
 - MMC Section 19.302 Medium and High Density Residential Zones (including R-2)
 - MMC Title 17 Land Division
 - MMC Section 19.401 Willamette Greenway Zone
 - MMC Chapter 19.500 Supplementary Development Regulations
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC 19.905 Conditional Uses

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

4. The application submittal includes a proposed Planned Development, Zoning Map Amendment, Property Line Adjustment, Willamette Greenway Conditional Use Review, and Transportation Facilities Review. Of all of the application components, the Planned Development and Zoning Map Amendment require the highest level of review (Type IV); as per MMC Subsection 19.1001.6.B, all are being processed with Type IV review.

The application has been processed and public notice provided in accordance with MMC Section 19.1007 Type IV Review. As required by MMC Subsection 19.1002.2, a preapplication conference was held on May 14, 2020. Public notice was sent to property owners and current residents within 400 ft of the subject property. As required by law, public hearings with the Planning Commission were held on October 27, 2020, December 8, 2020, and January 12, 2021, resulting in a recommendation for final decision by the City

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Council. A public hearing with the City Council was held on [month/day], 2021, as required by law.

These findings are worded to reflect the City Council's role as final decision-maker; they represent the Planning Commission's recommendation to the City Council.

5. MMC Title 12 Streets, Sidewalks, and Public Places

a. MMC Chapter 12.16 Access Management

MMC Section 12.16.040 establishes standards for access (driveway) requirements, including access spacing, number and location of accessways, and limitations for access onto local and neighborhood streets. For multifamily properties accessing local and neighborhood streets, new driveways must be spaced at least 100 ft from the nearest intersection.

The subject property has frontage on both Waverly Ct and Lava Dr, but development accessing Waverly Ct is the only development proposed at this time. Waverly Ct is a local street. The proposed site driveway would meet the City's spacing standard of 100 ft for local streets due to the property location on a corner. However, the driveway on Waverly Ct was shown to be offset from the existing Waverly Greens driveway on the opposite side of the street. The proposed new driveway at Waverly Ct was found to meet stopping sight distance but intersection sight distance for turning vehicles was not met. In the submitted Transportation Impact Study (TIS) Kittleson & Associates cited the following AASHTO guidance, "if the available sight distance for an entering or crossing vehicle is at least equal to the appropriate stopping sight distance for the major road, then drivers have sufficient sight distance to anticipate and avoid collisions." Their study specified that any new landscaping, above ground utilities, and signage should be located and maintained along the site frontage to maximize sight distance.

The City's traffic consultant recommends the minimum AASHTO sight distance requirements should be met at the proposed driveways and final acceptance should be made by the City Engineer prior to final site plan approval.

As conditioned, the development is consistent with the applicable standards of MMC 12.16.

b. MMC Chapter 12.24 Clear Vision at Intersections

MMC 12.24 establishes standards for maintenance of clear vision at intersections to protect the safety and welfare of the public in their use of City streets.

As conditioned, all driveways, accessways, and intersections associated with the proposed development conform to the applicable standards of MMC 12.24.

The City Council finds that, as conditioned, the development meets all applicable requirements of MMC Title 12. This standard is met.

6. MMC Title 17 establishes the regulations governing land division.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

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MMC Section 17.12.030 establishes the approval criteria for property line adjustment. The proposed plans meets these criteria as described below.

- (1) MMC Subsection 17.12.030.A.1 requires that the proposed property line adjustment complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed property line adjustment complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.

- (2) MMC Subsection 17.12.030.A.2 requires that the proposed boundary will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed boundary will provide sufficient area on each parcel to accommodate future development in accordance with the standards of the underlying R-2 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for variances in the future. As proposed, this criterion is met.

- (3) MMC Subsection 17.12.030.A.3 requires that the proposed boundary change not reduce residential density below minimum density requirements of the zoning district in which the property is located.

The proposed boundary results in three parcels. Parcel 1 contains the existing Dunbar Woods development with 36 units. The minimum density on this parcel would be 25 units. Parcel 2 is proposed to contain the proposed development of 100 units, which exceeds the minimum density of 78 units. Parcel 3 is 1.84 acres and will be developed as part of a future development.

As proposed, this criterion is met.

As proposed, the City Council finds that the proposed boundary meets the applicable criteria.

b. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- (1) MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated, as well as that minimum lot standards shall conform to Title 19.

The proposed lots are generally rectangular in shape and meet the minimum area requirements for the underlying R-2 zone. All lots conform to the relevant standards of the R-2 zone as described in Finding 7 and to other applicable standards of Title 19 as described elsewhere in these findings.

- (2) MMC Subsection 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street

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upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

The proposed lots are generally rectangular in shape and meet the minimum lot standards in Title 19. The proposed new lot lines are at a 90-degree angle to Waverly Ct or Lava Dr and the rear lot lines are generally parallel to the street.

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.
No compound lot lines are proposed for the side or rear lot lines.

- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variances to the lot shape standards are requested in this application.

- (5) MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

None of the proposed lots is a double frontage or reversed frontage lot.

- (6) MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

As proposed all of the lots comply with the minimum required 35 ft of frontage.

As proposed, the City Council finds that the new lots presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

c. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

As discussed in Finding 11, physical improvements are required as a result of the proposed Planned Development.

As conditioned, the City Council finds that the applicable standards of MMC 17.32 are met.

7. MMC Chapter 19.300 Base Zones

As a Planned Development, the proposed subdivision is subject to the requirements for Planned Developments as established in MMC Section 19.311. The Planned Development (PD) zone is a superimposed zone applied in combination with regular existing zones. The subject property is zoned R-2, so the underlying zone requirements of MMC Section 19.302 are relevant and must be addressed as well.

a. MMC Section 19.311 Planned Development Zone (PD)

The purpose of a Planned Development (PD) zone is to provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements, encouraging greater flexibility of design and providing a more

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desirable use of public and private common open space. PD zones can promote variety in the physical development pattern of the city and encourage a mix of housing types.

(1) MMC Subsection 19.311.2 Use

The City Council approves the final development plan of a PD zone, in consideration of the proposal's conformance to the following standards:

(a) Conformance to the City's Comprehensive Plan

As addressed in more detail in Findings 8 and 12, the proposed Planned Development conforms to the City's applicable Comprehensive Plan and is consistent with the relevant policies and goals.

(b) Formation of a compatible and harmonious group

As proposed, the development is a new community within the Waverly Greens and Dunbar Woods "neighborhood" already located in the immediate area. The proposed development will provide 100 units of apartments in four buildings. Although the proposed structures will have different front facades from the existing developments, because each community has its own character, according to the applicant's submittal materials, the size, orientation, architecture, color palette, and articulating features will be similar and will lend a sense of group compatibility.

(c) Suitability to the capacity of existing and proposed community utilities and facilities

The existing public utilities and facilities in the vicinity of the subject property are all of sufficient size and capacity to support the proposed development. As required, the new utilities provided within the proposed development itself will be suitable to serve it.

(d) Cohesive design and consistency with the protection of public health, safety, and welfare in general

The proposed street access is cohesively designed and meets the various applicable City standards for spacing and sight-distance. Frontage improvements along the subject property's frontage on Waverly Ct, including sidewalks, landscaping, and streetlights will meet applicable City standards. A trail system through a portion of the open space area will offer recreational opportunities while limiting impacts to natural areas.

(e) Affordance of reasonable protection to the permissible uses of properties surrounding the site

No commercial or other nonresidential uses are proposed as part of the development. Surrounding properties are zoned for low-density and high-density

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residential uses, and the proposed development will not limit any future development or redevelopment of those properties.

(2) MMC Subsection 19.311.3 Development Standards

MMC 19.311.3 establishes that the various applicable standards and requirements of MMC Title 19, including those of the underlying zone(s), are applicable in a PD zone, unless the Planning Commission grants a variance from said standards in its approval of the PD or the accompanying subdivision plat. The City Attorney has concurred with the conclusion of City staff that a formal variance request is not required for adjustments related to the flexibility inherent in the stated purpose of the PD zone to encourage greater flexibility of design and provide a more efficient and desirable use of common open space, with an allowance for some increase in density as a reward for outstanding design (e.g., housing type, lot size, lot dimension, setbacks, and similar standards).

(a) Minimum Size of a PD Zone

MMC Subsection 19.311.3.A requires that a PD Zone may be established only on land that is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone.

The subject property is approximately 10.8 acres in size and provides an adequate area for development.

(b) Special Improvements

MMC Subsection 19.311.3.B establishes the City's authority to require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities.

The City's Engineering Department has determined that no special or oversize facilities are required to ensure that the proposed development provides adequate public facilities.

(c) Density Increase and Control

MMC Subsection 19.311.3.C allows an increase in density of up to 20% above the maximum allowed in the underlying zone(s), if the City Council determines that the proposed Planned Development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.

Subtracting the area occupied by area with 25% or greater slope as required by the density-calculation standards provided in MMC Subsection 19.202.4, the maximum allowable density for the net area of the subject property is 84 units. The applicant has proposed a total of 100 units, which is a 20% increase. The applicant

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has listed the following elements as evidence of the project's outstanding design and exceptional advantages:

- *The development takes advantage of the naturally sloping topography by tucking most of the required parking under the building to minimize surface parking which further increases the vegetated area.*
- *The proposed development retains 54% of the vegetated area and the existing tree canopy west of the development extends above the building heights which minimizes the visual impact of the additional building height from the Willamette River. This creates a unique forested setting for the proposed development.*
- *The proposal includes relocating and enlarging the existing community garden, which is an extremely popular amenity and creating an overlook area and walking paths through the forested area with strategic views of the Willamette River in an area currently impassable. Very few multi-unit developments include a community garden space. The overlook area and paths will be available from the public right-of-way and open to the public.*
- *This development seeks to maximize density and minimize its footprint to create "an urban development within an urban forest." Fulfilling the needs for more housing while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for our natural environment. Through the project's compact design, the project will also reduce its operational footprint. Through the approval of the additional height allowance and width of the buildings, the project is able to take advantage of the natural topography on the site to tuck parking under the buildings. Tucking the parking under the building saves the development from surface parking allowing the project space to maintain the forested areas, add additional community spaces, community gardens, and other amenities.*
- *The proposed development includes 100 units of much-needed housing with a range of different sized units and price points.*
- *The site plan includes significant buffers and large setbacks from existing residences that are well beyond the requirements of the R-2 zone. These setbacks and buffers include significant trees and other vegetation.*
- *The proposed buildings include many exceptional features as compared to similar multi-unit developments:*
 - *Buildings A.1 and A.2 are designed to have corner windows to take advantage of views.*

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- *Buildings B.1 and B.2, while without river views will primarily face vegetated areas rather than other buildings and parking lots.*
- *Tuck-under parking is rare in typical multi-unit developments providing a significant amenity for tenants while also reducing the footprint of the development.*
- *Each apartment unit is designed with a balcony, which are designed to be more than three times the size required in the multi-family design standards. The smallest private outdoor space is 195 sq ft.*
- *80% of the apartments are designed to have cross ventilation, which reduces the need for air conditioning during warm weather*
- *Amenities such as solar panels and electric vehicle charging stations will be available upon completion of the project.*

The applicant has asserted that, without the Planned Development process, the site would be difficult to develop without resulting in greater impacts to the forested areas of the site.

As per the recommendation of the Planning Commission, the City Council finds that the proposed development provides sufficiently outstanding design features and exceptional amenities to justify the proposed density increase.

(d) Peripheral Yards

MMC Subsection 19.311.3.D requires that yards along the periphery of any Planned Development zone be at least as deep as the front yard required in the underlying zone(s). Open space may serve as peripheral yard.

The front yard requirements of the underlying R-2 zone is 15 ft. The proposed development provides large wooded setbacks, the smallest of which is 36 ft.

(e) Open Space

MMC Subsection 19.311.3.E requires that a Planned Development set aside land as open space, for scenic, landscaping, or other recreational purposes within the development. A minimum of one-third of the gross area of the site must be provided as open space and/or outdoor recreational areas, with at least half of this area being of the same general character as the area containing dwelling units.

The gross area of the subject property is approximately 10.8 acres, so a minimum of 3.24 acres must be provided as open space, with at least 1.6 acres available for recreational purposes. The applicant has proposed a maintained forest area with walking paths of approximately 3.5 acres, in addition to the areas of forested steep slopes to be maintained as open areas.

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- (3) MMC Subsection 19.311.6 Planning Commission Review of Preliminary Development Plan and Program

MMC 19.311.6 establishes that the Planning Commission shall review an applicant's preliminary development plan and program for a PD and shall notify the applicant whether the proposal appears to satisfy the provisions of this section or has any deficiencies. Upon the Commission's approval in principle of the preliminary plan and program, the applicant shall file a final development plan and program and an application for zone change.

The applicant has submitted a development plan and program for the proposed PD and has requested that the Commission consider it to be the final development plan and program submittal, along with the accompanying application for zone change.

- (4) MMC Subsection 19.311.8 Land Division

MMC 19.311.8 requires that the submittal of a final development plan and program be accompanied by an application for subdivision preliminary plat, where the PD involves the subdivision of land.

The proposal involves a 100-unit apartment development. The proposal includes a property line adjustment; the proposal does not include a subdivision.

- (5) MMC Subsection 19.311.9 Approval Criteria

MMC 19.311.9 requires that the approval authority may approve, approve with conditions, or deny the proposed PD zone based on the following criteria:

- (a) Substantial consistency with the proposal approved with Subsection 19.311.6

The applicant has submitted a development plan and program for the proposed PD and has requested that the Commission consider it to be the final development plan and program submittal, along with the accompanying application for zone change.

- (b) Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3

As demonstrated by these findings, the proposed development complies with these sections.

- (c) The proposed amendment is compatible with the surrounding area based on the following factors:

- (i) Site location and character of the area.
- (ii) Predominant land use pattern and density of the area.
- (iii) Expected changes in the development pattern for the area.

The proposed amendment is compatible with the surrounding area based upon the site location and character of the area. The existing dense, tall forest minimizes the impact of the proposed taller and wider buildings on the ridge on the views from the Willamette River and the breaking up of the length into two distinct masses

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minimizes the appearance from the street. As noted above, the existing multifamily structures in the neighborhood exceed the lengths proposed in this development with the existing Stuart and Waverley Hall Apartments located to the east of this development both ranging in over 284 ft in length. The proposed development is consistent with the predominant land use pattern and density of the area as it is surrounded by existing multifamily apartment complexes. There are no expected changes in the development pattern for the area. The area is designated med-high density residential and this development is the last undeveloped tract of land in the surrounding neighborhood. The general arrangement of the proposed buildings, including forested area and large setbacks and buffers, integrates the development into the surrounding neighborhood. It serves as a better transition between the surrounding high-density neighborhood and the adjacent low-density area with single-family homes. As indicated by the applicable 1989 City of Milwaukie Comprehensive Plan, there are no plans to change the development pattern for the area.

- (d) The need is demonstrated for uses allowed by the proposed amendment

As stated in the application materials, the proponents understand the needs of the rental market as they own a large portfolio of apartment communities ranging in affordability. They have found a gap in the availability of the proposed apartment types. Within their community, they have a waiting list for the type of accommodations this project is providing. The City of Milwaukie's Comprehensive Plan recognizes increased housing is a need and the City Council has identified increased housing opportunity and supply as a top goal for the city.

- (e) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment

The applicant team has performed preliminary investigations into the existing infrastructure including a transportation study to analyze the impacts of increased traffic on the existing city infrastructure. Increased storm water, sewer, domestic and fire water supply as a result of this 100-unit development have also been reviewed and calculated. The submitted application materials include these analyses confirming the adequacy of the existing systems. The existing public transportation facilities, utilities, and available services are adequate to support the proposed development.

- (f) The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700

A transportation impact study has been included as part of application submittal. See Finding 11 for details.

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- (g) Compliance with all applicable standards in Title 17 Land Division
As detailed in Finding 5, the proposed development complies with the applicable standards in Title 17.
- (h) Compliance with all applicable development standards and requirements
As conditioned, and as detailed in these Findings, the proposed development complies with the applicable development standards and requirements.
- (i) The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone
The Residential R-2 zone allows multi-unit residential development by right. As detailed by the applicant, the proposed project fulfills and expands needed amenities for the existing six communities of Waverley Greens Apartments. It would provide more places for community gathering and celebration. The proposed two new community centers and outdoor amenities provide places for the residents to garden, swim, eat, celebrate, meet, organize, and educate themselves. The existing community already partners with local educators to provide classes to its residents. This proposal will increase the number of spaces and opportunities for these experiences. The project is designed to be part of the existing natural forest. The proposal includes relocating and enlarging the community garden, which is an extremely popular amenity and creating walkable paths through the forested area with views of the Willamette River in an area that is currently unpassable. The proposal includes a public river viewing area adjacent to the public right-of-way. The additional density requested would add 16 units to the city's housing inventory. Through the site design the proposed development preserves and manages areas of significant forest far beyond the requirements of the base zoning regulations.
- The general arrangement of the proposed buildings, including forested area and large setbacks and buffers, integrates the development into the surrounding neighborhood. It serves as a better transition between the surrounding high-density neighborhood and the adjacent low-density area with single-family homes.*
- The proposed development seeks to maximize density and minimize its footprint to create an urban development within an urban forest. An additional objective is to fulfill the need for more housing in Milwaukie while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for the natural environment. Through the project's compact design, the project will also reduce its operational footprint. The approval of the additional height allowance and width of the building would allow the project to take advantage of the natural topography on the site to tuck parking under the buildings. The parking level pushes the building to exceed the Willamette Greenway Zone height limit, but still within the allowable City of Milwaukie code. Tucking the parking under the building saves the development from surface parking allowing the*

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project space to maintain the forested areas, add additional community spaces, community gardens and other amenities.

As conditioned, the City Council finds that the proposed development meets the approval criteria.

- (6) MMC Subsection 19.311.10 Planning Commission Action on Final Development Plan and Program

MMC 19.311.10 requires that the Planning Commission hold a public hearing using Type IV review to consider a final development plan and program, zone change application, and subdivision preliminary plat. If the Planning Commission finds that the final development plan and program is in compliance with the preliminary approval and with the intent and requirements of the applicable provisions of the zoning ordinance, it shall forward a recommendation for approval to the City Council for adoption.

As required, the Planning Commission held public hearings on October 27, 2020, December 8, 2020, and January 12, 2021 in accordance with the Type IV process outlined in MMC Section 19.1007 and considered the proposed development plan and program, zone change application, property line adjustment, and Willamette Greenway review. The Planning Commission found that the development plan and program is in compliance with the intent and requirements of the applicable provisions of MMC Title 19 Zoning and forwarded a recommendation of approval to the City Council for adoption.

- (7) MMC Subsection 19.311.11 Council Action on Final Development Plan and Program

MMC 19.311.11 requires that the City Council consider the final development plan and program and zone change application through the Type IV review process, upon receipt of a recommendation from the Planning Commission. Upon consideration of the proposal, the Council may adopt an ordinance applying the PD zone to the subject property and adopt the final development plan and program as the standards and requirements for that PD zone. The Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment, or may reject the proposal and abandon further hearings and proceedings.

The Council considered the final plan and program and zone change application, as well as the accompanying applications for subdivision preliminary plat and associated reviews, in accordance with the Type IV review process outlined in MMC Section 19.1007. The Council held a public hearing on [month/day], 2021, and adopted an ordinance applying the PD zone to the subject property, which adopted the final development plan and program as the standards and requirements for the new PD zone (Ordinance ###).

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The City Council finds that the applicable standards and requirements of MMC 19.311 are met. As per **Ordinance ###**, the final development plan and program is adopted as the standards and requirements and the PD zone designation is applied to the subject property.

b. MMC Section 19.302 Medium and High Density Residential Zones (including R-2)

The subject property is zoned Residential R-2. MMC 19.302 establish the allowable uses and development standards for the residential R-3 zone. As noted in Finding 7-a(2), although the underlying zone standards are primarily applicable, the PD zone allows adjustment to some of those standards. This applies to such underlying zone limitations as housing type, lot size, lot dimension, setbacks, and similar standards that relate to flexibility of design, greater efficiency in the use of common open space, and minor increases in density allowed as a reward for outstanding design.

(1) Permitted Uses

As per MMC Table 19.302.2, multifamily development is an outright permitted use in the R-3 zone.

The proposal is a 100-unit multifamily development.

(2) Lot and Development Standards

As discussed in Finding 7-a(2), above, adjustments to underlying zone standards that are related to the flexibility of design afforded by the PD process are allowed and do not require a formal variance request. Table 7-b(2) compares the applicable standards for development in the R-2 zone with the standards proposed as the final development plan and program for this PD zone.

Table 7-b(2)		
Standard	R-2 Requirement	Proposed PD Requirement – Parcel 2
1. Minimum Lot Size	5,000 sq ft	294,350 sq ft
2. Minimum Lot Width	50 ft	300+ ft
3. Minimum Lot Depth	80 ft	300+ ft
4. Minimum street frontage	35 ft	300+ ft
5. Front Yard	15 ft	15.08 ft
6. Side Yard	5 ft	36 ft
7. Rear Yard	15 ft	99 ft
8. Maximum Building Height	3.5 stories or 45 ft	4 stories; 52 ft

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	(whichever is less; with additional 10% vegetation)	
9. Side yard height plane limit	45-degree slope at 25 ft height	Exceeds this standard – see PD request for additional building height.
10. Maximum lot coverage	45%	21.9%
11. Minimum vegetation	15%	54%
12. Minimum density	11.6 units per acre	Minimum of 78 units for entire site
13. Maximum density	17.4 units per acre	Maximum of 84 units for entire site (Applicant has requested a 20% density increase to a total of 100 units)

The lots and development standards that will govern development on the subject property are shown in Table 7-b(2) and effectively establish a component of the final development plan and program for this PD zone.

8. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.401 Willamette Greenway Overlay Zone

MMC 19.401 establishes criteria for reviewing and approving development in the Willamette Greenway.

(1) MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

To construct a multi-unit apartment community constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

(2) MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

(a) Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan

The State Willamette River Greenway Plan defines “lands committed to urban use” in part as “those lands upon which the economic,

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developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate.”

The land for the proposed project has been committed to an urban use as defined under the State Willamette River Greenway Plan. The City of Milwaukie has designated the use of this land as Residential R-2, medium and high-density development.

- (b) Compatibility with the scenic, natural, historic, economic, and recreational character of the river

The proposed development would be more than 1,000 ft from the river and there is currently no access to the river from the subject property. The proposed development is consistent with the multi-unit residential character of the surrounding area and in its relationship with the river. The proposed development is set back from the river with a buffer of an existing adjacent golf course and multiple existing multi-unit residential developments that are closer and more exposed to the river. The proposed development maintains 54% of the site in its vegetated and forested state. The proposed development includes the addition of recreational walking paths through the forested site.

- (c) Protection of views both toward and away from the river

By maintaining the existing forest and specifically orienting the new development, the views from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest and removing invasive species and dead/diseased trees along with curating views from the development itself. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting the views from and/or across the river.

- (d) Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable

The proposed development footprint is located to the northeast portion of the site, which is the farthest corner away from the river. The south and west of the site are devoted to walking paths and recreational uses for future residents along with maintaining habitat corridors. The development site has no direct connection to the river.

- (e) Public access to and along the river, to the greatest possible degree, by appropriate legal means

There is no public access from the site to the river from the proposed development or its surrounding area. The subject property is not directly adjacent to the river.

- (f) Emphasis on water-oriented and recreational uses

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There is no direct access to the river from the site. Increased access to views of the river will be created by the development.

- (g) Maintain or increase views between the Willamette River and downtown

The site is not in the downtown.

- (h) Protection of the natural environment according to regulations in Section 19.402

Section 19.402 does not apply to the site; there are no mapped resource areas on the site. However, as part of the project, the proposed development would remove invasive species, dead and diseased trees, and improve the overall health of the forested area on the site.

- (i) Advice and recommendations of the Design and Landmarks Committee, as appropriate

The subject properties are not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee.

- (j) Conformance to applicable Comprehensive Plan policies

The Open Spaces, Scenic Areas, and Natural Resources Element includes goals and objectives related to conservation of open space and protection and enhancement of natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

The Willamette Greenway Element includes policies related to land use, public access and view protection, and maintenance of private property.

The Housing Element includes policies to provide opportunities for a wider range of housing choice in Milwaukie.

The proposed development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not impact visual corridors from Waverly Ct given the limited view opportunities that currently exist. The proposed development maximizes density while minimizing development footprint to increase urban tree canopy, recreational areas, and also provide additional community spaces - key aspects of the Milwaukie Comprehensive Plan.

The subject property is not designated as containing mapped natural resources. However, by preserving a significant portion of the site as forest, this upland wooded area would remain in a natural state.

The subject property is designated as high density; increasing the number of residential units to meet future demand is an important consideration in the Comprehensive Plan. One of the planning concepts is that the City's housing policies are designed to ensure that existing and future residents are provided

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housing opportunities coincident with a broad range of housing demands. The applicant has clarified that the overall Waverly Greens communities include rental units at a variety of rent levels and that the proposed units would be rented at the higher end of that scale. The 2016 Housing Needs Assessment notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city. Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others.

The subject property is zoned for high density development and is part of a larger multi-unit development community, but is also adjacent to a low-density single-unit development area. As shown in the applicant's site plans, by providing additional setbacks and a stated commitment to additional landscaped buffers, the proposed development provides this balance of interests. The proposed project addresses policy objectives through the use of extensive vegetated areas, tuck-under parking and additional building height to reduce overall project footprint, and increased setbacks and buffer areas to adjacent residences.

- (k) The request is consistent with applicable plans and programs of the Division of State Lands

The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL).

- (l) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C

The subject properties are not immediately adjacent to the main channel of the Willamette River. The proposed residential development is more than 1,000 ft from the river. This criterion does not apply.

The City Council finds that, as conditioned, the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.

- (3) MMC Subsection 19.401.9 Private Noncommercial Docks

MMC 19.401.9 establishes the requirements for private noncommercial docks.

- (a) Only 1 dock is allowed per riverfront lot of record.

No docks are proposed as part of this development.

This standard is not applicable.

The City Council finds that, as conditioned, the proposed activity meets all applicable standards of development activity in the Willamette Greenway zone.

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9. MMC Chapter 19.500 Supplementary Development Regulations

a. MMC Subsection 19.505.3 Multifamily Housing

MMC 19.505.3 establishes design standards for multifamily housing, to facilitate the development of attractive housing that encourages multimodal transportation and good site and building design. The requirements of this subsection are intended to achieve the principles of livability, compatibility, safety and functionality, and sustainability. The design elements, established in MMC Subsection 19.505.3.D, are applicable to all new multifamily housing developments with 3 or more units.

- (1) MMC Subsection 19.505.3.B states that all new multifamily and congregate housing developments with 3 or more dwelling units on a single lot are subject to the design elements in Table 19.505.3.D.

The proposed development will have 100 dwelling units on a single lot and is considered multifamily. The proposed development meets the applicability standards of MMC 19.505.3.B.

- (2) MMC Subsection 19.505.3.D contain standards for Multifamily Design Guidelines.

The proposed multi-unit residential development is following the Design Guidelines for the Discretionary Process. The application meets the standards of this section as described in Table 2 below.

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
1. Private Open Space	<p>The development should provide private open space for each dwelling unit, with direct access from the dwelling unit and visually and/or physically separate from common areas.</p> <p>The development may provide common open space in lieu of private open space if the common open space is well designed, adequately sized, and functionally similar to private open space.</p>	<i>Each apartment unit has its own private balcony directly accessible from the interior of each dwelling. The balconies are separated physically and visually from other apartments. The smallest private outdoor space is 195 sq ft.</i>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
<p>2. Public Open Space</p>	<p>The development should provide sufficient open space for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather.</p>	<p><i>There are multiple open space areas proposed in the development, including large outdoor community gardens, a swimming pool, walking trails, permanent picnic tables, and river overlook sitting areas. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.</i></p>
<p>3. Pedestrian Circulation</p>	<p>Site design should promote safe, direct, and usable pedestrian facilities and connections throughout the development. Ground-floor units should provide a clear transition from the public realm to the private dwellings.</p>	<p><i>As designed, the proposed development will have continuous connections with adequate lighting and street crossings to site elements as required. Walkways are separated from vehicle parking with physical barriers such as planter strips and raised curbs. Walkways shall be constructed of concrete, with a minimum width of 5 ft and a width of 7 ft where parked vehicles will overhang the walkway. The walkways will be separated from parking areas and internal driveways using curbing, landscaping, or distinctive paving materials.</i></p>
<p>4. Vehicle and Bicycle Parking</p>	<p>Vehicle parking should be integrated into the site in a manner that does not detract from the design of the building, the street frontage, or the site. Bicycle parking should be secure, sheltered, and conveniently located.</p>	<p><i>138 off-street parking spaces are proposed for the development. A total of 108 vehicle parking spaces for residents will be located under the buildings and 30 parking spaces will be provided off the private dead-end street for the apartment buildings, community center and other amenity spaces.</i></p> <p><i>Covered, secure bike parking with permanently mounted bike racks/hangers will be provided in the parking garage. Outdoor bike racks located no further than 3 ft from the main entrance of each building, are also proposed.</i></p> <p><i>A total of 100 bicycle parking spaces are proposed, 50 of which would be covered spaces (50%).</i></p>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
<p>5. Building Orientation and Entrances</p>	<p>Buildings should be located with the principal façade oriented to the street or a street-facing open space such as a courtyard. Building entrances should be well-defined and protect people from the elements.</p>	<p><i>The proposed buildings numbered A.1, A.2, and B.2 are located on a private internal dead-end drive, not a public right-of-way. Buildings A.1 and A.2 feature street facing primary entrances, which become focal points as the central element of the buildings' U-shape. Users are drawn into the building entry by an entry overhang, walking paths, and landscape elements.</i></p>
<p>6. Building Façade Design</p>	<p>Changes in wall planes, layering, horizontal & vertical datums, building materials, color, and/or fenestration should be incorporated to create simple and visually interesting buildings. Windows and doors should be designed to create depth and shadows and to emphasize wall thickness and give expression to residential buildings.</p> <p>Windows should be used to provide articulation to the façade and visibility into the street.</p> <p>Building facades should be compatible with adjacent building facades.</p> <p>Garage doors shall be integrated into the design of the larger façade in terms of color, scale, materials, and building style.</p>	<p><i>The street facing façade is broken into two building masses flanking a recessed entry with outdoor balconies and projecting window bays providing visual interest. A minimum of 25% of the façade is glazing. Garage doors will appear highly transparent as the garages will be open air and require doors that are perforated.</i></p>
<p>7. Building Materials</p>	<p>Buildings should be constructed with architectural materials that provide a sense of permanence and high quality, incorporating a hierarchy of building materials that are durable.</p> <p>Street-facing facades should consist predominantly of a simple palette of long-lasting materials such as brick, stone, stucco, wood siding, and wood shingles.</p> <p>Split-faced block and gypsum reinforced fiber concrete (for trim elements) should only be used in limited quantities.</p> <p>Fencing should be durable, maintainable, and attractive.</p>	<p><i>Building materials will be a mix of fiber cement board siding with wood accent siding with metal trim panels. The buildings will be constructed with architectural materials that provide a sense of permanence and high quality consistent with this requirement.</i></p>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
8. Landscaping	Landscaping should be used to provide a canopy for open spaces and courtyards, and to buffer the development from adjacent properties. Existing, healthy trees should be preserved whenever possible. Landscape strategies that conserve water should be included. Hardscapes should be shaded where possible, as a means of reducing energy costs (heat island effect) and improving stormwater management.	<i>Approximately 54% of the site is proposed to be landscaped or maintained as vegetation and a detailed landscaping plan and tree plan were submitted. As part of the development, existing trees will be maintained where possible. Diseased and dead trees, as well as, invasive species, such as English ivy and blackberries, will be removed and replaced by native plants where appropriate. New natural walking paths will be developed through the preserved wooded area for residents.</i>
9. Screening	Mechanical equipment, garbage collection areas, and other site equipment and utilities should be screened so they are not visible from the street and public or private open spaces. Screening should be visually compatible with other architectural elements in the development.	<i>Screening will be provided as per the development standards. Mechanical equipment will be housed inside the buildings with some roof top equipment located on lower roof areas that are blocked from view by adjacent high sloped roofs. Trash and recycling will be collected in trash rooms on the parking levels of each apartment building to avoid waste containers being visible from the outside.</i>
10. Recycling Areas	Recycling areas should be appropriately sized to accommodate the amount of recyclable materials generated by residents. Areas should be located such that they provide convenient access for residents and for waste/recycling haulers. Recycling areas located outdoors should be appropriately screened or located so they are not prominent features viewed from the street.	<i>Recycling collection will be provided in the trash/recycling room located on the parking level of each building. Residents will be responsible for bringing their recycling to that location and maintenance staff will collect and transport the material off site.</i>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
11. Sustainability	Development should optimize energy efficiency by designing for building orientation for passive heat gain, shading, day-lighting, and natural ventilation. Sustainable materials, particularly those with recycled content, should be used whenever possible. Sustainable architectural elements should be incorporated to increase occupant health and maximize a building's positive impact on the environment. When appropriate to the context, buildings should be placed on the site giving consideration to optimum solar orientation. Methods for providing summer shading for south-facing walls, and the implementation of photovoltaic systems on the south-facing area of the roof, are to be considered.	<i>As proposed, sustainability is a key component in the design of the development. Building orientation and solar access along with passive strategies were the first step of the design analysis. A preliminary solar study has been completed, and the applicants are committed to installing solar panels on the roofs. Each unit is provided with operable windows and overhangs, and sunscreens will be studied to maximize efficiency as part of the building design. Retaining and re-planting the surrounding tree canopy is a key component to maintaining a cool site that takes advantage of the breezes flowing down the Willamette River and through the tree canopy to provide passive cooling for the units. On-site rainwater collection is being investigated along with applying roofing materials with an SRI of 78 where the roof has a 3/12 pitch or less and an SRI of 29 where the roof pitch is 3/12 or greater.</i>
12. Privacy Considerations	Development should consider the privacy of, and sight lines to, adjacent residential properties, and should be oriented and/or screened to maximize the privacy of surrounding residences.	<i>As proposed, all privacy considerations have been incorporated into the design, including vegetated screening provided by the existing and proposed tree canopy and plantings.</i>
13. Safety	Development should be designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Lighting should be provided that is adequate for safety and surveillance, while not imposing lighting impacts to nearby properties. The site should be generally consistent with the principles of Crime Prevention Through Environmental Design (CPTED): <ul style="list-style-type: none"> • Natural Surveillance • Natural Access Control • Territorial Reinforcement 	<i>As proposed, all safety design considerations will be met in the final permit plans. The project is designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Exterior light fixtures will be provided that minimize light pollution while maintaining adequate lighting for egress and security. Units have living spaces that overlook building entrances and parking areas.</i>

The City Council finds that, as conditioned, the discretionary multifamily design guidelines have been met.

10. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space

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for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site is required to provide off-street parking and loading areas that conform fully to the requirements of MMC 19.600.

The proposed development consists of 100 apartment units in 4 buildings and an amenity building/clubhouse on a vacant site and is required to conform fully to the requirements of MMC 19.600.

The City Council finds that the provisions of MMC 19.600 are applicable to the proposed development.

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand.

The proposed multi-unit residential development includes 100 apartments that are more than 800 sq ft.

As per MMC Table 19.605.1, the minimum number of required off-street parking spaces for multifamily housing is 1.25 spaces per unit for units more than 800 sq ft. The maximum number of spaces is 2 spaces per unit, regardless of size. According to MMC Table 19.605.1, the proposed development should provide a minimum of 125 spaces and would have a maximum of 200 spaces allowed. As proposed, the development would provide 29 surface parking spaces and 108 garage spaces, for a total of 137 spaces, which falls within that range.

The City Council finds that this standard is met.

c. MMC Section 19.606 Parking Area Design and Landscaping

MMC 19.606 establishes standards for parking area design and landscaping, to ensure that off-street parking areas are safe, environmentally sound, and aesthetically pleasing, and that they have efficient circulation.

(1) MMC Subsection 19.606.1 Parking Space and Aisle Dimension

MMC 19.606.1 establishes dimensional standards for required off-street parking spaces and drive aisles. For 90°-angle spaces, the minimum width is 9 ft and minimum depth is 18 ft, with a 9-ft minimum curb length and 22-ft drive aisles. Parallel spaces require with 22-ft lengths and a width of 8.5 ft.

The applicant has submitted a parking plan that satisfies these dimensional standards.

(2) MMC Subsection 19.606.2 Landscaping

MMC 19.606.2 establishes standards for parking lot landscaping, including for perimeter and interior areas. The purpose of these landscaping standards is to

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provide buffering between parking areas and adjacent properties, break up large expanses of paved area, help delineate between parking spaces and drive aisles, and provide environmental benefits such as stormwater management, carbon dioxide absorption, and a reduction of the urban heat island effect.

(a) MMC Subsection 19.606.2.C Perimeter Landscaping

In all but the downtown zones, perimeter landscaping areas must be at least 6 ft wide where abutting other properties and at least 8 ft wide where abutting the public right-of-way. At least 1 tree must be planted for every 30 lineal ft of landscaped buffer area, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment. Parking areas adjacent to residential uses must provide a continuous visual screen from 1 to 4 ft above the ground to adequately screen vehicle lights.

For the majority of the site, the design maintains more than 30 ft of setback to the proposed buildings. The majority of the parking spaces are covered garage spaces, but 29 surface spaces are proposed in the interior of the community. None of these spaces are located at the perimeter of the site.

This standard is met.

(b) MMC Subsection 19.606.2.D Interior Landscaping

At least 25 sq ft of interior landscaped area are required for each parking space. Planting areas must be at least 120 sq ft in area, at least 6 ft in width, and dispersed throughout the parking area. For landscape islands, at least 1 tree shall be planted per island, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment.

The proposed development includes 29 surface parking spaces, for which a minimum of 725 sq ft of interior landscaping is required. As proposed, the site plan provides approximately 2,000 sq ft of interior landscaping in 10 individual landscaped islands, well over the minimum required. All of the interior landscaped areas are at least 120 sq ft in size, but the triangle-shaped islands at the end of the line of stalls are approximately 112 sq ft. All islands are disbursed throughout the various parking areas on the site.

This standard is met through the approval of the Planned Development.

(c) MMC Subsection 19.606.2.E Other Parking and Landscaping Provisions

Preservation of existing trees in off-street parking areas is encouraged and may be credited toward the total number of trees required. Parking area landscaping must be installed prior to final inspection, unless a performance bond is posted with the City. Required landscaping areas may serve as stormwater management facilities, and pedestrian walkways

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are allowed within landscape buffers if the buffer is at least 2 ft wider than required by MMC 19.606.2.C and 19.606.2.D.

As noted in the findings above, approximately 54% of the site will be maintained with vegetation including the existing tree canopy. An arborist report was included with the application, including a tree removal and protection plan. 135 trees are proposed for protection and retention with priority given to the larger diameter Douglas firs and Oregon white oaks.

This standard is met.

As conditioned, the City Council finds that the applicable standards of MMC 19.606.2 are met.

(3) MMC Subsection 19.606.3 Additional Design Standards

MMC 19.606.3 establishes various design standards, including requirements related to paving and striping, wheel stops, pedestrian access, internal circulation, and lighting.

(a) MMC Subsection 19.606.3.A Paving and Striping

Paving and striping are required for all required maneuvering and standing areas, with a durable and dust-free hard surface and striping to delineate spaces and directional markings for driveways and accessways.

The plans submitted indicate that all parking areas will be paved and striped.

This standard is met.

(b) MMC Subsection 19.606.3.B Wheel Stops

Parking bumpers or wheel stops are required to prevent vehicles from encroaching onto public rights-of-way, adjacent landscaped areas, or pedestrian walkways. Curbing may substitute for wheel stops if vehicles will not encroach into the minimum required width for landscape or pedestrian areas.

The applicant's narrative indicates that a combination of curbs set back 2 ft or wheel stops will be installed to prevent vehicles from encroaching into pedestrian walkways and perimeter landscaping areas. This requirement will be confirmed as part of the subsequent Development Review and final inspection.

This standard is met.

(c) MMC Subsection 19.606.3.C Site Access and Drive Aisles

Accessways to parking areas shall be the minimum number necessary to provide access without inhibiting safe circulation on the street. Drive aisles shall meet the dimensional requirements of MMC 19.606.1, including a 22-ft minimum width for drive aisles serving 90°-angle stalls and a 16-ft minimum width for drive aisles not abutting a parking space. Along

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collector and arterial streets, no parking space shall be located such that its maneuvering area is in an ingress or egress aisle within 20 ft of the back of the sidewalk. Driveways and on-site circulation shall be designed so that vehicles enter the right-of-way in a forward motion.

The proposed development will take its access via a driveway from Waverly Ct. The proposed drive aisles meet the minimum applicable dimensional requirements and are designed so that vehicles enter the right-of-way in a forward motion.

The submitted Transportation Impact Analysis (TIS) includes future vehicle trip distribution related to the development based on the impact of the development combined with background growth.

As conditioned, this standard is met.

(d) MMC Subsection 19.606.3.D Pedestrian Access and Circulation

Pedestrian access shall be provided so that no off-street parking space is farther than 100 ft away, measured along vehicle drive aisles, from a building entrance or a walkway that is continuous, leads to a building entrance, and meets the design standards of MMC Subsection 19.504.9.E.

As proposed, no off-street parking space is farther than 100 ft away from a building entrance or walkway that meets the standards of this subsection.

This standard is met.

(e) MMC Subsection 19.606.3.E Internal Circulation

The City Council has the authority to review the pedestrian, bicycle, and vehicular circulation of the site and impose conditions to ensure safe and efficient on-site circulation. Such conditions may include, but are not limited to, on-site signage, pavement markings, addition or modification of curbs, and modification of drive aisle dimensions.

The City Council has reviewed the proposed circulation plan and concluded that it provides safe and efficient on-site circulation.

This standard is met.

(f) MMC Subsection 19.606.3.F Lighting

Lighting is required for parking areas with more than 10 spaces and must have a cutoff angle of 90° or greater to ensure that lighting is directed toward the parking surface. Lighting shall not cause a light trespass of more than 0.5 footcandles measured vertically at the boundaries of the site and shall provide a minimum illumination of 0.5 footcandles for pedestrian walkways in off-street parking areas.

The proposed development will have continuous connections with adequate lighting and street crossings to site elements as required. The applicant's submittal

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did not include a lighting plan. A condition requiring a photometric plan showing compliance to be submitted during permit review has been included.

As conditioned, this standard is met.

As conditioned, the City Council finds that the applicable standards of MMC 19.606.3 are met.

As conditioned, the City Council finds that the applicable design and landscaping standards of MMC 19.606 are met.

d. MMC Section 19.608 Loading

MMC 19.608 establishes standards for off-street loading areas and empowers the Planning Director to determine whether loading spaces are required. The purpose of off-street loading areas is to contain loading activity of goods on-site and avoid conflicts with travel in the public right-of-way; provide for safe and efficient traffic circulation on the site; and minimize the impacts of loading areas to surrounding properties. For residential development with fewer than 50 dwelling units on a site that abuts a local street, no loading space is required; otherwise, 1 space is required.

The proposed multi-unit residential development includes 100 units in 4 buildings. None of the buildings have more than 50 dwellings, but a loading zone is included adjacent to the Community Center. No impacts to the public right of way or surrounding properties are anticipated by loading activity on the site.

The City Council finds that this standard is met and that no loading spaces are required.

e. MMC Section 19.609 Bicycle Parking

MMC 19.609 establishes standards for bicycle parking for new development of various uses. Multifamily residential development with 4 or more units shall provide 1 space per unit. When at least 10 bicycle spaces are required, a minimum of 50% of the spaces shall be covered and/or enclosed. MMC Subsection 19.609.3.A provides that each bicycle parking space shall have minimum dimensions of 2 ft by 6 ft, with 5-ft-wide aisles for maneuvering. MMC Subsection 19.609.4 requires bike racks to be located within 50 ft of a main building entrance.

The proposed multi-unit residential development has 100 units, which equals a minimum of 100 bicycle spaces required, 50 of which must be covered and/or enclosed. Per Finding 10-b, a total of 100 bicycle spaces are proposed, with 50 of those spaces being covered, which will be located at the parking garage entry of each building. This secure bike parking will be on permanently mounted bike racks/hangers in the parking garage. Outdoor bike racks, located no further than 30 ft from the main entrance of each building are included to meet the required number of racks required. The submitted plans do not include details of the bike stall dimensions, so a condition has been established to require more detailed information sufficient to determine that the applicable standards are met.

As conditioned, the City Council finds that this standard is met.

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f. MMC Section 19.610 Carpool and Vanpool Parking

MMC 19.610 establishes carpool parking standards for new industrial, institutional, and commercial development. The number of carpool/vanpool parking spaces shall be at least 10% of the minimum amount of required parking spaces. Carpool/vanpool spaces shall be located closer to the main entrances of the building than other employee or student parking, except ADA spaces and shall be clearly designated with signs or pavement markings for use only by carpools/vanpools.

The proposed development is a multi-unit residential development.

This standard does not apply.

As conditioned, the City Council finds that the proposed development meets all applicable standards of MMC 19.600.

11. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including new construction.

The applicant proposes to develop new construction of 100 multifamily residential units as an expansion to an existing multifamily development. The proposed new construction and additional dwelling units trigger the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff on May 14, 2020, prior to application submittal. The applicant's proposal includes a Transportation Facilities Review and a transportation impact study, meeting the requirements of this section.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

The proposed development completed a formal TIS according to scoping developed by the City Engineer and the City's on-call traffic consultant (DKS) provided the applicant with a scope of work for the TIS. No offsite mitigation was found to be required. Adjacent frontage improvements will include 6-ft curb tight sidewalks, three new pedestrian crossings, and a ½-

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street 2" mill and overlay of Waverly Court along the property frontage as shown in submitted preliminary plans dated July 28, 2020 and received by the city on August 4, 2020. Additional information regarding the TIS is presented in the accompanying staff report.

As submitted, the applicant's TIS is sufficient to meet the requirements of MMC 19.704.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

Improvements submitted by the applicant were in rough proportion to potential impacts. Final design will be approved by the City Engineer prior to construction, including final design mitigations for any deficiency in intersection-sight distance.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The application was referred to the Oregon Department of Transportation (ODOT), Clackamas County Department of Transportation and Development (DTD), TriMet, and Metro for comment. Agency comments have been incorporated into these findings and the associated conditions of approval.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As proposed, the development is consistent with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

The proposed Waverly Ct cross section conforms to applicable requirements and are consistent with MMC 19.708.2.

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(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

The proposed development includes ADA ramps and ADA compliant sidewalks.

As conditioned, the development is consistent with all applicable standards of MMC 19.708.3.

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities, including a reference to the Public Works Standards.

The City's bicycle facilities goals, objectives, and policies are found in Chapter 6 of the Transportation System Plan (TSP). No additional context is identified for the adjacent frontage of development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.4.

(5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths.

The proposed site plan includes pedestrian connections within the development connecting to the proposed sidewalk on Waverly Ct.

As proposed, the development is consistent with all applicable standards of MMC 19.708.5.

(6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

The City's transit facilities goals, objectives, and policies are found in Chapter 7 of the TSP. No additional context is identified for the adjacent frontage of development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.6.

As conditioned, the City Council finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

12. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the process for amending the City's Comprehensive Plan and land use regulations, including the zoning map. Specifically, MMC Subsection 19.902.6 establishes the review process and approval criteria for zoning map amendments.

a. MMC Subsection 19.902.6.A Review Process

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MMC 19.902.6.A provides that, generally, changes to the zoning map that involve 5 or more properties or encompass more than 2 acres of land are legislative and are therefore subject to Type V review; otherwise, they are quasi-judicial in nature and subject to Type III review. The City Attorney has the authority to determine the appropriate review process for each proposed zoning map amendment.

The proposed zoning map amendment encompasses a single property of approximately 10.8 acres and is related to a proposed planned development, which requires Type IV review. The City Attorney has determined that the proposed zoning map amendment is quasi-judicial in nature and requires Type III review. The concurrent planned development requires Type IV review, which is also a quasi-judicial process. The City Council finds that the Type IV review process is appropriate for the proposed zoning map change.

b. MMC Subsection 19.902.6.B Approval Criteria

MMC 19.906.2.B establishes the following approval criteria for zoning map amendments:

(1) The proposed amendment is compatible with the surrounding area based on the following factors:

- (a) Site location and character of the area
- (b) Predominant land use pattern and density of the area
- (c) Expected changes in the development pattern for the area

The area surrounding the subject property includes a golf course, low to moderate density residential development, as well as a number of multi-unit dwelling developments. The proposed development will preserve over half of the site area as natural open space or vegetation with access through trails for low-impact recreational use. The location offers easy access to Highway 224, downtown Milwaukie and the light rail station, the Trolley Trail and the Springwater corridor, Milwaukie Bay Park, and Hwy 99E.

The 100 units of apartments will be arranged in a compact pattern of four buildings with mostly covered parking in the lower levels of the buildings to minimize the building footprint. The development is requesting a 20% increase in overall density, but that is due to the steep slopes on the site, not the gross area of the subject property. The proposed development is consistent with the Housing element of the Comprehensive Plan and the need for more rental housing opportunities in Milwaukie.

The proposed zoning amendment is compatible with the surrounding area based on the factors listed above.

(2) The need is demonstrated for uses allowed by the proposed amendment.

The applicable 1989 Milwaukie Comprehensive Plan, as amended, includes an objective calling for an adequate and diverse range of housing types in the city, including a wide range of densities. One of the planning concepts is that the City's housing policies are

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designed to ensure that existing and future residents are provided housing opportunities coincident with a broad range of housing demands. The 2016 Housing Needs Assessment notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city.

- (3) The availability is shown of suitable alternative areas with the same or similar zoning designation.

Functionally, the PD designation is a form of overlay zone designation that can be applied to sufficiently sized properties for greater flexibility in developing the site. This criterion is more applicable to standard base zone designations and is intended to ensure that a suitable number of other properties with the same base zone designation will remain available for development.

This criterion is not applicable to a proposal to add the PD designation to a base zone.

- (4) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

The applicant's submittal materials include a traffic impact study, utility plans, and preliminary stormwater drainage report to demonstrate that public facilities are or will be made adequate to serve the proposed development.

Existing water and sanitary sewer services in Waverly Ct are provided by the City and Clackamas County's Water and Environment Services (WES) respectively and are adequate to serve the proposed new units.

The applicant proposes to manage stormwater runoff from the new development with methods for water conservation and maintenance on-site. three large, shallow bioswale facilities.

No newly dedicated public rights-of-way are proposed to serve the proposed lots. Proposed public improvements to Waverly Ct are shown including new pedestrian crossings, pedestrian ramps, and sidewalks. All improvements will be constructed to meet applicable City standards.

The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the proposed development.

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

The applicant prepared a transportation impact study (TIS) to evaluate the proposed development's anticipated impacts on the transportation system. The TIS concluded that

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traffic volumes from the proposed development will not cause any of the intersections in the study area to fall below acceptable levels of service. Additional information is provided in the accompanying staff report.

As conditioned, the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The Land Use Map within the City's Comprehensive Plan (Plan) reflects the R-2 zoning of the subject property, with a High Density designation for the site. The proposed amendment would add the Planned Development (PD) designation to the zone designation for the subject property but would not affect the designation on the Land Use Map.

The Comprehensive Plan includes a number of goals and policies that are applicable to the proposed development.

- (a) Chapter 1 Citizen Involvement

The goal of Chapter 1 is to encourage and provide opportunities for citizens to participate in all phases of the planning process. Prior to submitting the application, the applicant attended a meeting of the Historic Milwaukie Neighborhood District Association on July 13, 2020 to present the project. The applicant noted that the neighbors spoke highly of the current Waverley Greens apartment properties and noted the quality landscaping and community amenities. Overall, the community reaction to the presentation was positive with attendees looking forward to walking through the wooded areas and perhaps even being future tenants.

The Type IV review process utilized for consideration of any Planned Development provides for public hearings by both the Planning Commission and City Council, where citizens have the opportunity to present testimony and participate in the decision-making process. Public hearings on the proposed development were held by the Planning Commission on October 27, 2020, December 8, 2020, and January 12, 2021; a public hearing was held by the City Council on [month/day], 2021. The Commission and Council considered testimony from citizens en route to reaching the decision reflected in these findings.

- (b) Chapter 3 Environmental and Natural Resources

Open Spaces, Scenic Areas, and Natural Resources Element

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

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The subject property does not contain mapped natural resources subject to MMC 19.402. In 1987, the area known as “Waverly Woods” was identified as a natural resources property, but, as noted in the background and concepts section, the site (and others) was dropped as a designated natural area because “...of other values (i.e. economic, social).”

(i) *Objective #1 – Open Space*

This objective seeks to protect open space resources in the city, defined as vacant land that will remain undeveloped in accordance with the Willamette Greenway program or other land use requirements.

The subject property is nearly entirely wooded, and the proposed development includes maintaining approximately 54% of the site in vegetation and includes removal of all invasive plants and trees.

(ii) *Objective #2 – Natural Resources*

The subject property is not designated as containing mapped natural resources. However, by preserving a significant portion of the site as forest, this upland wooded area would remain in a natural state.

(c) *Chapter 4 Land Use*

Residential Land Use and Housing Element

Goal statement: To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.

One of the planning concepts is that the City’s housing policies are designed to ensure that existing and future residents are provided housing opportunities coincident with a broad range of housing demands. The applicant has clarified that the overall Waverly Greens communities include rental units at a variety of rent levels and that the proposed units would be rented at the higher end of that scale. The 2016 Housing Needs Assessment notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city. Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data shows that some renter households have the ability to pay for newer and/or higher quality units than is currently available.

(i) *Objective #2 – Residential Land Use: Density and Location*

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This objective is to locate higher density residential uses so that the concentration of people will help to support public transportation services and major commercial centers.

The proposed development seeks to maximize allowable density in a smaller footprint on a site within walking distance of the downtown area and all of its amenities including a public bus hub and a light rail transit station.

(ii) *Objective #3 – Residential Land Use: Design*

This objective relates to a desirable living environment by allowing flexibility in design while also minimizing the impact of new construction on existing development. Planning concepts in this section state that "...residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized. Transition policies will be applied to reduce any negative impacts of development on adjacent uses."

This means that the goal is to balance the goal of providing additional housing, including density bonuses to realize the full development potential of a site, while at the same time requiring thoughtful design as it relates to adjacent properties. The subject property is zoned for high density development and is part of a larger multi-unit development community, but is also adjacent to a low-density single-unit development area. As shown in the applicant's revised site plans, by providing additional setbacks and a stated commitment to additional landscaped buffers, the proposed development provides this balance of interests.

(iii) *Objective #4 – Neighborhood Conservation*

This objective relates to the various areas of city that are defined by allowed density. In high density areas, such as the subject property, "...clearance and new construction will be allowed, as will construction on currently vacant lands. Identified historic resources will be protected as outlined in the Historic Resources Chapter. The predominant housing type will be multifamily."

(iv) *Objective #5 – Housing Choice*

This objective states that the city will "...continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population." The planning concept in this objective is that "...while the predominant housing type is expected to continue to be single family detached, the City will encourage a wide range of housing types and densities in appropriate locations within individual neighborhood areas including duplexes,

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rowhouses, cottage clusters, accessory dwelling units, live/work units, multifamily..."

Included in the listed policies is that the City will "...encourage the development of larger subdivisions and PUDs that use innovative development techniques for the purpose of reducing housing costs as well as creating an attractive living environment. Such techniques to reduce costs may include providing a variety of housing size, type, and amenities. The City may provide density bonuses, additional building height allowances, or other such incentives for the provision of affordable housing in residential development projects."

The plan looks to balance somewhat competing interests and minimize impacts to adjacent properties. It also discusses the desire for open space and/or recreational areas as part of these housing developments and preserving existing tree coverage whenever possible.

The proposed project addresses these policy objectives through the use of extensive vegetated areas, tuck-under parking and additional building height to reduce overall project footprint, and increased setbacks and buffer areas to adjacent residences.

Willamette Greenway Element

Goal statement: To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Generally, the Willamette Greenway boundaries are to include all land within 150 feet of the ordinary low water line of the Willamette River and such additional land, including Kellogg Lake and lands along its south shore. The subject property is more than 1,000 feet as the crow flies from the river and there is private development in the form of both residential dwellings and the Waverly Country Club between the river and the development site.

The subject property has no physical relationship with the river and has no direct connection to the river. The proposed development maintains 54% of the site in its vegetated and forested state. The proposed development includes the addition of recreational walking paths through the forested site and provides public viewing points to the river.

By maintaining the existing forest and carefully orienting the new development, the views from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest and removing invasive species and dead/diseased trees along with creating views from the development itself. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting the views from and/or across the river.

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Neighborhood Element

Goal statement: To preserve and reinforce the stability and diversity of the City's neighborhoods in order to attract and retain long-term residents and ensure the City's residential quality and livability.

The subject property and surrounding area are in what was identified in the plan as Neighborhood Area 1. It recognizes that the Waverly Heights residential area is a "mix of large single family homes and high density apartments." The plan includes a guideline for multifamily housing that includes that new multifamily housing should not "significantly alter the visual character of existing single family areas." The plan includes considerations such as: projects should not be located randomly throughout the neighborhood; should have adequate off-street parking; should have close proximity to major streets and public transit; and should be designed to be aesthetically pleasing.

The subject property is on the edge of an existing single-unit dwelling neighborhood and also within a high-density residential area made up of both rental apartments and condominiums. Its proposed location is not random and is within walking distance of downtown and all of its amenities including public transit. The proposed site design includes a significant setback and buffer from adjacent properties, over one-half of the site will be vegetated, and the buildings have a high-end design aesthetic, which is compatible with the surrounding neighborhood.

(d) *Chapter 5 – Transportation, Public Facilities and Energy Conservation*

Chapter 5 focuses on the provision of high quality, consistent, and reliable public facilities and services, which are integral to the future growth and livability of Milwaukee. Policies include maintaining and enhancing levels of public facilities and services to city residents and businesses.

The applicant team has performed preliminary investigations into the existing infrastructure including a transportation study to analyze the impacts of increased traffic on the existing city infrastructure. Increased storm water, sewer, domestic and fire water supply as a result of this 100-unit development have also been reviewed and calculated. The submitted application materials include these analyses confirming the adequacy of the existing systems. The existing public transportation facilities, utilities, and available services are adequate to support the proposed development.

Chapter 5 addresses the City's responsibility to support a multimodal approach to transportation planning in a way that reflects how citizens think about and experience the transportation system. Policies include developing and maintaining a safe and secure transportation system and provide travel choices to allow people to reduce the number of trips made by single-occupant vehicles. Additional policies include maintaining a set of design and development regulations that are

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sensitive to local conditions to create a well-connected transportation system that is sustainable and meets the needs of current and future generations.

The City's Transportation System Plan (TSP) is an ancillary Comprehensive Plan document that contains the City's long-term transportation goals and policies. The applicant's TIS demonstrates consistency with the TSP and asserts that the proposed development will not result in significant impacts to the surrounding transportation system.

As conditioned, the proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

- (7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The Metro Urban Growth Management Functional Plan includes a number of titles that address various aspects of the region's goals and policies for urban development.

- (a) *Title 1 Housing Capacity*

The proposed development will provide a large number of needed housing units in a compact urban form.

- (b) *Title 7 Housing Choice*

The proposed development will provide needed multi-unit rental housing and will support Metro's policies for expanding housing choice with a needed housing type in Milwaukie.

- (c) *Title 13 Nature in Neighborhoods*

The proposed development supports Metro's policies for conserving and enhancing habitat areas by minimizing impacts to the wooded area via a compact development, maintaining more than one-half of the site in vegetation, removing invasive species, and developing a trail system for residents.

The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

- (8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

Several of the Statewide Planning Goals are relevant to the proposed amendment:

- (a) *Goal 2 Citizen Involvement*

Prior to submitting the application, the applicant attended a meeting of the Historic Milwaukie Neighborhood District Association on July 13, 2020 to present the project. The applicant noted that the neighbors spoke highly of the current Waverley Greens apartment properties and noted the quality landscaping and community amenities. Overall, the community reaction to the presentation was

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positive with attendees looking forward to walking through the wooded areas and perhaps even being future tenants.

The Type IV review process utilized for consideration of any Planned Development provides for public hearings by both the Planning Commission and City Council, where citizens have the opportunity to present testimony and participate in the decision-making process. Public hearings on the proposed development was held by the Planning Commission on October 27, 2020, December 8, 2020, and January 12, 2021; a public hearing was held by the City Council on [month/day], 2021. The Commission and Council considered testimony from citizens en route to reaching the decision reflected in these findings.

(b) Goal 10 Housing

As addressed in Finding 7-b(6) and elsewhere in these findings, the proposed development would provide 100 units of much-needed rental housing to the city.

Per the City's 2016 Housing Needs Analysis (HNA), 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. The HNA includes the City's buildable lands inventory (BLI) for housing within the UGB, showing that the city has sufficient zoned capacity to meet the projected housing needs over the next 20 years. Relevant findings from the HNA include:

- (i) The projected growth in the number of non-group households over 20 years (2016-2036) is roughly 1,070 households, with accompanying population growth of 2,150 new residents. The supply of buildable land includes properties zoned to accommodate a variety of housing types. Single-family residential zones with larger minimum lot sizes (e.g., R5, R7 and R10 zones) will accommodate single-family detached housing. Multi-family and mixed-use zones can accommodate high density housing (apartments).*
- (ii) Over the next 20 years, 30% of all needed units are projected to be multi-family in structures of 5+ attached units.*
- (iii) Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data in the HNA shows that some renter households have the ability to pay for newer and/or higher quality units than is currently available.*

(c) Goal 12 Transportation and Transportation Planning

As addressed in Finding 14 and elsewhere in these findings, the applicant's TIS demonstrates that the proposed development will not require changes to the functional classification of existing or planned transportation facilities and will not result in significant impacts on the transportation system.

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(d) *Goal 15 Willamette River Greenway*

As addressed in Finding 8 and elsewhere in these findings, the proposed development is not incompatible with the river, particularly because it is located more than 1,000 ft from the river. By maintaining the existing forest and specifically orienting the new development, the views from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest and removing invasive species and dead/diseased trees along with curating views from the development itself. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting the views from and/or across the river.

As conditioned, the proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendment, as conditioned, is consistent with the applicable criteria for zoning map amendments.

As conditioned, the City Council finds that the proposed amendment to the City's Zoning Map is approvable.

13. The application was referred to the following departments and agencies on September 17, 2020:

- 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 400 ft of the subject property on October 7, 2020 and on November 17, 2020.

Agency and NDA comments received are summarized as follows:

- **Kate Hawkins, Development Review Planner and Avi Tayar, P.E., Oregon Department of Transportation:** Comments related to crash history analysis and Year 2021 queuing analysis in the submitted TIS. Recommendations were that the

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applicant should evaluate any contributing factors and demands and identify potential improvements. The applicant submitted a response to the review memo and ODOT stated that they agreed with the supplemental analysis. While there may be concerns with queues and crashes at the intersection of the 17th Ave/Harrison St/OR-99E, the proposed development does not appear to have a significant impact on these conditions and no additional mitigation is necessary.

All public comments received are available for review on the application webpage: <https://www.milwaukieoregon.gov/planning/pd-2020-001>.

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ATTACHMENT 2 Conditions of Approval Master File # PD-2020-001

Waverly Woods, 10415 SE Waverly Ct

1. Applicant must construct the project in compliance with all Public Works Standards and the requirements identified in Other Requirements.

2. Building Permit Submittal

The applicant must submit a Type I Development Review application with final plans for construction of the project. The purpose of the Type I Development Review is to confirm that the final construction plans are substantially consistent with the land use approval. The final construction plans must address the following:

- a. Final plans submitted for construction permit review must be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on August 4, 2020 and further revised in submittals received on November 10, 2020, except as otherwise modified by these conditions.
 - b. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - d. Final plans submitted for construction permit review must include details of the bike stall dimensions to confirm that the applicable standards are met.
 - e. Final plans submitted for construction permit review must include a photometric plan showing compliance with lighting standards.
 - f. Final plans submitted for construction permit review must include details of the perimeter fence that must be repaired and/or replaced and must be maintained in good condition.
 - g. Final plans submitted for construction permit review must include a final landscaping plan that must include additional buffer plantings along the north-western boundary adjacent to the Waverly Heights neighborhood to mitigate visual impacts to neighboring properties.
 - h. Final plans submitted for construction permit review must include all amenities associated with that building, including pathways, view overlook areas, community gardens, etc.
3. Prior to issuance of development permits, the following must be resolved:
 - a. Prior to commencement of any earth-disturbing activities, the applicant must obtain an erosion control permit from the City.

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removed by appropriate amendment to the Zoning Ordinance and the property changed back to original zoning.

- b. As per MMC Subsection 19.311.17, the total time period of construction of all phases of this development shall not exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is (are) obtained. The required public infrastructure must be constructed in conjunction with or prior to each phase.

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ATTACHMENT 3 Other Requirements Master File # PD-2020-001 Waverly Woods – 10415 SE Waverly Ct

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. The level of use approved by this action shall be permitted only after issuance of a certificate of occupancy.
2. Limitations on Development Activity.

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as provided in MMC Subsection 8.08.070(I).
3. Landscaping Maintenance.

As provided in MMC Subsection 19.606.2.E.3, required parking area landscaping shall be maintained in good and healthy condition.
4. Applicant must submit an access and water supply plan as required by the Clackamas Fire District #1 for full review and approval.
5. Final Development Plan and Program

As per the requirements of MMC Subsection 19.311.12 through 19.311.15, no excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, until the following items must be addressed regarding the final development plan and program:

 - a. Prior to the effective date of the ordinance adopting the final development plan and program and accompanying change to the zoning map, file with the City Recorder's office a final development plan and program that includes any modifications that were part of the final plan approved by City Council.
 - b. The City shall prepare a notice to acknowledge that the final development plan and program approved by City Council constitutes zoning for the subject property. The notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. The applicant shall record a copy of this acknowledgment notice in the County Recorder's office.
 - c. An application for approval of variations to the recorded final plan and program may be submitted in writing. Such variations may be approved by the City staff provided they do not alter dwelling unit densities, alter dwelling unit type ratios, change the

ATTACHMENT 3

boundaries of the planned development, or change the location and area of public open spaces and recreational areas.

6. Prior to, or concurrent with, building permit submittal, the following must be resolved:
 - a. Submit full-engineered plans for construction of all required public improvements, which must be reviewed and approved by the City of Milwaukie Engineering Department.
 - b. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - c. Pay an inspection fee equal to 5.5% of the cost of the public improvements; at time of plan submittal, a plan review fee of 1.5% is required, the balance of the 5.5% is required at time of issuance of the right-of-way permit.
 - d. Provide a payment and performance bond in the amount of 130 percent of the approved engineer's estimate or contractor's bid cost of the required public improvements.
7. Prior to final inspection, the following must be resolved:
 - a. Provide a final approved set of electronic PDF red-lined "As Constructed" drawings to the City of Milwaukie.
 - b. Install all underground utilities, including stubs for utility service, prior to surfacing any streets.
 - c. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
8. Prior to final acceptance, the following must be resolved:
 - a. Provide a final approved set of digitally signed, electronic PDF "As Constructed" drawings to the City of Milwaukie.
 - b. Provide a 2-year maintenance bond in the amount of 10 percent of the approved engineer's estimate or contractor's bid cost of the required public improvements.
9. Other Engineering Requirements.

Submit a final stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 - Stormwater Design Standards of the City of Milwaukie Public Works Standards. In the event the stormwater management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.

The stormwater management plan shall demonstrate that the post-development runoff does not exceed pre-development runoff, inclusive of any existing stormwater management facilities serving the development site.

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The stormwater management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.

Development/building permits will not be issued for construction until the stormwater management plan has been approved and deemed compliant with MMC 12.02 and MMC 13.14 by the City of Milwaukie.

ATTACHMENT 4



HATHAWAY LARSON

Koback · Connors · Heth

December 15, 2020

VIA EMAIL (c/o Vera Kolas, Planner)

Mr. Robert Massey, Chair
Planning Commission
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Waverley Woods Apartment Planned Development (Application)
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001,
PLA-2020-001 & TFR-2020-002
Final Written Argument

Dear Chair Massey and Planning Commission Members:

As you know, this firm represents the applicant for the above-reference Application, Walker Ventures, LLC (the “Applicant”). The Applicant is submitting this final written argument pursuant to the post-hearing procedures the Planning Commission established for this Application. This final written argument is based on the evidence that has already been submitted into the record. For the reasons set forth in this final written argument and the record, the Applicant respectfully requests that the Planning Commission recommend approval of the Application subject to the conditions of approval set forth in the Staff Report, dated December 1, 2020 (the “Staff Report”), with one exception. For the reasons set forth in Section D.2 below, Applicant respectfully requests that the Planning Commission not adopt Condition 4.b as part of its recommendations.

A. The Applicant proposed the Planned Development to allow for an exceptional development that would not be feasible under the base zoning and will minimize the overall impacts on the subject property and surrounding properties.

As the Applicant explained in its November 17, 2020 letter to the Planning Commission, the primary purpose for proposing the Planned Development (“PD”) was to use the flexibility allowed by this process to design an exceptional development project that will minimize the impacts on the subject property and surrounding properties in a way that could not be otherwise achieved under the current R-2 zone:

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“From the beginning, more than eight years ago when Applicant first began discussions with architects about the development of this property, Applicant has emphasized the importance of taking advantage of the magnificent setting overlooking the Willamette river and creating this new community in a natural setting with more of a bucolic than an urban feel. That goal has remained paramount throughout the planning of this project. Applicant’s architects have proposed and studied numerous different plans over many years seeking to achieve those goals. Through that process it was eventually determined that it would not be feasible to meet those objectives by developing this site under the limitations of regular zoning. It became apparent that much more of the property can be preserved as open space if some buildings larger than permitted under regular zoning are constructed with parking tucked underneath. By that method, fewer buildings are needed, less of the land will be covered by buildings, less of the property will be paved with access roads, and less of the property will be covered by external parking, carports, or garages. Plans that were considered under regular zoning would have had much less open space and would not have preserved nearly as many of the existing trees and as much of the natural setting as does the planned development Applicant has submitted.” Letter from Scott Wyse, dated November 17, 2020, p.1-2.

By proposing adjustments to the density, height and length standards for the A-1 and A-2 buildings, the Applicant is able to design a multi-family residential project that is far superior and less impactful than a project developed under the R-2 zoning.¹ The Applicant is proposing four buildings as opposed to the five buildings that would be required under the R-2 zoning, and is well below the maximum 45% building lot coverage allowed under R-2 zoning (21.9%). Milwaukie Municipal Code (“MMC”) Table 19.302.4.B.4. The Applicant is proposing under building parking which will significantly reduce the amount of surface parking and impervious area required under the R-2 zoning option. As a result of the smaller development footprint, the Applicant is proposing to retain approximately 40% of the natural forest area on the property and provide 54% of vegetative open space, well in excess of the 15% vegetation open space requirement under the R-2 zoning.² MMC Table 19.302.4. The retention of a significant portion of the natural forest area enables the Applicant to provide significantly greater buffers, screening

¹ Mr. Robinson’s claim that the Applicant’s November 17, 2020 letter was a threat to cut the neighbors out of the public process is a gross mischaracterization on that letter. Letter from Michael Robinson, dated December 8, 2020, p.1. Mr. Wyse never threatened to cut the neighbors out of the public process or pursue the base zone development option. Mr. Wyse simply explained the rationale behind the Applicant’s decision to pursue the PD proposal, why the PD proposal provides advantages over the base zone development option and noted that the PD proposal provided neighbors more procedural opportunities to comment on the project. This is a statement of fact not a threat.

² The Application Narrative indicates that the R-2 vegetative open space requirement is 25% pursuant to MMC 19.302.5.H.2 because the Applicant is proposing a fourth story. Application Narrative, p.4. Without the PD the Applicant would be limited to a 35-foot height under the WG overlay zone, and therefore the Applicant would be required to propose 5 buildings that are 35 feet in height and would be limited to the 15% vegetative open space requirement.

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and setbacks to adjacent properties than the 5 to 15-foot setbacks required under the R-2 zoning.³ MMC Table 19.302.4.B.1.

Although the Applicant is proposing some adjustments to the density, height and length standards, these adjustments are fairly modest under the circumstances.⁴ The additional 20% density is consistent with the PD development standards and allows for a smaller development footprint. MMC 19.311.3.C. The additional height only applies to the A-1 and A-2 buildings, which are the furthest from the adjacent residential area, and is consistent with the R-2 zoning height limits.⁵ Staff Report, p.6; MMC 19.202.2.B; MMC Table 19.302.4. The additional building length (203 feet as opposed to 150 feet) only applies to the A-1 and A-2 buildings, is significantly less than the 284-plus foot building length for the nearby Stuart and Waverley Hall Apartments located to the east of this development, and will include a significant recessed entry that will break the buildings up and provide the appearance of two building masses for each building. Staff Report, p.18; MMC Table 19.302.4.

This more flexible approach allows for trade-offs to enable an overall superior project, which is precisely what the PD process was intended to allow. The purpose of the PD process is to “provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements,” “encourage greater flexibility of design and the application of new techniques in land development,” “provide a more efficient, aesthetic, and desirable use of public and private common open space,” and “promote variety in the physical development pattern of the City.” MMC 19.311.1. In this case, the Applicant is proposing the PD to utilize the flexibility and provide a more efficient, aesthetic, and desirable use of the open space and promote variety in the development pattern.

B. The Applicant is not asking for anything that is not expressly allowed or contemplated under the City’s zoning code.

While the neighbors are certainly entitled to raise their objections and concerns as part of this public process, it is important to emphasize that many of the core objections relate to aspects of the project that are expressly allowed or contemplated under the City’s zoning code.

Several neighbors object to the concept of a multi-family apartment development on this property given its proximity to the Waverly Heights single-family subdivision and the Waverly

³ The four closest residences will be 218 feet, 200 feet, 143 feet and 82 feet from the closest proposed buildings. Building A.2 will be at least 99 feet from the WCC property line. Staff Report, p.6.

⁴ The PD allows an applicant to modify the development standards, such as density, height and length, subject to compliance with the PD standards. As set forth in MMC 19.311.3, the “[a]pproval of a PD Zone establishes a modified set of development standards specific to the development.”

⁵ The adjustment is only necessary because the Willamette Greenway (“WG”) overlay zone, which covers approximately 70% of the site, has a 35-foot height limitation. MMC 19.401.3.A.

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Country Club (“WCC”) driving range.⁶ However, the subject property is specifically designated for high density residential under the Comprehensive Plan and zoned R-2, which is one of the medium and high density residential zones that are intended to accommodate multi-family residential uses. Application Narrative, p.13; MMC 19.302. Properties to the south and east are similarly designated for high density residential under the Comprehensive Plan and zoned R-2. The property is adjacent to the Dunbar Woods Apartments and very close to several other existing apartment complexes in the area. The Comprehensive Plan identifies the Waverly Heights residential area as a “mix of large single family homes and high density apartments.” Staff Report, p.12. Concerns raised about the appropriateness or compatibility of a multi-family residential use on this property are inconsistent with the Comprehensive Plan and zoning designations for the property and surrounding area.

Several neighbors object to the concept of any development on the property given the WG overlay zone over a portion of the property and the fact that it has not been previously developed. The WG overlay zone does not prevent development or require the preservation of the property in its natural state. The WG overlay zone expressly allows all uses permitted under the base zone subject to the criteria in MMC 19.401.6. MMC 19.401.5.A. MMC 19.401.6 effectively requires an applicant to minimize the impacts of the development to the extent practicable which is precisely what the PD proposal is attempting to accomplish.

Several neighbors object to the concept of a PD proposal and phased development project. MMC 19.311 specifically allows for a PD process and expressly permits a phased development. MMC 19.311.17. As previously explained, the PD is being proposed consistent with the purpose of the PD zone.

C. The Application complies with and exceeds the applicable approval standards criteria.

The Application must be reviewed based on the approval standards and criteria set forth in the MMC. ORS 227.173(1). The purpose for requiring that the standards and criteria be set forth in the code is to ensure that both the applicant and the public understand the standards upon which a development proposal will be judged. *State ex rel. West Main Townhomes, LLC v. City of Medford*, 233 Or App 41, 225 P3d 56 (2009).

As explained in the Application material, testimony at the public hearings and the post-hearing written submittals, the project meets or exceeds the applicable approval standards and criteria. The Applicant is proposing a high-density multi-family residential development project which is expressly contemplated under the Comprehensive Plan and R-2 zoning. The Applicant is utilizing the PD process for its intended purpose - flexibility with the design to allow for an exceptional development project that will minimize the impacts on the subject property and surrounding properties in a way that could not be otherwise achieved under the base zoning. The project exceeds several key development standards – the maximum building lot coverage (21.9% versus the maximum 45% allowed under R-2), vegetative open space requirement (54%

⁶ The subject property is adjacent to the WCC driving range, but it is not adjacent to the golf course itself. The WCC is not located within the City of Milwaukie and therefore does not have a City zone.

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versus the 15% required under R-2), and substantially larger buffers, screening and setbacks than required under the R-2 zone. The project complies with the multi-family residential design guidelines and proposes a superior design that implements several features not typically found in multi-family residential apartment projects (corner outlooks with windows on two walls, large balconies, cross ventilation, under building secure parking, etc.).

The City Staff, who is a neutral party in this proceeding and has significant expertise with respect to the City zoning code requirements and historical application of the code requirements to development projects, has consistently determined that the Application satisfies the applicable approval standards and criteria and recommended approval. Staff made this determination both before and after the Planning Commission's October 27, 2020 hearing and the public testimony and comments. The latest Staff Report provides a thorough and detailed analysis of the project's compliance with the approval criteria and responds to the questions and issues raised by the neighbors. The Planning Commission should give significant weight to Staff's analysis and recommendations.

D. Summary of key issues and responses to neighbor comments.

The Application, the Applicant's post-hearing written submittals and the Staff Reports already provide detailed responses to the approval criteria and the issues raised by the neighbors, and therefore the Applicant will rely on those detailed responses for purposes of this final written argument. The Applicant will use the final written argument to summarize its response to the key criteria and issues raised by the neighbors in the public process.

1. The project provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.

MMC 19.311.3.C allows a PD to exceed the density allowed under the base zone up to 20% if "the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning." The key term is "exceptional," which is not defined in the MMC, and therefore it should be interpreted consistent with its common usage. MMC 19.104. Webster's Third International Dictionary, which is the dictionary used by the Oregon courts to determine the meaning of undefined code terms, defines the term "exceptional" to mean: "being out of the ordinary: uncommon, rare" and "better than average; superior." Letter from Scott Wyse, dated November 17, 2020, p.2-3; *State v. Gaines*, 346 Or 160, 175, 206 P3d 1042 (2009).

The proposed development is an outstanding design and includes many exceptional features that are uncommon and better than average or superior to similar multi-family apartment developments constructed under regular zoning. See Letter from Scott Wyse, dated November 10, 2020, p.1-6; Letter from Scott Wyse, dated November 17, 2020, p.2-6. The proposal maximizes the density while at the same time providing a significantly smaller development footprint and less impervious area than similarly sized apartment developments. This will result in larger than typical buffers between the apartment buildings and the neighboring properties. The proposal will retain a significantly portion of the natural forest (40%) and provide significantly more open space (54%) than similar apartment developments. This will create an

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environment of urban living in a forested setting which is seldom achieved in apartment communities. The proposal includes secure under building parking, which is rare in all but the most dense urban settings, and is a huge advantage in the wet Oregon climate. Three-quarters of the apartments in the A-1 and A-2 buildings and two-thirds of the B-1 and B-2 buildings will have corner outlooks with windows on two walls, providing wonderful views from the apartment's principal living area, a quality rarely achieved in other apartment projects. The A-1 and A-2 buildings are designed to be cut into the slope of the property in such a way as to take full advantage of the extraordinary views from the property across the Willamette River, despite being set back very far from the adjoining WCC property and Willamette River. These views will be complemented by exceptionally large balconies for each unit. 80% of the apartments will have cross ventilation. The Applicant intends to provide solar panels and hook ups for electrical vehicles.⁷ The proposal includes a new community garden, which is very popular with urban dwellers and rarely found in other apartment complexes. The proposal also includes natural paths and a public river viewing area adjacent to Waverly Court.⁸

The Applicant provided a detailed comparison of these proposed features to 24 existing apartment complexes in the area. *See* Letter from Scott Wyse, dated November 10, 2020, p.1-6. Few of these other apartment complexes have more than 30% of their land area in a vegetative state, and most have significantly less than that with most of the land area covered by the apartment buildings, roadways, parking spaces, carports, or garages. Only a few provided under building parking. Only one of the apartment complexes included a community garden. None of the other apartment complexes provide the extent of corner outlook views, oversized balconies and quality of views as the proposed development. Many of these similar apartment complexes do not offer any of these exceptional features and none of them offered all of them.

Notwithstanding the substantial difference between the proposed PD and these similar apartment developments, WCC and other neighbors raised various questions to which the Applicant would like to respond. First, WCC disputes the Applicant's definition of "exceptional" by claiming the Applicant cannot "create its own definition" even though Mr. Robinson initially argued that the Applicant needed to define the term before it can be applied. Letter from Michael Robinson, dated December 1, 2020, p.2; Letter from Michael Robinson, dated November 10, 2020, p.2-3. As previously explained, MMC 19.104 requires terms not defined in the MMC to be interpreted

⁷ The Applicant has completed a preliminary solar study, and, subject to completion of its solar study, the Applicant intends to install solar panels on the roofs, similar to the extensive solar panels the Applicant voluntarily provided as part of its Waverley Greens apartment complex. The Applicant intends to construct the infrastructure/wiring for the solar panels in the buildings as part of the development to make it solar ready and add the solar panels upon completion of the solar study. The Applicant will also construct the infrastructure/wiring needed to provide electric vehicle hook up stations for any residents that request them.

⁸ A question was raised at the Planning Commission's December 8, 2020 hearing regarding parking for the use of the public viewing area. The Applicant is not proposing and does not believe it is necessary to provide additional parking for this small public viewing area. Most people will walk to the public viewing area from the surrounding area. For those people who will drive in their vehicle, the public viewing area is adjacent to Waverly Court and there is more than sufficient street parking to accommodate these vehicles.

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consistent with their common usage and the Oregon courts rely on Webster's Third International Dictionary to determine the meaning of undefined code terms. WCC's position is contradictory since they offer their own definition of the term. Contrary to WCC's suggestion, neither MMC 19.311.3.C nor the common definition of exceptional require the Applicant to demonstrate that **none** of the similar apartment developments have **any** of these exceptional features.⁹ The Applicant's demonstration that many of the similar apartment complexes do not offer any of these exceptional features and none of them offer all of them is sufficient to demonstrate that the project overall includes exceptional features that are uncommon, rare, better than average and superior to similar developments.

Second, WCC questions the relevancy of the similar apartment developments that were used for comparison because some of them are not in the City or on properties zoned R-2. MMC 19.311.3.C requires a comparison to "similar developments constructed under **regular zoning**," not within the City or in the same base zone. Regardless, five of the existing apartments the Applicant used for comparison are located within the City and zoned R-2. Letter from Scott Wyse, dated November 10, 2020, p.6. Neither WCC nor any of the neighbors provided a single example of a similar apartment development with the same or similar exceptional features.

Third, WCC and other parties claim that only those exceptional features provided as part of the first phase of the PD can be considered. While most of these exceptional features will in fact be provided as part of the first phase of the PD, MMC 19.311.3.C does not limit the comparison to the first phase only. The PD is an overall plan that must be judged based on the development proposed in all phases. There is nothing in MMC 19.311.3.C or MCC 19.311 generally supporting this narrow view that only considers the benefits of the first phase.

2. The project complies with the open space requirements.

MMC 19.311.3.E requires open space be set aside for "scenic, landscaping, or open recreational purposes within the development." It specifically requires at least one-third of the gross site area devoted to "open space and/or outdoor recreational areas" and at least half of the required open space and/or recreational areas must be of the same general character as the area containing the dwelling units. MMC 19.311.3.E. The project exceeds these requirements.

The Applicant is proposing 54% open space. This is well in excess of the 33% PD requirement and does not even account for the outdoor recreational areas which will also be provided (for example, the community pool). The buildings are surrounded by woods in the back and landscaped areas in the front, all of which will be in the "same general character as the area containing the dwelling units" and will be provided for "scenic, landscaping, or open recreational

⁹ WCC mischaracterizes the standard as requiring exceptional amenities "**none of which** are found in similar developments" or "not found **at all** in those similar developments." Letter from Michael Robinson, dated November 17, 2020, p.1 & 4. (Emphasis added). The actual standard is exceptional amenities "not found in similar developments constructed under regular zoning." The additional language Mr. Robinson included in his standard demonstrates that the actual code language does not mean what he claims it means.

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purposes.” Letter from Scott Wyse, dated November 17, 2020, p.7. Therefore, the project complies with the open space requirements.

As explained at the Planning Commissions December 8, 2020 hearing, the Applicant does not believe it is necessary or prudent to require a conservation easement or deed dedication to further preserve the open space. Staff Report, p.67, Condition 4.b. Such a condition is unusual and unnecessary. MMC 19.311.11.B provides that the City can adopt an ordinance applying the PD Zone and adopt the “approved final development plan and program as the standards and requirements for said zone.” The approved final development plan and program will include the approved open space. Any variations to the approved final development plan and program must be reviewed and approved by the City pursuant to MMC 19.311.15. All approved development is subject to the compliance and enforcement provisions in MMC 19.106. Therefore, it is unnecessary to require a conservation easement or deed dedication when the open space will be approved as part of the final plan. The Applicant respectfully requests that the Planning Commission not adopt Condition 4.b.

WCC argues that the open space requirements need to be evaluated based on the larger 10.8-acre parcel because the Applicant allegedly is “requesting that the entire 10.8 acres of the subject property be zoned PD.” Letter from Michael Robinson, dated December 1, 2020, p.2. WCC is wrong about the scope of the PD. The 10.8-acre property contains three parcels, only one (Parcel 2) of which is proposed for the PD and it is 6.77 acres in size. Parcel 1 is developed with the Dunbar Woods apartments and Parcel 3 is reserved for future development. Staff Report, p.1. WCC’s claim that Staff believes the PD applies to the entire 10.8-acre property is clearly wrong. The Staff Report explains: “The 10.8-acre subject property at 10415 SE Waverly Ct is made up of **three parcels** and is currently developed with the Dunbar Woods apartments. As part of this proposal, the applicant is adjusting the boundaries of the site to establish Dunbar Woods on its own lot, **use 6.77 acres for the planned development**, and establish a third parcel for a future development (see Figure 1).” Staff Report, p.1. (Emphasis added).

WCC also incorrectly asserts that the Applicant failed to provide sufficient “public open space” which it claims is required under MMC 19.505.3.D and MMC 19.311. Neither MMC 19.505.3.D nor MMC 19.311.3.E require the Applicant to provide open space available to the public. MMC 19.311.3.E expressly defines “open space” as an area set aside for purposes of the development, not the public: “the land area to be set aside and used for scenic, landscaping, or open recreational purposes **within the development.**” (Emphasis added). The reference to public open space in MMC 19.505.3.D refers to “common space” for the development, not open space available for general public use. MMC Table 19.505.3.D.2. The project will clearly include significant common space for the development, including large outdoor community gardens, swimming pool, walking trails, kitchen/catering space, wine cellar, permanent picnic tables, and community meeting rooms.” Application Narrative, p.14. Additionally, adjacent neighbors have requested that the Applicant not allow general public use of the open space and trails to minimize the pedestrian traffic, and the Applicant agreed that they will be limited to the project residents.

3. The project addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

MMC 19.311.9.I requires the Applicant to demonstrate the project “addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.” The project clearly serves a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone. The project serves a public purpose and benefit by providing additional multi-family housing, which the 2016 Housing Needs Analysis identifies is needed, and the PD allows for more housing units than the R-2 zone. Staff Report, p.9-10. The project will provide substantial amenities for its residents and expand the amenities for the existing six communities of Waverley Greens Apartments, including new community centers and outdoor amenities for the residents to garden, swim, eat, celebrate, meet, organize, and educate themselves. The project includes relocating and enlarging the community garden, which is an extremely popular amenity and creating walkable paths through the forested areas. The project maximizes the density while at the same time allowing for a significantly smaller development footprint and less impervious area than similarly sized apartment developments. As noted above, the project includes exceptional amenities that are not found in similar multi-family apartment developments. These public amenities are not required under the base zone and the Applicant is only able to provide them as part of this project using the more flexible PD approach.

WCC erroneously argues that the project must demonstrate a public purpose or benefit that relates to the City of Milwaukie as a whole. Although the additional housing units, exceptional design and amenities, and smaller development footprint do provide a public purpose and benefit that serves the City as a whole, MMC 19.311.9.I is not intended to be limited to those attributes that serve the entire City. Nothing in MMC 19.311.9.I or 19.311 in general support such a broad application of this requirement. WCC’s reliance on the meaning of “public” in the terms “public area requirements,” “public facilities” and “public park” is misguided because these are different defined terms and apply to City owned property and facilities, which is clearly different than a public purpose or benefit provided as part of a privately owned development.

4. The project complies with the Willamette Greenway approval criteria.

MMC 19.401.6 sets forth the approval criteria for development within the WG overlay zone. The key criteria applicable to this project include: (A) whether the land has been committed to an urban use; (B) compatibility with the scenic, natural, historic, economic, and recreational character of the river; (C) protection of views both toward and away from the river; (D) landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable; and (L) a vegetation buffer plan meeting the conditions of MMC 19.401.8. As explained by the Applicant and Staff, the project complies with all of these criteria. Application Narrative, p.11-13; Staff Report, p.12-15.

Some of the neighbors questioned the project’s compliance with these criteria based solely on the fact the Applicant is proposing development within the WG overlay zone area. The WG overlay zone does not prohibit development. The property is zoned R-2, has the existing Dunbar Woods apartments located on the property from which it is to be partitioned and is adjacent to other multi-family apartment complexes, and therefore is clearly committed to an urban use. Although the project proposes to increase the density, it does so with a significantly smaller development

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footprint and less impervious area than similarly sized apartment developments. The project as proposed will retain a significant portion of the natural vegetation (40%) and provides a significant amount of open space (54%). The vegetation buffer plan in MMC 19.401.8 only apply to the “land area between the river and a location 25 ft upland from the ordinary high water line,” which is an area well outside the property boundaries. MMC 19.401.8.A. The project is set back from the Willamette River by approximately 770 to 1,000 feet, is buffered by the WCC golf course and multiple existing multi-family developments which are closer and more exposed to the river, and therefore it will have no impact on the river itself.

Some neighbors claim that the project does not comply because it will impact the views to and from the river due to the increased height, but the evidence shows otherwise.¹⁰ By maintaining the existing forest between the A-1 and A-2 buildings and the river, and carefully orienting the new development, the view of the buildings from the river and the neighboring homes will be minimal, as is shown by the visual simulations the Applicant has provided. The buildings will be less visible from the river than many of the surrounding uses that are closer to the river. Staff Report, p.14. The project will also provide new opportunities for views to the river for the residents in the A-1 and A-2 buildings and through the creation of recreational paths in the forest area. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally affecting the views from and/or across the river.

5. The project is consistent with the Comprehensive Plan.

The Applicant and City Staff initially addressed compliance with the relevant provisions of the 2020 Comprehensive Plan since it is the most recent Comprehensive Plan. Application Narrative, p.13-14. After it was noted that the Application was filed before the 2020 Comprehensive Plan went into effect, the Applicant addressed compliance with the relevant goals and policies in the prior Comprehensive Plan (1989). Memorandum from Phil Krueger, YGH Architecture, dated November 10, 2020, p.7-14. Therefore, the Applicant demonstrated the project is consistent with both the 1989 and 2020 Comprehensive Plans. Staff agrees that the project is consistent with the Comprehensive Plan. Staff Report, p.8-12 & Attachment 1.

The Applicant will rely on the detailed responses to the Comprehensive Plan goals and policies in its November 10 post-hearing submission and the Staff Report, but it is important to emphasize some underlying reasons why the project is consistent with the Comprehensive Plan. The project complies with the Residential goals and policies because the Comprehensive Plan designates the property high density residential development on this site. Additionally, the 2016 Housing Needs Analysis identifies a need for additional housing and anticipates 30% of the new housing to be multi-family housing. Staff Report, p.9-10. The project complies with the Neighborhood goals and policies because the Comprehensive Plan identifies the Waverly

¹⁰ WCC complained that the A-1 and A-2 buildings will be visible from its driving range. Neither the WG overlay zone criteria nor any other provisions in the MMC are designed to protect the views from golf course driving ranges. Regardless, the Applicant is proposing to retain the forest area between the property and the WCC so any visual impacts will be mitigated. At their closest point, the A-1 and A-2 buildings are 190 feet and 99 feet from WCC’s property. That large buffer area will remain densely populated by tall trees and shrubs.

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Heights residential area as a “mix of large single family homes and high density apartments” and the project provides substantial buffers, screening and setbacks to the adjacent properties to minimize the impacts. Staff Report, p.12. The project complies with the Willamette Greenway and Open Space goals and policies because it will protect a substantial portion of the natural resources and provide large open space areas by use of a significantly smaller development footprint and less impervious area than required by the zoning code or similarly sized apartment developments.

WCC’s challenge to the project’s consistency with the Comprehensive Plan is based predominately on its mischaracterization of how the Comprehensive Plan is intended to apply to specific development projects. Most of the Comprehensive plan goals and policies cited by WCC are general policies establishing policy direction for the City to implement through the zoning code or other planning provisions, and therefore are not approval standards. Comprehensive Plan policies and purpose statements that set out goals, objectives or policies to be achieved through the zoning code or other provisions, or that contain language that is merely aspirational, such as those that “encourage” a particular action or result, or indicate a certain result is “desirable,” are not mandatory approval criteria. *Bennett v. City of Dallas*, 96 Or App 645, 647-49, 773 P2d 1340 (1989); *Burlison v. Marion County*, 52 Or LUBA 216, 218-219 (2006); *Angel v. City of Portland*, 21 Or LUBA 1, 13-14 (1991). If the language of the provision is not stated in mandatory terms such as “shall”, it is not a mandatory approval standard. *Wolfgram v. Douglas County*, 54 Or LUBA 54, 63 (2007); *Neuharth v. City of Salem*, 25 Or LUBA 267, 277-78 (1993). WCC does not identify any mandatory Comprehensive Plan goals and policies with measurable standards with which the project does not comply.¹¹

WCC also erroneously asserts that the project is inconsistent with Comprehensive Plan goals and policies even though it complies with the zoning code provisions that implement these goals and policies. For example, the project complies with the Comprehensive Plan goals and policies that require natural resources be protected, preserved or maintained by retaining far more of the existing natural resources and providing significantly more open space than required under the applicable approval criteria. As previously explained, the project exceeds many of the applicable zoning code requirements that are specifically designed to protect the natural resources,

¹¹ WCC also challenged the project’s compliance with the Statewide Planning Goals. The Statewide Planning Goals generally do not directly apply to decisions made pursuant to an acknowledged comprehensive plan or land use regulations. *Baxter v. Monmouth City Council*, 51 Or App 853, 858, 627 P2d 500 (1981) (once LCDC acknowledges a comprehensive plan and implementing ordinances, land use decisions are governed by applicable criteria in that plan and those ordinances); *Byrd v. Stringer*, 295 Or 311, 316–317, 666 P2d 1332 (1983) (statewide planning goals are necessarily met if the county’s land use decision comports with the acknowledged comprehensive plan and implementing ordinances). The City’s Comprehensive Plan is an acknowledged plan and the Applicant’s compliance with the Comprehensive Plan demonstrates compliance with the Statewide Planning Goals. WCC does not identify any specific Statewide Planning Goal provision that imposes different or additional requirements beyond those in the Comprehensive Plan, other than to claim without citing any legal authority that Goal 10 prohibits higher end housing. There is nothing in Goal 10 that supports WCC’s claim that it prohibits higher-end housing throughout the State unless there is a specific need for it identified in the comprehensive plan.

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minimize effects on surrounding uses and ensure the development is laid out and designed in a suitable manner. The Applicant's compliance with the more specific and measurable zoning code criteria is evidence of compliance with the more general Comprehensive Plan provisions these zoning code criteria are intended to implement.

Some parties questioned whether the project complies with the Comprehensive Plan because the project does not include affordable housing units. The mere fact that the 2016 Housing Needs Analysis identifies a need for more affordable housing units does not mean the Applicant or any other residential developer is limited to developing affordable housing units. There is nothing in the MMC, the Comprehensive Plan or the 2016 Housing Needs Analysis that **require** the Applicant or any other residential developer to provide affordable housing units. Affordable housing is provided through public, regulatory and/or tax incentives, not zoning mandates that limit or force developers to develop affordable housing units.

6. The project complies with the discretionary design guidelines.

In response to questions raised about whether the Applicant is pursuing the discretionary or objective design process, the Applicant's clarified that the project is pursuing the discretionary design guidelines process set forth in MMC Table 19.505.3.D since the PD already requires Type IV Development Review. Memorandum from Phil Krueger, YGH Architecture, dated November 10, 2020, p.1. The Applicant has provided detailed responses for each of the discretionary design guidelines and has demonstrated compliance with these discretionary standards. Memorandum from Phil Krueger, YGH Architecture, dated November 10, 2020, p.1-4. Staff agrees with the Applicant's analysis of the discretionary design guidelines. Staff Report, p.42-46. None of the neighbors have challenged the project's compliance with the discretionary design guidelines.

One question was raised regarding the color choices the Applicant intends to use for the buildings, expressing a concern that the Applicant may use the color white for the base color of the buildings based on one the renderings. The Applicant does not intend to use white as the base color. The applicant intends to use more natural colors that will blend in with the surrounding natural environment.

7. The project is compatible with the surrounding properties.

Several neighbors claim the project is incompatible with the Waverly Heights single-family subdivision, which is zoned R-10, because it proposes multi-family residential apartments. Many of these neighbors argue that the project should be limited to single-family residences or include a mix of single-family and multi-family residences. There are several flaws with this assertion.

The property is specifically planned and zoned for high density residential. It is designated high density under the Comprehensive Plan and zoned R-2, which is a medium to high density residential zone intended to accommodate multi-family residential uses. Application Narrative, p.13; MMC 19.302. The zoning of the subject property controls the allowed uses, not the zoning of the adjacent properties.

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The project is compatible with the surrounding area. There are several properties immediately to the south and east that are similarly planned and zoned for high density residential and already have dense multi-family apartments or condominiums located on them. The Comprehensive Plan identifies the Waverly Heights residential area as a “mix of large single family homes and high density apartments.” Staff Report, p.12. The project is clearly compatible with the overall surrounding uses and cannot be judged based solely on a comparison to the Waverly Heights single-family subdivision.

The R-2 zone expressly contemplates multi-family residential development adjacent to single-family residences and the project exceeds the transition measures required in those instances. MMC 19.302.5.I provides the transition measures required for multi-family development that abuts a R-10-, R-7-, or R-5-zoned property, demonstrating that it is proper to develop multi-family residential adjacent to single-family residential so long as the transition measures are satisfied. The project substantially exceeds the transition measures. The transition measures require the building height to be limited to the height limit for the adjacent lower density residential zone for all those buildings within: (1) 25 feet of the adjacent property/zone; or (2) 15 feet if the adjacent property/zone lies within, or on the edge of, a right-of-way. In this case, the closest building is 49 feet from adjacent R-10 zoned property and 82 feet from the closest single-family residence. Staff Report, p.6-7.

The Applicant did not ignore the single-family zoning area as some neighbors suggested. The project provides significantly greater buffers, screening and setbacks to the adjacent properties than the 5 to 15-foot setbacks required under the R-2 zoning. MMC Table 19.302.4. The four closest residences will be 218 feet, 200 feet, 143 feet and 82 feet from the closest buildings and the A-2 building will be at least 99 feet from the WCC property line. Staff Report, p.6. The Applicant is maintaining the forest areas adjacent to the residences and WCC, which will provide a significant physical and visual buffer between the properties. The Applicant continues to meet with adjacent neighbors in an attempt to further address their concerns and has made a concession to them to increase the buffer area by agreeing to move the A-2 building six feet further from the property line.

Some parties claim that the project is incompatible because it will purportedly decrease the property values of the nearby Waverly Heights single-family residences. The City cannot consider a development’s effect on property values unless there is a specific requirement in the City code to do so. *Hill v. City of Portland*, 66 Or LUBA 250, 258-59 (2012). There is nothing in the applicable approval criteria that requires the consideration of impacts on property values of surrounding uses. Additionally, there is insufficient evidence to demonstrate that the project will in fact cause a decrease in property values on the surrounding properties. Even if there were a specific requirement in the City code to consider property values (which there is not), generalized claims of effects on property values are insufficient – there must be substantial evidence demonstrating that the development will have a negative effect on the property values in this specific instance. *Johnson v. City of Eugene*, 42 Or LUBA 353, 366-67 (2002). The alleged effect on property values is speculative and unlikely given that there are already several existing multi-family apartments in the immediate area. If the City were to conclude otherwise, it would be extremely difficult to develop a multi-family residential project anywhere in the City that is not well away from single-family residences.

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8. The project does not violate historic resource or preservation requirements.

Some neighbors allege the project violates the historic resources or preservation requirements because Waverly Heights is designated as a historic neighborhood. Although some properties in Waverly Heights are designated as historic resources, the entire subdivision is not designated as historic. Regardless, the project does not conflict with any historic resource or preservation requirements.

MMC 19.403 provides the Historic Preservation overlay zone requirements that govern historic resources. The historic preservation standards apply almost exclusively to the property where the historic resource is located and not adjacent or surrounding properties. To the extent these standards address adjacent properties at all, they are limited to commercial and industrial uses and not multi-family residential uses. MMC 19.403.5.E.10 provides: “An appropriate buffer or screen, as provided under Subsection 19.504.6, may be required when a **new commercial or industrial improvement or use** is proposed on or adjacent to a designated resource, or within or adjacent to an historic district.” (Emphasis added). Therefore, the project does not violate historic resource or preservation requirements.

9. The project complies with the PD phasing requirements.

Several neighbors criticized the Applicant’s proposal to develop the project in three phases. Some neighbors questioned the Applicant’s commitment to construct all three phases, believe the City should force the Applicant to commit to a specific phasing schedule and/or claim the City should only consider the amenities proposed for the first phase. These claims are inconsistent with the applicable PD code provisions.

MMC 19.311.17 specifically allows a PD applicant to develop the project in phases. MMC 19.311.17.A allows for a phased development over a seven-year period. The Applicant is proposing a three phased development over the time period allowed under MMC 19.311.17.A. MMC 19.311.17 does not require an applicant to commit to a specific construction schedule, but the Applicant provided additional information about the timing of the three construction phases in response to inquiries from the neighbors.¹² In response to concerns raised about blasting associated with the construction project, which will be limited, the Applicant is willing to provide reasonable advanced notice of scheduled blasting to any of the surrounding residents who request such notice. The Applicant would not have gone to the time, effort and expense of designing and proposing a three-phase PD if the Applicant did not intend to develop all three phases. MMC 19.311 does not limit the evaluation of the PD to the first phase. The PD is an overall plan that must be judged based on the development proposed in all phases.

¹² The Applicant estimates that each phase of construction will last about a year, with external construction (grading, framing, and exterior envelope) taking about six months and internal construction taking six months. Letter from Scott Wyse, dated November 17, 2020, p.9.

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10. The Applicant measured the height of the buildings consistent with MMC 19.202.2.B.

Some neighbors questioned the Applicant's methodology for measuring the height of the A-1 and A-2 buildings. The Applicant measured the height of the buildings consistent with MMC 19.202.2.B.

MMC 19.202.2.B sets forth the standards for measuring the exterior height of buildings. MMC 19.202.2.B.1 provides for two base points for property on sloped property such as the subject property. Base point 1 is the elevation of the highest point of the property and base point 2 is the elevation at the lowest point of the property. If the highest point of the property is more than 10 feet higher than the lowest point, which is the case here, then the base point 2 is the elevation 10 feet above the lowest point. Measurements to the top of the building depend on the type of roof. MMC 19.202.2.B.2. In this case the roof is a pitched roof with a pitch 12/12 or less, which means the measurement is based on its average height of the roof as measured to its highest gable height. MMC 19.202.2.B.2.c.

The Applicant measured the A-1 and A-2 buildings consistent with MMC 19.202.2.B. The Applicant measured the buildings using both base points and the average height of the roof as measured to its highest gable height per MMC 19.202.2.B.2.c. The measurement for base point 1 (highest elevation) is approximately 43 feet and the measurement for base point 2 (10 feet above the lowest elevation) is approximately 52 feet. Application Narrative, p.8. Staff agrees with these measurements. Staff Report, p.6.

Although the Applicant is proposing the PD in part to allow the A-1 and A-2 buildings to exceed the allowed height, it is important to note that it is only necessary to address the WG overlay zone height limit. The R-2 zone allows for a height of 3 stories or 45 ft, but it permits an additional story if an additional 10% of site area is retained beyond the minimum required which the project does in this case. MMC Table 19.302.4 & 19.302.5.E. Therefore, the allowed height under the R-2 zone is 4 stories or 55 feet. The A-1 and A-2 buildings comply with the R-2 height limits under both base point 1 and 2. The PD only seeks to exceed the WG overlay zone height limit.

11. The project complies with the privacy and lighting requirements.

Some neighbors claim the project should not be allowed on privacy grounds because some of the buildings exceed the height limit, the balconies and windows will allegedly provide a line of sight into adjacent properties and the lights will shine from the windows at night. The Applicant designed the project to minimize the privacy effects on the adjacent properties and the project complies with the relevant code requirements.

To begin with, it is important to note that the applicable code provisions do not limit the size or number of balconies or windows. Therefore, there is nothing in the MMC that prohibits the Applicant from proposing large balconies and windows.

The A-1 and A-2 buildings are the only buildings that exceed the WG overlay zone height limit and the balconies and windows in those buildings are oriented toward the river, not adjacent residential properties. Additionally, the A-1 and A-2 buildings comply with the R-2 height limit,

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and the WG overlay zone height limit they exceed is not designed to provide privacy protections for adjacent properties.

The Applicant designed the project to minimize the privacy effects on the adjacent properties in a way that complies with the approval criteria. MMC Table 19.505.3.D.12 addresses privacy considerations and requires multi-family development projects to consider the privacy and sight lines to adjacent residential properties, and “be oriented and/or screened to maximize the privacy of surrounding residences.” The project complies with these requirements. As previously noted, the A-1 and A-2 buildings are oriented toward the river, not adjacent residential properties, and the B-1 and B-2 buildings comply with the height limits. The project provides significant setbacks from adjacent residential properties – ranging from 218 feet, 200 feet, 143 feet and 82 feet – and the Applicant agreed to move the A-2 building an additional six feet away from the property line.¹³ The project includes an extensive natural vegetative buffer along all sides of the property that are adjacent to residential properties which will screen the project from the adjacent residences. At the December 8, 2020 hearing, the Applicant submitted visualizations that show the views from adjacent properties to the north of the project which show that there will not be direct lines of sight that would significantly affect the privacy of neighbors.

Although some neighbors complained about light shining from the windows at night and the need to address light pollution, none of them identify any relevant standards in the code. The City’s zoning code does not restrict the size or number of windows due to alleged light pollution.

12. The project complies with the transportation standards.

Several neighbors expressed concerns about the traffic to and from the project and the Applicant’s potential use of Lava Drive for construction access. The project satisfies the applicable transportation standards and the Applicant clarified that it will not use Lava Drive for construction access.

MMC 19.311.9.F and 19.704 provide the transportation requirements. MMC 19.311.9.F requires the project to be “consistent with the functional classification, capacity, and level of service of the transportation system.” MMC 19.704 provides the standards for the traffic evaluation.

The Applicant addressed the transportation standards and demonstrated that the project is consistent with the functional classification, capacity, and level of service of the transportation system. The Applicant submitted a formal Traffic Impact Study (“TIS”) prepared by a traffic engineer that concluded the project is consistent with the functional classification, capacity, and level of service of the transportation system and no offsite mitigation is required. The City Engineer and the City’s on-call traffic consultant (DKS) provided the Applicant the scoping for the TIS, reviewed the TIS for compliance and agreed with its conclusions and recommendations. Staff Report, p.52-53. The Oregon Department of Transportation (“ODOT”) also reviewed the

¹³ The Applicant is utilizing the discretionary design guideline path for the project, but it is noteworthy that the objective design guidelines only place limits on windows “within 30 ft of windows on adjacent residences” and in those cases requires the windows be offset, not eliminated or reduced in size. MMC Table 19.505.3.D.12. None of the adjacent residences are even close to 30 feet from the proposed buildings.

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TIS. Staff Report, p.53. The fact that all of the traffic engineers that reviewed the TIS agree it complies with the requirements is substantial evidence the project satisfies the applicable transportation standards and will not create adverse traffic conditions.

The Applicant clarified that access for the construction of the proposed buildings will be from Waverley Court and the portion of Lava Drive to the west of its intersection with Waverley Court will not be used for construction. Email from Scott Wyse, dated November 10, 2020. It is possible that a portion of Lava Drive may be used for the transportation of some shrubs and trees being removed from the site, but any such activities on Lava Drive will be limited and of short duration so as to minimally disturb any residents of condominiums at Shoreside East.

13. The Applicant's tree removal plan is consistent with the MMC and Comprehensive Plan.

Although WCC admits the property does not fall within the vegetation buffer area of the WG overlay zone and is not subject to any requirement to retain trees, WCC erroneously states that the Applicant's proposed tree removal is inconsistent with the Comprehensive Plan and the purpose of the WG overlay zone. Letter from Michael Robinson, dated October 27, 2020, p.7-8. WCC is wrong for several reasons.

As WCC admits, the property does not fall within the vegetation buffer area addressed in MMC 19.401.8 and is not subject to any tree retention requirement. The vegetation buffer area applies to the "land area between the river and a location 25 ft upland from the ordinary high water line." MMC 19.401.8.A. There is no dispute the subject property is not within this area.

There is nothing in the WG overlay zone provision or any other section of the MMC that requires the Applicant to retain more trees than it is proposing in this case. WCC mentions the Comprehensive Plan but does not cite any specific provision to support its claim. WCC relies on the WG overlay zone purpose statement in MMC 19.401.1, but purpose statements are not approval criteria unless there is specific language stating that they are intended to be mandatory approval criterion. *Jones v. City of Grants Pass*, 64 Or LUBA 103, 110 (2011); *SEIU v. City of Happy Valley*, 58 Or LUBA 261, 271-72, *aff'd*, 228 Or App 367, 208 P3d 1057, *rev den*, 347 Or 42 (2009). MMC 19.401.1 does not include any language indicating it is intended to be a mandatory approval criterion and it does not even mention the retention of trees. MMC 19.401.8 is intended to address the tree retention requirements, not MMC 19.401.1.

The Applicant is retaining a significant portion of the trees, far more than is required under the R-2 or WG overlay zoning requirements. As the Applicant's arborist explained, the vast majority of trees being removed are "dead, dying, in poor to very poor health and/or structural conditions." 10/27/20 Planning Commission Packet, Section 5.1, p.260. The WG overlay zone is not intended to protect dead, dying or trees in poor to very poor condition.

14. The Applicant is entitled to consolidate its applications and request a concurrent review and process pursuant to the City code, State law and City precedent.

WCC raised two procedural objections related to the Applicant's consolidation of the various applications and request that they be concurrently reviewed and processed. First, WCC claims

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the Applicant is not allowed to process the preliminary development plan and final development plan applications concurrently. Second, WCC claims the Applicant is not allowed to process the limited land use applications (property line adjustment and design review) concurrently with the remaining applications under Oregon law. The City Staff and City attorney disagree with WCC's position. Staff Report, p.4-5. WCC is wrong and its position is inconsistent with the City code, State law and City precedent.

As explained in the Staff Report, an applicant is entitled to request that multiple applications be reviewed and processed concurrently so long as the consolidated applications are processed according to the highest numbered review type required for any part of the application. Staff Report, p.4-5. MMC 19.1001.6.B provides that “[w]hen multiple land use applications are required for a single proposal, the applicant may request, or the City may require, that the applications be processed concurrently or individually” and further states that “[t]he City shall generally allow applicants the choice of having multiple applications for a single proposal processed concurrently or individually.” MMC 19.1001.6.B implements ORS 227.175(2) which requires all cities to “establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project.” In this case, the Applicant elected to use the consolidate process allowed by MMC 19.1001.6.B and ORS 227.175(2) and have all of the applications reviewed and processed pursuant to the highest review type required of any of the applications – Type IV.

Neither MMC 19.1001.6.B nor MMC 19.311 preclude an applicant from utilizing this consolidation process for the preliminary and final development plan applications. Contrary to WCC's suggestion, the preliminary and final development plan applications are in fact separate applications and not merely two steps for the same land use application. MMC 19.311.5 and 19.311.7 require separate application filings for the preliminary and final development plan applications. As noted on the Application form, the Applicant paid two separate application fees for the preliminary (\$1,500) and final (\$5,000) development plan applications. There is **nothing** in MMC 19.311 that expressly requires an applicant to wait until after the preliminary planned development approval is obtained before it can file for the final development plan approval.

Nor does it make sense to force an applicant to process the preliminary development plan and final development plan applications separately because the preliminary development plan process is designed to benefit the applicant, not the public. Unlike a final development plan which requires public notice and a “public hearing per Section 19.1007,” the preliminary development plan does not require either public notice or a public hearing. MMC 19.311.6.A & 19.311.10.A. The preliminary development plan merely requires a Planning Commission “meeting,” the Planning Commission merely advises “the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies” and is not reviewed by the City Council. MMC 19.311.6.A. As Staff explained, the preliminary development plan process is designed to provide the Applicant preliminary input on the development project so the applicant can factor it in as part of the final development plan. Staff Report, p.4.

WCC is also wrong in claiming that ORS 227.175(2) precludes an applicant from processing limited land use applications (property line adjustment and design review) concurrently with the other types of land use applications. The Oregon Court of Appeals rejected a similar argument and concluded that ORS 227.175(2) establishes the minimum consolidation requirements for

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cities and does not preclude cities from allowing broader consolidation rights. *North East Medford Neighborhood Coalition v. City of Medford*, 214 Or App 46, 53, 162 P3d 1059 (2007). MMC 19.1001.6.B applies to all applications and does not prevent an applicant from consolidating land use and limited land use applications. The PD process expressly allows an applicant to submit a land division preliminary plat, which is a limited land use application, “to be considered at the same time as the final development plan.” MMC 19.311.8.A. Therefore, the City code clearly allows an applicant to process limited land use applications concurrently with the other types of land use applications.

Finally, Staff and the Planning Commission have previously determined an applicant can apply for both preliminary and final planned development approval as a consolidated process and can combine a land division application with the planned development/zone change applications. The City adopted this position for the Kellogg Creek Planned Development (PD-2017-001), which proposed a 92-unit planned development that included a request for both preliminary and final planned development approval, zone change, subdivision and related approvals. We submitted a copy of the staff report to the City Council, dated August 29, 2017, in which both the Planning Commission and Staff recommended approval.¹⁴ Memorandum from Phil Krueger, dated November 10, 2020, p.15 & Attachment.

Conclusion

For the reasons set forth in this final written argument and the record, the Applicant respectfully requests that the Planning Commission recommend approval of the Application subject to the conditions of approval set forth in the Staff Report, with the exception of Condition 4.b. We appreciate your time and consideration of this matter.

Very truly yours,

HATHAWAY LARSON LLP

/s/

E. Michael Connors

EMC/ph

Cc: Walker Ventures, LLC
YGH Architecture

¹⁴ The applicant subsequently withdrew the application on January 22, 2018, before the City Council could render its decision, but this application demonstrates there is City precedent for allowing an applicant to apply for both preliminary and final planned development approval and combine a land division (subdivision) application with the planned development/zone change applications.



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Brett Kelter, Associate Planner
Date: January 5, 2021, for January 12, 2021, Public hearing
Subject: File #ZA-2020-002 – Proposed Amendments to Title 18 (Flood Hazard Regulations)

ACTION REQUESTED

Open the public hearing for land use file #ZA-2020-002. Discuss the proposed amendments to Milwaukie Municipal Code (MMC) Title 18 (Flood Hazard Regulations), take public testimony, and provide direction to staff regarding any desired revisions to the proposed amendments. Recommend City Council approval of file #ZA-2020-002 and adoption of the proposed ordinance and recommended Findings in Support of Approval found in Attachment 1.

BACKGROUND INFORMATION

In June 2019, a representative of the Oregon Department of Land Conservation and Development (DLCD) initiated an assessment of Milwaukie's floodplain management program. Such assessments are necessary to ensure that a community continues to meet the floodplain management requirements overseen by the Federal Emergency Management Agency (FEMA), so the City can maintain its eligibility for the National Flood Insurance Program (NFIP). The City's participation in the NFIP allows residents to purchase flood insurance at a reasonable cost.

The City's flood hazard regulations are established in Milwaukie Municipal Code (MMC) Title 18. The DLCD assessment identified several needed upgrades to the City's floodplain management process, including the establishment of a formal floodplain development permit and standard operating procedures. DLCD also provided a model flood hazard ordinance that reflects new language required by FEMA for continued compliance with the NFIP, due in part to changes to the State of Oregon building code pertaining to flood hazard areas. Staff from the Engineering Department have implemented most of the required measures related to the floodplain management process; all that remains is to adopt the necessary revisions to the language of MMC Title 18.

ANALYSIS

Summary of Required Key Changes to Title 18

DLCD has given the City until March 30, 2021, to adopt changes to Title 18 that address the minimum requirements for continued eligibility for the NFIP. With that in mind, the proposed amendments are drawn largely from the model ordinance provided by DLCD and are presented in Attachment 1-b (the “clean” version). The “strikeout/underline” format of Attachment 1-c highlights the bulk of the changes, although the actual proposal is to repeal the existing text of Title 18 and replace it entirely in a renumbered and reorganized format.

The proposed changes to the existing code are summarized as follows:

- Formal applicability of the 1996 flood elevation to all properties mapped with the 1996 flood boundary, adjusted to account for the elevations higher in the watershed
- Requiring property owners to record a non-conversion agreement with title and deed, to prohibit conversion of interior space constructed below the flood protection elevation (such as garages) into habitable space, and allowing for future City inspections to ensure compliance
- Disallowance of new critical facilities (such as schools, fire stations, and nursing homes) within the 100-year floodplain (instead of simply discouraging them) unless a variance is obtained; exemption for existing critical facilities
- Better alignment with the State of Oregon Specialty Codes (building code)—for example, to call out standards for garages, tanks, and flood openings in residential structures
- Establishment of a Floodplain Development Permit and standard operating procedures, to capture all the necessary information
- Revisions to the duties of the Floodplain Administrator, including removal of references to “Engineering Director,” adding language requiring notification of community boundary changes (annexations), a requirement to submit new technical data, and responsibility for making Substantial Improvement and Substantial Damage determinations
- Clarification of the variance procedure, including a simplification of considerations and removal of the procedural exemption for restoration of historic structures
- Updates to definitions required by FEMA (additions, deletions, rewordings)
- Renumbering and reorganizing, including using more than one single chapter (18.04)
- Other administrative updates to conform with model ordinance and NFIP

KEY ISSUES

There are approximately 250 properties within the city limits that include areas identified by FEMA as having a one percent or greater annual chance of flooding to an average depth of one to three feet (sometimes referred to as the “100-year floodplain”), as well as the portions of properties that were inundated in the floods of February 1996. See Attachment 2 for a map of the mapped flood hazard areas in Milwaukie. Approximately 10% of these 250 properties are owned by public entities, including Clackamas County, North Clackamas School District, and North Clackamas Parks and Recreation District; another 10% are owned by the City. Most of the proposed changes are administrative in nature and do not reflect a shift in the City’s policies regarding flood hazard management.

1996 Flood Areas

One exception concerns those properties that include areas known to have flooded in 1996, which have long been shown on the City’s maps but have not been regulated consistently across different parts of the city. For example, the 38-foot NAVD elevation, which defines the 1996 flood area in the current code, is relatively close to the ground surface elevation near the Willamette River and is used to determine the design flood elevation in the 1996 flood area.

In the upper reaches of the Johnson Creek watershed, the ground surface elevation is over 100 feet, so the 38-foot elevation does not accurately describe the water surface elevation of the 1996 flood area shown on the City’s maps. The boundary of the 1996 flood was determined from aerial photographs taken sometime after the peak of the flood. Flooding was observed in the upper Johnson Creek watershed in 1996, so we know that an adjustment factor is necessary to make those mapped 1996 flood areas relevant in the process of determining the design flood elevation at all the ground surface elevations found within the 1996 flood area.

In addition, the current code does not reference the 1996 flood when setting the flood protection elevation for residential construction—it pins the required construction elevation only to the 100-year floodplain elevation. This means that residential construction in areas known to have been historically flooded has effectively not been required to build as much flood protection as nonresidential construction and so has been more vulnerable to potential damage in a future flood event.

To remedy these issues, staff has proposed two amendments: (1) to define the 1996 flood elevation as 2.4 feet above the FEMA 100-year flood elevation across all areas of the 1996 flood and (2) to require that residential and nonresidential construction both take the mapped 1996 flood areas into account when determining the required flood protection levels. Near the Willamette River, 2.4 feet is the maximum difference between the FEMA 100-year flood elevation and the current code definition of the 1996 flood elevation (38 feet NAVD). By adding 2.4 feet to the 100-year flood elevation in all areas of the 1996 flood, there will be a relevant 1996 flood elevation in all areas where the 1996 flood has been mapped, and all construction in these areas will be based on an appropriate flood protection elevation.

Of the 250 properties in Milwaukie that include flood-prone areas, approximately 70% (nearly 170 properties) include at least some area mapped as having flooded in 1996. Approximately

27% of those (45 properties) are vacant; another 30% (49 properties) are developed with either commercial, industrial, or manufacturing uses; and 42% (71 properties) are developed with single-family homes. The effect of introducing the proposed 2.4-foot adjustment factor to establish flood protection elevations would affect properties where new construction is proposed in the 1996 flood area or where improvements or repair to an existing structure in the 1996 flood area will cost more than 50% of the value of the structure. These substantial improvements or repair of substantial damage to existing structures must be rebuilt to a new standard.

Requiring new construction in the 1996 flood area to elevate an additional 2.4 feet in areas known to have flooded in 1996 will not significantly increase construction costs and is unlikely to deter development. However, elevating existing structures to meet the current code for construction of substantial improvements or repair of substantial damage will be prohibitively expensive, though this would be the case whether the 1996 flood adjustment factor is 2.4 feet or 0 feet (i.e., regardless of whether the City regulates the 1996 flood area at all).

To illustrate: There are 29 properties that are developed with single-family residences built prior to the adoption of the City's flood regulations, where the house may be located in the FEMA 100-year floodplain but where there is no 1996 flood area mapped on the property. In order to complete the construction of substantial improvements or repair of substantial damage, these single-family residences are currently required to elevate, potentially up to 9 feet, to reach the minimum flood protection elevation (1 foot above the 100-year flood elevation). The cost of elevating an existing structure and constructing a new foundation ranges from \$20,000 to \$100,000.

Failure to enact this requirement would jeopardize the City's continued participation in the NFIP and property owners' ability to obtain affordable flood insurance. In light of the magnitude of the cost to property owners of substantial improvements or repairs, the City has worked with FEMA in the past to complete voluntary buy-outs of houses in the floodplain that have been repeatedly damaged by flooding. FEMA reimburses the City for the cost of the purchase and demolition of the house. To help mitigate the high cost of bringing an older structure into compliance with either the existing FEMA 100-year flood requirements or the proposed 1996 flood requirements, the City will continue to seek ways to support the owners and renters of these structures through such efforts as further collaboration with FEMA and the encouragement of more affordable housing development in the larger community.

Other Changes of Note

The other proposed amendments, summarized on page 2 of this report, for the most part represent changes to improve administration of the rules and should have little significant impact for the owners of property in flood hazard areas. Some key points are explained below:

- The specific standards for crawlspace construction, currently found in MMC Subsection 18.04.150.G, have been eliminated because they have been largely made redundant by other new standards specific to flood openings.

- The specific standards for large subdivisions have been eliminated primarily because the City now has the data necessary to determine the base flood elevation and will do so for all proposed development as part of the Floodplain Development permit process.
- There have been several occasions where a garage or accessory structure was established within a flood hazard areas as non-livable space (as allowed in accordance with other standards) and then an owner attempted to convert it into livable space without going through the required permitting process. Establishing the requirement that an owner sign an agreement not to convert such spaces into livable spaces without addressing the relevant building and flood hazard regulations is proposed as a safeguard and a way to highlight the flood requirements when owners construct such non-livable spaces in flood zones.
- The current code discourages the construction of new critical facilities (such as schools, hospitals, fire stations, nursing homes, etc.) within flood hazard areas, but it does allow them. The City’s new Comprehensive Plan includes policies that push to prohibit the location of critical facilities in flood zones. However, there are some types of critical facilities that generally need to be close to a watercourse (sewage treatment plants, for example). This topic is one that warrants additional analysis and public discussion before imposing an outright prohibition, but as an interim step, staff is proposing to effectively require a formal variance in order to locate new critical facilities in flood areas.

CONCLUSIONS

Staff recommendation to the Planning Commission is as follows:

1. Recommend that the City Council approve the proposed amendments to MMC Title 18 (Flood Hazard Regulations) presented in Attachment 1-b.
2. Recommend that the City Council adopt the proposed ordinance and attached Findings in Support of Approval presented in Attachments 1 and 1-a, respectively.

The proposed amendments to MMC Title 18 are largely “policy neutral” and do not represent a significant departure from the current regulations. While prohibiting construction of new critical facilities in the floodplain is in keeping with certain policies of the newly adopted Comprehensive Plan (notably Policy 5.3.5), the proposed amendments do not attempt to assertively further address other Comprehensive Plan policies. A proposal for more significant changes in the City’s flood hazard regulations will require extensive public outreach, conversation, and deliberation—things for which there not is currently time if the City is to meet the March 2021 deadline set by DLCD. In the interim, staff have determined that the wisest course of action is to adopt the proposed amendments provided in Attachment 1-b, a set of revisions that aim to avoid protracted policy discussions while still meeting NFIP requirements.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.902 Amendments to Maps and Ordinances
- MMC Section 19.1008 Type V Review

This application is subject to Type V review, which requires the Planning Commission to hold an initial evidentiary hearing to and then forward a recommendation to the City Council for a final decision. Type V applications are legislative in nature and involve the creation, revision, or large-scale implementation of public policy.

The Commission has 4 decision-making options as follows:

- A. Recommend that Council approve the proposed amendments as per to the recommended Findings in Support of Approval.
- B. Recommend that Council approve the proposed amendments with revisions, including modifications to the recommended Findings in Support of Approval. Such modifications need to be read into the record.
- C. Recommend that Council deny the proposed amendments.
- D. Continue the hearing.

There is no deadline for a final decision on Type V applications, as they are legislative in nature. However, as noted earlier, DLCDC has set a deadline of March 31, 2021, to adopt changes to Title 18 that address the minimum requirements for continued eligibility for the NFIP. If City wishes to continue its participation in the NFIP, it must either meet the DLCDC deadline or request a formal extension and propose a new timeline for compliance.

COMMENTS

Notice of the proposed amendments to Title 18 was mailed to the owners of all properties within the city limits that include areas identified by FEMA as having a one percent or greater annual chance of flooding to an average depth of one to three feet (sometimes referred to as the “100-year floodplain”). The notice was also mailed to the owners of those properties having areas along the Willamette River and its backwaters of Johnson and Kellogg Creeks that were flooded to elevation 38 feet (NAVD) in February of 1996.

Notice was also provided to the following agencies and departments: City of Milwaukie Building, Engineering, and Public Works Departments; Milwaukie City Attorney; Chairpersons & Land Use Committees (LUCs) for the Neighborhood District Associations (NDAs) of Ardenwald-Johnson Creek, Hector Campbell, Historic Milwaukie, Island Station, Lake Road, Lewelling, and Linwood; Clackamas Fire District #1 (CFD#1); NW Natural; North Clackamas School District #12; North Clackamas Parks and Recreation District; and Water Environment Services.

The following is a summary of the comments received to date by the City—see Attachment 3 for complete details.

- **Peter Passarelli, Public Works Director, City of Milwaukie:** Regarding the proposed definition of “hazardous material,” would it be prudent to add language that addresses emerging contaminants of concern, like pharmaceuticals, endocrine disruptors, perfluorooctanesulfonic acid (PFOS), and perfluorooctanoic acid (PFOA)?

Staff Response: The City Attorney has advised against deviating from the language proposed in the model ordinance, especially as the definition is comprised largely of referenced designations. If the contaminants in question do not meet the DEQ definition of hazardous material, then they are likely not subject to regulation; if they do meet the DEQ definition (either currently or at some point in the future), then they should be covered by the more general language.

- **Paul Hawkins, Chair of Lake Road NDA LUC and resident on Kellogg Creek:** Has reviewed the material and agrees with the proposed updates.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	E-Packet
1. Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a. Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Proposed Amendments (clean version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Proposed Amendments (strikeout/underline version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Map of Flood Hazard Areas in Milwaukie	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Comments Received	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = materials provided to Planning Commission 7 days prior to the meeting.

E-Packet = packet materials posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-meeting>, available 7 days prior to the meeting.



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 18 FLOOD HAZARD REGULATIONS, TO COMPLY WITH FEDERAL EMERGENCY MANAGEMENT REQUIREMENTS (FILE #ZA-2021-002).

WHEREAS, the State of Oregon has in ORS 197.175 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, Title 18 of the Milwaukie Municipal Code (MMC) establishes flood hazard regulations designed to minimize public and private losses due to flooding; and

WHEREAS, the proposed amendments to Title 18 bring the Milwaukie Municipal Code in compliance with federal requirements for floodplain protection; and

WHEREAS, adoption of the proposed amendments is required for the city to continue to participate in the National Flood Insurance Program; and

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

WHEREAS, on January 12, 2021, the Milwaukie Planning Commission conducted a public hearing as required by MMC Subsection 19.1008.5 and adopted a motion in support of the proposed amendments; and

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

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

Section 1. Findings. Findings of fact in support of the proposed amendments are attached as Exhibit A.

Section 2. Repeal and Replacement. The existing text of MMC Title 18 is repealed and replaced with the new text presented in Exhibit B (clean version); for reference, the substantive changes are represented in Exhibit C (strikeout/underline version).

Section 3. Effective Date. The amendments will become effective in 30 days.

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 _____.

ATTACHMENT 1

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**Recommended Findings in Support of Approval
File #ZA-2020-002
Amendments to MMC Title 18 (Flood Hazard Regulations)**

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

1. The applicant, the City of Milwaukie, proposes to amend the flood hazard regulations that are established in Title 18 of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2020-002.
2. The purpose of the proposed code amendments is to update the City's flood hazard regulations to maintain consistency and compliance with federal regulations in order to retain eligibility for the National Flood Insurance Program (NFIP). The City's participation in the NFIP allows residents to purchase flood insurance at a reasonable cost. The proposal is to repeal the existing language in Title 18 and replace it with new (but very similar) language based on a model ordinance provided by the Oregon Department of Land Conservation and Development (DLCD).
3. The proposal is subject to the criteria and procedures outlined in the following sections of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1008 Type V Review

The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. An initial evidentiary hearing was held by the Planning Commission on January 12, 2021, and another public hearing was held by the City Council on March 2, 2021 as required by law.

4. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. Specifically, MMC Subsection 19.902.5 establishes Type V review as the process for changing the text of land use regulations, with the following approval criteria:

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

The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code, including MMC Section 19.402 Natural Resources.

This standard is met.

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

Of the various goals, objectives, and policies in the recently updated Comprehensive Plan, the chapter on Environmental Stewardship & Community Resiliency is where the language most relevant to the proposed amendments can be found. In particular, the section on Natural Hazards includes the following overarching Goal statement:

Protect the Milwaukie community from the threats of natural hazards, including those induced by climate change, through risk minimization, education, and adaptation.

Goal 5.1 – Identifying, Avoiding, and Reducing Hazard Potential

Identify areas with high natural hazard potential and develop policies and programs to avoid or reduce potential negative impacts.

Policy 5.1.1: Ensure that City natural hazard maps stay updated and reflect the most recent information and best available science for natural hazard areas, including flooding, landslides, liquefaction, unstable soils, wildfire, earthquakes, drought and sea level rise.

Policy 5.1.2: Require the submittal and neutral third-party review of detailed technical reports for proposed development within high risk flood, liquefaction and landslide hazard areas.

Policy 5.1.3: Encourage and prioritize development in areas with low risk of natural hazards and restrict development in areas with high risk that cannot be adequately mitigated.

Policy 5.1.4: Regulate floodplain areas in a manner that protects the public, recognizes their natural functions as waterways and critical habitat, and provides open space/recreational opportunities.

Goal 5.2 – Partnerships and Education

Continue and expand partnerships with government agencies, utilities, and other groups that can help Milwaukie residents prepare for natural hazards.

Policy 5.2.1: Continue to coordinate with regional, state and federal agencies on disaster preparedness efforts.

Policy 5.2.3: Ensure that mapping of the 100- and 500-year floodplain areas stays current and accurate.

Goal 5.3 – Infrastructure and Building Resiliency

Ensure that the City's built environment and infrastructure are adequately prepared for natural disasters.

Policy 5.3.1: Ensure that relevant sections of the Milwaukie Municipal Code, most notably those that deal with Flood Hazards, Seismic Conditions, and Soils, are maintained to reflect best available science.

Policy 5.3.5: Prohibit essential public facilities and uses with vulnerable populations from being located within areas at high risk of flooding, landslides, liquefaction, and fire, and aim to relocate existing uses in these areas.

Goal 5.4 – Adaptation and Mitigation

Develop programs that inform the public about the increased risks from natural hazards and create strategies for how to deal with them.

Policy 5.4.1: In areas where there is a high risk of flooding or other natural hazards, support efforts by the City and other public and private entities to acquire properties for conservation purposes. Restrict development to uses that have a demonstrated community benefit and for which the natural hazard risks and environmental impacts can be adequately mitigated.

Policy 5.4.3: Coordinate with local, regional, state and federal agencies on disaster preparedness efforts, including coordination for major seismic and flooding events.

The City's flood regulations remain an important part of a larger network of regional, state, and federal rules intended to protect the public and reduce flood damage. The proposed amendments are intended to provide continued consistency and compliance with applicable federal regulations related to flood hazard management. This includes referencing the latest flood mapping available from FEMA, establishing a more formal floodplain development process, and continuing to regulate and restrict development in areas at high risk of flooding. The proposed amendments further restrict the siting of critical facilities in the regulatory floodplain and are aligned with the latest state building codes. As proposed, the amendments are consistent with and facilitate the actualization of several relevant goals and policies in the City's Comprehensive Plan.

This standard is met.

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

The proposed amendments are consistent with the following applicable sections of Metro's Urban Growth Management Functional Plan:

Title 3 – Water Quality and Flood Management

MMC Title 18 (Flood Hazard Regulations) incorporates Metro's Title 3 regulations as to ensure that the City's regulations for flood management are consistent with those of Metro. Furthermore, the proposed amendments are designed to ensure that City regulations continue to be consistent with applicable federal regulations for flood management.

Title 8 – Compliance Procedures

The City's current Comprehensive Plan and land use regulations are in compliance with the Functional Plan. The proposed amendments will be deemed to comply with the Functional Plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). As required by Metro Code Section 3.07.820.A, the City has provided notice of the proposed amendments to Metro's Chief Operating Officer as much in advance of the City Council hearing on the proposed amendments as possible.

In processing the proposed amendments, the City has followed its own requirements and procedures for citizen involvement. The proposed amendments have been reviewed at a public City Council work session and made available to the City's various Neighborhood District Associations for review. The City has conducted public hearings on the proposed amendments before the Planning Commission and City Council and has published public notice prior to each hearing.

This standard is met.

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

Goal 1 – Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City has an adopted and acknowledged amendment process and has followed that process in making these amendments. Public hearings on the proposed amendments have been held and public notice was published prior to each hearing. In addition, all owners of property within designated flood hazard areas were sent notice of the public hearings. The Planning Commission members are appointed by an elected City Council, following an open and public selection process.

Goal 2 – Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The proposed amendments will not change the City's land use planning process. The City will continue to have a comprehensive land use plan and implementing regulations that are consistent with the plan. The proposed amendments will update MMC Title 18 of the municipal code and make it consistent with applicable federal flood management regulations. Specifically, the proposed amendments will update existing definitions related to flood hazard regulations to be consistent with those found in federal regulations, reorganize information for greater clarification, and generally ensure that MMC Title 18 operates consistently with respect to development issues within identified flood hazard areas. These changes strengthen the City's existing policies that implement Goal 2.

Goal 7 – Areas Subject to Natural Hazards

To protect people and property from natural hazards.

The proposed amendments will improve the City's implementation of Statewide Planning Goal 7. The proposed amendments are specifically designed to ensure that City ordinances relating to development in designated flood hazard areas continue to be consistent with applicable federal regulations for flood management.

This standard is met.

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

The primary purpose of the proposed amendments is to revise the flood hazard regulations of MMC Title 18 so that they remain consistent with the latest federal regulations.

This standard is met.

The City Council finds that the proposed amendments to MMC Title 18 (Flood Hazard Regulations) are consistent with the applicable approval criteria for zoning text amendments as established in MMC 19.902.5.B.

5. MMC Section 19.1008 Type V Review

MMC 19.1008 establishes the procedures and requirements for Type V review, which is the process for legislative actions. The City Council, Planning Commission, Planning Manager, or any individual may initiate a Type V application.

The proposed amendments were initiated by the Planning Manager on December 9, 2020.

- a. MMC Subsection 19.1008.3 establishes the public notice requirements for Type V review.

(1) MMC Subsection 19.1008.3.A General Public Notice

MMC 19.1008.3.A establishes the requirements for public notice, including a requirement to post public notice of a public hearing on a Type V application at least 30 days prior to the first evidentiary hearing. The notice must be posted on the City website and at City facilities that are open to the public.

A notice of the Planning Commission's January 12, 2021, hearing was posted as required on December 11, 2020. A notice of the City Council's March 2, 2021, hearing was posted as required on January 29, 2021. In addition,

(2) MMC Subsection 19.1008.3.B DLCD Notice

MMC 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) as per the standards of MMC Subsection 19.1001.6.C.4.a, which required notice to be sent to DLCD at least 35 days prior to the first evidentiary hearing.

ATTACHMENT 1 Exhibit A

Notice of the proposed amendments was sent to DLCD on December 9, 2020, in advance of the first evidentiary hearing on January 12, 2021.

(3) MMC Subsection 19.1008.3.C Metro Notice

MMC 19.1008.3.C requires notice of a Type V application be sent to Metro at least 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on December 9, 2020, in advance of the first evidentiary hearing on January 12, 2021.

(4) MMC Subsection 19.1008.3.D Property Owner Notice (Measure 56)

MMC 19.1008.3.D requires notice to property owners if, in the Planning Manager's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments are largely administrative in nature and would not result in significant changes for most of the properties within a designated flood zone, though they would present new restrictions for a small portion of the affected areas. A notice to this effect was mailed to the owners of all affected properties on December 22, 2020.

b. MMC Subsection 19.1008.4 Type V Decision Authority

MMC 19.1008.4 establishes that the City Council is the review authority for Type V applications and may approve, approve with conditions, amend, deny, or take no action on a Type V application after a public hearing.

The City Council held a public hearing to consider this application on March 2, 2021, and approved the proposed amendments as presented.

c. MMC Subsection 19.1008.5 Type V Recommendation and Decision

MMC 19.1008.5 establishes the procedures for review and a decision on Type V applications. The process includes an initial evidentiary hearing by the Planning Commission and a recommendation to the City Council, followed by a public hearing and decision by the City Council.

The Planning Commission held an initial evidentiary hearing on January 12, 2021, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on March 2, 2021, and approved the proposed amendments as presented.

TITLE 18 FLOOD HAZARD REGULATIONS

18.04 PURPOSE AND METHODS

18.04.010 Statement of Purpose

The flood hazard areas within the City of Milwaukie are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety, and general welfare. These flood losses may be caused by the cumulative effect of obstructions in regulatory floodplains, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

It is the purpose of this title to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in the regulatory floodplain;
- F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas to minimize blight areas caused by flooding;
- G. Notify potential buyers that property is in a regulatory floodplain;
- H. Notify those who occupy regulatory floodplains that they assume responsibility for their actions;
- I. Maintain the functions and values of floodplains, such as allowing for storage and conveyance of stream flows through existing and natural flood conveyance systems; and
- J. Participate in, promote, and maintain eligibility for flood insurance and disaster relief.

18.04.020 Methods of Reducing Flood Losses

In order to accomplish its purposes, this title includes methods and provisions for:

- A. Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

Proposed Code Amendments

- D. Controlling filling, grading, dredging, and other development which may increase flood damage;
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

18.08 DEFINITIONS

Unless specifically defined below, words or phrases used in this title will be interpreted so as to give them the meaning they have in common usage.

“Appeal” means a request for a review of the interpretation of any provision of this title or a request for a variance.

“Area of February 1996 inundation” means the areas along the Willamette River and its backwaters of Johnson and Kellogg Creeks that were flooded to elevation 38 feet (NAVD) in February of 1996. These areas are shown on the Metro Water Quality and Flood Management Area Maps.

“Area of shallow flooding” means a designated Zone AO, AH, AR/AO, or AR/AH on a community’s Flood Insurance Rate Map with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding (AH) or sheet flow (AO).

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map as Zone A, AO, AH, A1-30, AE, A99, or AR. Also referred to as “special flood hazard area.”

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

“Base flood elevation (BFE)” means the elevation to which floodwater is anticipated to rise during the base flood.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides, including any sunken room or sunken portion of a room.

“Building” means a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site.

“Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools; nursing homes; hospitals; police, fire and emergency response installations; and installations which produce, use, or store hazardous materials or hazardous waste.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Design flood elevation (DFE)” means the higher elevation of the following:

1. The base flood elevation (BFE); or
2. For properties that include an area of February 1996 inundation, the water surface elevation of the February 1996 flood event, interpolated as 2.4 feet above the nearest adjacent BFE.

“Elevated building” means, for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

“Flood or Flooding” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph 1-b of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1-a of this definition.

“Flood elevation study” means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also referred to as “Flood Insurance Study.”

“Flood Insurance Rate Map (FIRM)” means the official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

“Flood Insurance Study (FIS)”: See “Flood elevation study.”

“Flood Protection Elevation (FPE)” means the elevation 1 foot above the Design Flood Elevation.

“Floodplain or flood-prone area” means land area susceptible to being inundated by water from any source.

“Floodplain administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

“Floodplain management regulations” means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance) and other application of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water

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surface elevation more than ~~one (1) foot~~ a designated height. Also referred to as “Regulatory floodway.”

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

“Hazardous material” means hazardous materials as defined by the Oregon Department of Environmental Quality, including any of the following:

1. Hazardous waste as defined in Oregon Revised Statutes (ORS) 466.005;
2. Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances defined in ORS 453.005
3. Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;
4. Hazardous substances designated by the United States Environmental Protection Agency (EPA) under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
5. Substances listed by the United States EPA in section 40 of the Code of Federal Regulations, Part 302 – Table 302.4 (list of Hazardous Substances and Reportable Quantities) and amendments;
6. Material regulated as a Chemical Agent under ORS 465.550;
7. Material used as a weapon of mass destruction, or biological weapon;
8. Pesticide residue;
9. Dry cleaning solvent as defined by ORS 465.200(9).

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title.

“Manufactured dwelling” means a structure, transportable in one or more sections, which is intended for use as a dwelling, built on a permanent chassis, and designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured dwelling” does not include recreational vehicles and is synonymous with “manufactured home” and “mobile home.”

“Manufactured dwelling park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

“Mean sea level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“New construction” means, for floodplain management purposes, structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by City of Milwaukie and includes any subsequent improvements to such structures.

“Recreational vehicle” means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory floodplain” is also referred to as “regulatory flood hazard area” and means floodplain mapped as either:

1. The land area inundated by the base flood on the Flood Insurance Rate Map (FIRM), or
2. The land area inundated by the February 1996 flood on the Metro Water Quality and Flood Management Area maps.

“Regulatory flood hazard area”: See “Regulatory floodplain.”

“Regulatory floodway”: See “floodway.”

“Special flood hazard area”: See “Area of special flood hazard.”

“Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a

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substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvements of a structure within the last ten years, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvements. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

“Variance” means a grant of relief by the City from the terms of a floodplain management regulation.

“Violation” means the failure of a structure or other development to be fully compliant with the City’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this title is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means an artificial or natural stream, swale, creek, river, ditch, canal, or other open channel that serves to convey water, whether intermittently, perennially, or continuously.

18.12 GENERAL PROVISIONS**18.12.010 Applicability**

This title applies to all regulatory floodplains and floodways within the jurisdiction of the City of Milwaukie. 2.

Provisions of this title are to be administered concurrently with those of Title 19, the Zoning Ordinance of the City.

18.12.020 Basis for Establishing the Regulatory Floodplain

- A. The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled “The FIS for Clackamas County, Oregon and Incorporated Areas,” dated January 18, 2019, with accompanying FIRMs 4100C0009D, 4100C0017D, 4100C0028D, and 4100C0036D are hereby incorporated by reference and declared to be a part of this title. The FIS and FIRM panels are on file at the Community Development Department, located at 6101 SE Johnson Creek Boulevard in Milwaukie, Oregon.

- B. The February 1996 flood inundation area identified by the Metro Water Quality and Flood Management Area maps are hereby incorporated by reference and declared to be a part of this title. The Metro Water Quality and Flood Management Area maps are on file at Community Development, located at 6101 SE Johnson Creek Boulevard in Milwaukie, Oregon.

18.12.030 Coordination with State of Oregon Specialty Codes

Pursuant to the requirement established in ORS 455 that the City administers and enforces the State of Oregon Specialty Codes, the City does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in a regulatory floodplain. Therefore, this title is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

18.12.040 Compliance and Penalties for Noncompliance

A. Compliance

All development within a regulatory floodplain is subject to the terms of this title and required to comply with its provisions and all other applicable regulations.

B. Penalties for Noncompliance

No structure or land will hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this title and other applicable regulations. Violations of the provisions of this title by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) will constitute a violation. Violations will be punishable by a fine of not more than one thousand dollars per violation per day. Nothing contained herein will prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

18.12.050 Abrogation and Severability

A. Abrogation

This title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this title and another title, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions will prevail.

B. Severability

This title and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the title is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way effect the validity of the remaining portions of this title.

18.12.060 Interpretation

In the interpretation and application of this title, all provisions will be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

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18.12.070 Warning and Disclaimer of Liability

A. Warning

The degree of flood protection required by this title is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This title does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

B. Disclaimer of Liability

This title does not create liability on the part of the City of Milwaukie, any officer or employee thereof, or the Federal Insurance Administrator, for any flood damages that result from reliance on this title or any administrative decision lawfully made hereunder.

18.16 ADMINISTRATION**18.16.010 Designation of The Floodplain Administrator**

The City Engineer or their designee is hereby appointed as the Floodplain Administrator to administer, implement, and enforce this title by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

18.16.020 Duties and Responsibilities of the Floodplain Administrator

Duties of the Floodplain Administrator, or their designee, include, but are not limited to:

A. Permit Review

The Floodplain Administrator will review all development permits for the following purposes:

1. To determine that the permit requirements of this title have been satisfied;
2. To determine that all other required local, state, and federal permits have been obtained and approved;
3. To determine whether the proposed development is located in a floodway. If located in the floodway, assure that the floodway provisions of this title in Subsection 18.20.010.B (Floodways) are met;
4. To determine whether the proposed development is located in the regulatory floodplain where DFE or BFE data is available either through the FIS or from another authoritative source. If regulatory flood elevation data is not available, then ensure compliance with the provisions of Section 18.20.060 (Use of Other Design Flood Data);
5. To provide to building officials the FPE applicable to any building requiring a development permit;
6. To determine whether the proposed development qualifies as a substantial improvement as defined in Chapter 18.08 (Definitions);

7. To determine whether the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in Section 18.20.010 (Alteration of Watercourses); and
8. To determine whether the proposed development activity includes the placement of fill or excavation. If fill or excavation is proposed, ensure compliance with the provisions in Section 18.20.020 (Compensatory Storage).

B. Information to Be Obtained and Maintained

The following information will be obtained and maintained and will be made available for public inspection as needed, utilizing forms developed by FEMA where applicable:

1. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures located in the regulatory floodplain where DFE or BFE data is provided through the FIS, FIRM, or obtained in accordance with Subsection 18.20.060 (Use of Other Design Flood Data);
2. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of Subsections 18.20.010.B (Floodways) and 18.16.020.A (Permit Review) are adhered to;
3. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement);
4. Where DFE or BFE data are utilized, obtain as-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection;
5. Maintain all Elevation Certificates (ECs) submitted to the City;
6. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this title and where DFE or BFE data is provided through the FIS, FIRM, or obtained in accordance with Section 18.20.060 (Use of Other Design Flood Data);
7. Maintain all floodproofing certificates required under this title;
8. Record and maintain all variance actions, including justification for their issuance;
9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under Subsection 18.20.010.B (Floodways);
10. Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under Subsection 18.16.020.D (SI/SD);
11. Maintain for public inspection all records pertaining to the provisions of this title; and
12. Obtain, record, and maintain a non-conversion agreement for any areas constructed below flood protection elevation subject to inspection at least once a year.

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C. Requirement to Notify Other Entities and Submit New Technical Data

1. Community Boundary Alterations

The Floodplain Administrator will notify the Federal Insurance Administrator (FIA) in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBM)s and FIRMs accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

2. Watercourse Alterations

Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification will be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:

- a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or
- b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

The applicant will be required to submit a Conditional Letter of Map Revision (CLOMR) when required under section (Requirement to Notify Other Entities and Submit New Technical Data) 4.2.3.3. Ensure compliance with all applicable requirements in Subsection 18.16.020.C (Requirement to Notify Other Entities and Submit New Technical Data) and Subsection 18.20.010 (Alteration of Watercourses).

3. Requirement to Submit New Technical Data

A community's flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the City must notify the FIA of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Sub-Section 65.3. The City may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.

The Floodplain Administrator will require a CLOMR prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the DFE.

An applicant must notify FEMA within six (6) months of project completion when an applicant has obtained a CLOMR from FEMA. This notification to FEMA must be provided as a LOMR.

The applicant will be responsible for preparing all technical data to support CLOMR/LOMR applications and paying any processing or application fees associated with the CLOMR/LOMR.

The Floodplain Administrator will be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable state and federal laws.

D. Substantial Improvement and Substantial Damage Assessments and Determinations

Conduct Substantial Improvement (SI) (as defined in Chapter 18.08) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with Section 18.16.020.B (Information to be Obtained and Maintained). Conduct Substantial Damage (SD) (as defined in Chapter 18.08) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area (as established in Subsection 18.12.020.A) are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

18.16.030 Establishment of Floodplain Development Permit

A. Floodplain Development Permit Required

A Floodplain Development Permit must be obtained through application on forms furnished by the City Engineer before construction or development begins within any area horizontally within the regulatory floodplain established in Subsection 18.12.020.A. The Floodplain Development Permit is required for all structures, including manufactured dwellings, and for all other development, as defined in Chapter 18.08, including fill and other development activities.

B. Application for Floodplain Development Permit

Application for a Floodplain Development permit may be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. The proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of Subsection 18.16.020.B (Information to be Obtained and Maintained).
2. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.
3. Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods proposed for any non-residential structure meet the floodproofing criteria for non-residential structures in Section 18.20.120 (Nonresidential Construction).
4. Description of the extent to which any watercourse will be altered or relocated.
5. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.

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6. The amount and location of any fill or excavation activities proposed.

18.16.040 Variance Procedure

The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

A. Conditions for Variances

1. Generally, variances will be heard by the Planning Commission. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the design flood level, in conformance with the provisions of Subsections 18.04.040.D.1.c and D.1.e and 18.04.040.D.2. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
2. Variances will not be issued within any floodway, unless the project is for the sole purpose of stream, fish, habitat, or other ecological enhancement, or for dam removal.
3. Variances may be issued by the City for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Subsection 18.16.040.A.4 are met, and the structure or other development is protected by methods that minimize flood damages during the design flood and create no additional threats to public safety.

4. Approval criteria

Variances will only be issued upon:

- a. A showing of good and sufficient cause;
- b. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable;
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, additional public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances; and
- d. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

B. Variance Notification

Any applicant to whom a variance is granted will be given written notice that the issuance of a variance to construct a structure below the flood protection elevation may result in increased premium rates for flood insurance and that such construction below the design flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance, will be maintained in accordance with Subsection 18.16.020.B (Information to be Obtained and Maintained).

18.20 PROVISIONS FOR FLOOD HAZARD REDUCTION

In all regulatory floodplains, the following standards must be adhered to:

18.20.010 Alteration of Watercourses

A. The flood carrying capacity within the altered or relocated portion of said watercourse must be maintained. Maintenance must be provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Compliance with Subsection 18.20.010 (Alteration of Watercourses) and Subsection 18.16.020.C.3 (Requirement to Submit New Technical Data) is required.

B. Floodways

Located within the regulatory floodplains established in Subsection 18.12.020.A are watercourses and other areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential.

Encroachments within floodways, including fill, new construction, substantial improvements, and other development within a setback of the adopted regulatory floodway, are prohibited unless:

1. The proposal is a dock, boat ramp, or other water dependent structures AND a certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge; OR
2. The encroachment proposal meets the following criteria:
 - a. Is for the primary purpose of fish enhancement;
 - b. Does not involve the placement of any structures (as defined in Chapter 18.08) within the floodway;
 - c. Has a feasibility analysis completed documenting that fish enhancement will be achieved through the proposed project;
 - d. Has a maintenance plan in place to ensure that the stream carrying capacity is not impacted by the fish enhancement project;
 - e. Has approval by the National Marine Fisheries Service, the State of Oregon Department of Fish and Wildlife, or the equivalent federal or state agency; AND
 - f. Has evidence to support that no existing structures will be negatively impacted by the proposed activity.

Then an approved CLOMR or may be required prior to approval of a floodplain permit.

C. If the requirements of Subsection 18.20.010.B (Floodways) are satisfied, all new construction, substantial improvements, and other development must comply with all other applicable flood hazard reduction provisions of Chapter 18.20.

18.20.020 Compensatory Storage (Balanced Cut and Fill)

The placement of fill or structures that displaces ten cubic yards or less of flood storage area is exempt from the requirements of this section (18.20.020).

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The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area must comply with the following standards:

- A. Development, excavation, and fill must be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.
- B. Excavation and fill must not be performed in a manner as to adversely impact other functions of a floodplain, including but not limited to, erosion control, promoting biodiversity, and ground water recharge.
- C. All fill placed at or below the design flood elevation in the regulatory floodplain must be balanced with at least an equal volume of material removal in a hydraulically equivalent location.
- D. Excavation will not be counted as compensating for fill if such areas will be filled with water in two-year rainstorm conditions or are designated for HCA mitigation.
- E. Temporary fills permitted during construction must be removed.
- F. Uncontained areas of hazardous materials in the regulatory floodplain are prohibited.
- G. Excavation to balance a fill must 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:
 - 1. The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;
 - 2. The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
 - 3. Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill must be approved by the City.
- H. New culverts, stream crossings, and transportation projects must be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects must be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings must be as close to perpendicular to the stream as practicable. Bridges must be used instead of culverts wherever practicable.
- I. Excavation and fill required for the construction of detention facilities or structures, and other facilities, must be designed to reduce or mitigate flood impacts and improve water quality. Levees must not be used to create vacant buildable lands.

18.20.030 Utilities and Equipment

- A. Water Supply, Sanitary Sewer, and Onsite Waste Disposal Systems
 - 1. All new and replacement water supply systems must be designed to minimize or eliminate infiltration of flood waters into the system.
 - 2. New and replacement sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

3. Onsite waste disposal systems must be located to avoid impairment to them or contamination from them during flooding, consistent with the Oregon Department of Environmental Quality.

B. Electrical, Mechanical, Plumbing, and Other Equipment

All new electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities must be elevated at or above the flood protection elevation or must be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities in Substantially Improved structures must be elevated at or above the flood protection elevation.

18.20.040 Structures

- A. All new construction and substantial improvements must be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. All new construction and substantial improvements must be constructed with flood resistant materials below the flood protection elevation.

18.20.050 Tanks

- A. Underground tanks must be anchored to prevent flotation, collapse and lateral movement under conditions of the design flood.
- B. Above-ground tanks must be installed at or above the flood protection elevation.

18.20.060 Use of Other Design Flood Data

When DFE data has not been provided in accordance with Section 18.12.020 (Basis for Establishing the Regulatory Floodplain), the Floodplain Administrator will obtain, review, and reasonably utilize any flood elevation data available from a federal, state, or other source, in order to administer Section 18.20.

18.20.070 Structures Located in Multiple or Partial Flood Zones

In coordination with the State of Oregon Specialty Codes:

- A. When a structure is located in multiple flood zones on the community's regulatory floodplain maps the provisions for the more restrictive flood zone will apply.
- B. When a structure is partially located in a regulatory floodplain, the entire structure must meet the requirements for new construction and substantial improvements.

18.20.080 Critical Facilities

Construction of new critical facilities must be located outside the limits of the regulatory floodplain.

If allowed by variance in accordance with the provisions of this title, new critical facilities constructed within the regulatory floodplain must have the lowest floor elevated at least three feet above the base flood height (BFE) or to the height of the 500-year flood, whichever is higher. Access to and from any new critical facility must also be protected to the height utilized

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above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

Existing critical facilities, including future improvements and maintenance to critical facilities, within the limits of the regulatory floodplain are exempt from this requirement.

18.20.090 Flood Openings

All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements.

Enclosed areas below the flood protection elevation, including crawl spaces, must:

- A. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;
- B. Be used solely for parking, storage, or building access;
- C. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
 1. A minimum of two openings.
 2. The total net area of non-engineered openings must be not less than one (1) square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls.
 3. The bottom of all openings must be no higher than one foot above grade.
 4. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they must allow the automatic flow of floodwater into and out of the enclosed areas and must be accounted for in the determination of the net open area.
 5. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 must be complied with when applicable.

18.20.100 Garages

- A. Attached garages may be constructed with the garage floor slab below the flood protection elevation, if the following requirements are met:
 1. Not located within a floodway.
 2. The floors are at or above grade on not less than one side;
 3. The garage is used solely for parking, building access, and/or storage;
 4. The garage is constructed with flood openings in compliance with Subsection 18.04.050.I (Flood Openings) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 5. The portions of the garage constructed below the flood protection elevation are constructed with materials resistant to flood damage;
 6. The garage is constructed in compliance with the standards in Chapter 18.20; and
 7. The garage is constructed with electrical, and other service facilities located at or above the design flood elevation plus 1 foot.

8. A Non-Conversion Agreement is recorded with title and deed which prohibits alteration of the accessory structure at a later date as to violate the building code and floodplain damage prevention ordinance requirements and the owner(s) and subsequent owner(s) agree to allow a representative of the City of Milwaukie onto the Property and into the building(s) to verify compliance with this Agreement.
- B. Detached garages must be constructed in compliance with the standards for accessory structures in Subsection 18.20.150 (Accessory Structures) or nonresidential structures in Section 18.20.120 (Nonresidential Construction) depending on the square footage of the garage.

18.20.110 Residential Construction

- A. New construction and substantial improvement of any residential structure must have the lowest floor, including basement, elevated at or above the flood protection elevation.
- B. Enclosed areas below the lowest floor must comply with the flood opening requirements in Section 18.20.090 (Flood Openings).
- C. Enclosed areas below the lowest floor must be constructed with flood resistant materials.
- D. No enclosed areas below flood protection elevation are permitted at locations sharing a cross section with average floodway velocities that are expected to meet or exceed 5 ft/s.

18.20.120 Nonresidential Construction

- A. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure must have the lowest floor, including basement, elevated at or above the flood protection elevation; or, together with attendant utility and sanitary facilities, must:
 1. Be floodproofed so that below the flood protection elevation the structure is watertight, with walls substantially impermeable to the passage of water.
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications must be provided to the Floodplain Administrator as set forth in Subsection 18.16.020.B (Information to be Obtained and Maintained).
- B. Non-residential structures that are elevated, not floodproofed, must comply with the standards for enclosed areas below the lowest floor in Section 18.20.090 (Flood Openings).
- C. Applicants floodproofing non-residential buildings must be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level.
- D. Applicants must supply a maintenance plan for the entire structure to include but not limited to: exterior envelop of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the

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location of all shields, gates, barriers, and components, as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.

- E. Applicants must supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.

18.20.130 Manufactured Dwellings

- A. New or substantially improved manufactured dwellings supported on solid foundation walls must be constructed with flood openings that comply with Section 18.20.090 (Flood Openings).
- B. The bottom of the longitudinal chassis frame beam must be at or above flood protection elevation.
- C. New or substantially improved manufactured dwellings must be anchored to prevent flotation, collapse, and lateral movement during the design flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (see FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- D. Electrical crossover connections must be at or above design flood elevation plus 1 foot.

18.20.140 Recreational Vehicles

A recreational vehicle placed on sites is required to:

- A. Be on the site for fewer than 180 consecutive days; and
- B. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

Meet the requirements of Section 18.20.130 (Manufactured Dwellings), including the anchoring and elevation requirements for manufactured dwellings.

18.20.150 Accessory Structures

Relief from elevation or floodproofing requirements for residential and nonresidential structures may be granted for accessory structures that meet the following requirements:

- A. Accessory structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in Subsection 18.20.010.B (Floodways).
- B. Accessory structures must only be used for parking, access, and/or storage and must not be used for human habitation.
- C. In compliance with State of Oregon Specialty Codes, accessory structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two (2) acres in area and the proposed accessory structure will be located a minimum of 20 feet from all property lines. Accessory structures on properties that are zoned as nonresidential are limited in size to 120 square feet.
- D. The portions of the accessory structure located below the flood protection elevation must be built using flood resistant materials.

- E. The accessory structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- F. The accessory structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in Section 18.20.090 (Flood Openings).
- G. Accessory structures must be located and constructed to have low damage potential including no enclosed areas at locations sharing a cross section with floodway velocities that are expected to meet or exceed 5 ft/s.
- H. Accessory structures must not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with Section 18.20.030 (Utilities and Equipment).
- I. Accessory structures must be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the design flood.
- J. A Non-Conversion Agreement is recorded with title and deed which prohibits alteration of the accessory structure at a later date as to violate the building code and floodplain damage prevention ordinance requirements and the owner(s) and subsequent owner(s) agree to allow a representative of the City of Milwaukie onto the Property and into the building(s) at least once a year to verify compliance with this Agreement.

TITLE 18 FLOOD HAZARD REGULATIONS

Note: The strikeout/underline format presented in this draft is intended to represent the substantive changes and is not a complete markup of the existing regulations, since the degree of reorganization and renumbering presented in these amendments would make an exact markup much more difficult to read.

18.04 PURPOSE AND METHODS

18.04.010 Statement of Purpose

The flood hazard areas within the City of Milwaukie are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety, and general welfare. These flood losses may be caused by the cumulative effect of obstructions in regulatory floodplains, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

It is the purpose of this title to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in the regulatory floodplain;
- F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas to minimize blight areas caused by flooding;
- G. Notify potential buyers that property is in a regulatory floodplain;
- H. Notify those who occupy regulatory floodplains that they assume responsibility for their actions;
- I. Maintain the functions and values of floodplains, such as allowing for storage and conveyance of stream flows through existing and natural flood conveyance systems; and
- J. Participate in, promote, and maintain eligibility for flood insurance and disaster relief.

18.04.020 Methods of Reducing Flood Losses

In order to accomplish its purposes, this title includes methods and provisions for:

- A. Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

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- D. Controlling filling, grading, dredging, and other development which may increase flood damage;
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

18.08 DEFINITIONS

Unless specifically defined below, words or phrases used in this title will be interpreted so as to give them the meaning they have in common usage.

“Appeal” means a request for a review of the interpretation of any provision of this title or a request for a variance.

“Area of February 1996 inundation” means the areas along the Willamette River and its backwaters of Johnson and Kellogg Creeks that were flooded to elevation 34.5 (NGVD) 38 feet (NAVD) in February of 1996. These areas are shown on the Metro Water Quality and Flood Management Area Maps.

“Area of shallow flooding” means a designated Zone AO, AH, AR/AO, or AR/AH on a community’s Flood Insurance Rate Map with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding (AH) or sheet flow (AO).

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. ~~Designation on maps always includes the letter A. It is shown on the Flood Insurance Rate Map as Zone A, AO, AH, A1-30, AE, A99, or AR.~~ It is shown on the Flood Insurance Rate Map as Zone A, AO, AH, A1-30, AE, A99, or AR. Also referred to as “special flood hazard area.”

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year. ~~Also referred to as the one hundred (100) year flood. Designation on maps always includes the letter A.~~

“Base flood elevation (BFE)” means the elevation to which floodwater is anticipated to rise during the base flood.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides, including any sunken room or sunken portion of a room.

“Building” means a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site.

~~“City” means the City of Milwaukie, Oregon.~~

“Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools; nursing homes; hospitals; police, fire and emergency response installations; and installations which produce, use, or store hazardous materials or hazardous waste.

~~“Critical feature” means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.~~

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Design flood height elevation (DFE)” means the higher elevation of the following:

1. ~~The elevation of the one hundred (100)-year storm as defined in FEMA Flood Insurance Studies and shown as Zone A on Flood Insurance Rate Maps. The base flood elevation (BFE); or~~
2. ~~For properties that include an area of February 1996 inundation, the water surface elevation of 34.5, the elevation of the February 1996 flood event measured for the Willamette River, interpolated as 2.4 feet above the nearest adjacent BFE.~~

“Elevated building” means, for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

~~“Existing manufactured home park or subdivision” means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.~~

~~“Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

~~“FEMA” means the Federal Emergency Management Agency.~~

“Flood or Flooding” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph 1-b of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1-a of this definition.

“Flood elevation study” means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also referred to as “Flood Insurance Study.”

“Flood Insurance Rate Map (FIRM)” means the official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

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“Flood Insurance Study (FIS)”: means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary Floodway Map, and the water surface elevation of the base flood. See “Flood elevation study.”

“Flood management areas” means all lands contained within the one hundred (100)-year floodplain, and floodway as shown on the Federal Emergency Management Agency Flood Insurance Rate Maps and Floodway Maps, and the areas of inundation for the February 1996 flood as shown on the Metro Water Quality and Flood Management Area Maps.

“Flood Protection Elevation (FPE)” means the elevation 1 foot above the Design Flood Elevation.

“Flood storage area” means that area below the design flood height but above bankful stage, which is capable of storing flood waters during a flood event.

“Floodplain or flood-prone area” means land area susceptible to being inundated by water from any source.

“Floodplain administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

“Floodplain management regulations” means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance) and other application of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot a designated height. Also referred to as “Regulatory floodway.”

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

“Habitable floor” means any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation, or a combination thereof. A floor used only for storage purposes is not a “habitable floor.”

“Hazardous material” means hazardous materials as defined by the Oregon Department of Environmental Quality, including any of the following:

1. Hazardous waste as defined in Oregon Revised Statutes (ORS) 466.005;
2. Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances defined in ORS 453.005
3. Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;

4. Hazardous substances designated by the United States Environmental Protection Agency (EPA) under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
5. Substances listed by the United States EPA in section 40 of the Code of Federal Regulations, Part 302 – Table 302.4 (list of Hazardous Substances and Reportable Quantities) and amendments;
6. Material regulated as a Chemical Agent under ORS 465.550;
7. Material used as a weapon of mass destruction, or biological weapon;
8. Pesticide residue;
9. Dry cleaning solvent as defined by ORS 465.200(9).

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

~~“Levee” means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.~~

~~“Levee system” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.~~

~~“Lowest floor” means the lowest floor of the lowest enclosed area (including basements and any crawlspace that is below grade). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title.~~

~~“Manufactured home dwelling” means a structure, transportable in one or more sections, which is intended for use as a dwelling, built on a permanent chassis, and designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home dwelling” does not include recreational vehicles, park trailers, travel trailers, and other similar vehicles and is synonymous with “manufactured home” and “mobile home.”~~

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~~“Manufactured home dwelling park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home dwelling lots for rent or sale.~~

~~“Mean sea level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.~~

~~“New construction” means, for floodplain management purposes, structures for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter—a floodplain management regulation adopted by City of Milwaukie and includes any subsequent improvements to such structures.~~

~~“New manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.~~

~~“Recreational vehicle” means a vehicle which is:~~

- ~~1. Built on a single chassis;~~
- ~~2. 400 square feet or less when measured at the largest horizontal projection;~~
- ~~3. Designed to be self-propelled or permanently towable by a light duty truck; and~~
- ~~4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.~~

~~“Regulatory floodplain” is also referred to as “regulatory flood hazard area” and means floodplain mapped as either:~~

- ~~1. The land area inundated by the base flood on the Flood Insurance Rate Map (FIRM), or~~
- ~~2. The land area inundated by the February 1996 flood on the Metro Water Quality and Flood Management Area maps.~~

~~“Regulatory flood hazard area”: See “Regulatory floodplain.”~~

~~“Regulatory floodway”: See “floodway.”~~

~~“Remedy a violation” means to bring a structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.~~

~~“Special flood hazard area”: See “Area of special flood hazard.”~~

~~“Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary~~

forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

~~“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner principally above ground, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling.~~

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

~~“Substantial improvement” means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:~~

~~a. Before the improvement or repair is started; or~~

~~b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.~~

any reconstruction, rehabilitation, addition, or other improvements of a structure within the last ten years, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvements. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

~~“Variance” means a grant of relief by the City from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter terms of a floodplain management regulation.~~

“Violation” means the failure of a structure or other development to be fully compliant with the City’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in ~~the FEMA standards~~ this title is presumed to be in violation until such time as that documentation is provided.

~~“Water dependent” means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.~~

~~“Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.~~

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“Watercourse” means an artificial or natural stream, swale, creek, river, ditch, canal, or other open channel that serves to convey water, whether intermittently, perennially, or continuously.

18.12 GENERAL PROVISIONS**18.12.010 Applicability**

This title applies to all regulatory floodplains and floodways within the jurisdiction of the City of Milwaukie. 2.

Provisions of this title are to be administered concurrently with those of Title 19, the Zoning Ordinance of the City.

~~In the event that a claim for just compensation is made against the City pursuant to Article I, Section 18 of the Oregon Constitution based on the application or enforcement of this title, the City Council may waive, suspend, or modify application or enforcement of this title if the City Council determines that application or enforcement would result in an unconstitutional taking. In the event that the waiver, suspension or modification results in a state statute or regulation becoming directly applicable, the City will enforce the state law as required.~~

18.12.020 Basis for Establishing the Regulatory Floodplain

- A. The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled “The FIS for Clackamas County, Oregon and Incorporated Areas,” dated January 18, 2019, with accompanying FIRMs 4100C0009D, 4100C0017D, 4100C0028D, and 4100C0036D ~~and other FEMA maps and studies for those areas annexed or restudied~~ are hereby incorporated by reference and declared to be a part of this title. The FIS and FIRM panels are on file at the Community Development Department, located at 6101 SE Johnson Creek Boulevard in Milwaukie, Oregon.
- B. The February 1996 flood inundation area identified by the Metro Water Quality and Flood Management Area maps are hereby incorporated by reference and declared to be a part of this title. The Metro Water Quality and Flood Management Area maps are on file at Community Development, located at 6101 SE Johnson Creek Boulevard in Milwaukie, Oregon.

18.12.030 Coordination with State of Oregon Specialty Codes

Pursuant to the requirement established in ORS 455 that the City administers and enforces the State of Oregon Specialty Codes, the City does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in a regulatory floodplain. Therefore, this title is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

18.12.040 Compliance and Penalties for Noncompliance**A. Compliance**

All development within a regulatory floodplain is subject to the terms of this title and required to comply with its provisions and all other applicable regulations.

B. Penalties for Noncompliance

No structure or land will hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this title and other applicable

regulations. Violations of the provisions of this title by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) will constitute a violation. Violations will be punishable by a fine of not more than one thousand dollars per violation per day. Nothing contained herein will prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

18.12.050 Abrogation and ~~Greater Restrictions~~ Severability

A. Abrogation

This title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this title and another title, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions will prevail.

B. Severability

This title and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the title is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way effect the validity of the remaining portions of this title.

18.12.060 Interpretation

In the interpretation and application of this title, all provisions will be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the ~~City governing body~~; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

18.12.070 Warning and Disclaimer of Liability

A. Warning

The degree of flood protection required by this title is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This title does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

B. Disclaimer of Liability

This title does not create liability on the part of the City of Milwaukie, any officer or employee thereof, or the Federal Insurance Administrator, for any flood damages that result from reliance on this title or any administrative decision lawfully made hereunder.

18.16 ADMINISTRATION

18.16.010 ~~Engineering Director—Designated Administrator~~ Designation of The Floodplain Administrator

The ~~Engineering Director~~ City Engineer or their designee is hereby appointed as the Floodplain Administrator to administer, implement, and enforce this title by granting or denying

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development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

18.16.020 ~~Engineering Director~~—Duties and Responsibilities of the Floodplain Administrator

Duties of the ~~Engineering Director~~ Floodplain Administrator, or their designee, include, but are not limited to:

A. Permit Review

The Floodplain Administrator will review all development permits for the following purposes:

1. To determine that the permit requirements of this title have been satisfied;
2. To determine that all other required local, state, and federal permits have been obtained and approved;
3. ~~To determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements shall:~~
 - a. ~~Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;~~
 - b. ~~Be constructed with materials resistant to flood damage;~~
 - c. ~~Be constructed by methods and practices that minimize flood damages; and~~
 - d. ~~Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~
4. To determine whether the proposed development is located in a floodway. If located in the floodway, assure that the floodway provisions of this title in Subsection 18.20.010.B (Floodways) are met;
5. To determine whether the proposed development is located in the regulatory floodplain where DFE or BFE data is available either through the FIS or from another authoritative source. If regulatory flood elevation data is not available, then ensure compliance with the provisions of Section 18.20.060 (Use of Other Design Flood Data);
6. To provide to building officials the FPE applicable to any building requiring a development permit;
7. To determine whether the proposed development qualifies as a substantial improvement as defined in Chapter 18.08 (Definitions);
8. To determine whether the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in Section 18.20.010 (Alteration of Watercourses); and
9. To determine whether the proposed development activity includes the placement of fill or excavation. If fill or excavation is proposed, ensure compliance with the provisions in Section 18.20.020 (Compensatory Storage).

B. Information to Be Obtained and Maintained

The following information will be obtained and maintained and will be made available for public inspection as needed, utilizing forms developed by FEMA where applicable:

1. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures and whether or not the structure contains a basement located in the regulatory floodplain where DFE or BFE data is provided through the FIS, FIRM, or obtained in accordance with Subsection 18.20.060 (Use of Other Design Flood Data);
2. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of Subsections 18.20.010.B (Floodways) and 18.16.020.A (Permit Review) are adhered to;
3. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement);
4. Where DFE or BFE data are utilized, obtain as-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection;
5. Maintain all Elevation Certificates (ECs) submitted to the City;
6. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this title and where DFE or BFE data is provided through the FIS, FIRM, or obtained in accordance with Section 18.20.060 (Use of Other Design Flood Data);
7. Maintain all floodproofing certificates required under this title;
8. Record and maintain all variance actions, including justification for their issuance;
9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under Subsection 18.20.010.B (Floodways);
10. Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under Subsection 18.16.020.D (SI/SD);
11. Maintain for public inspection all records pertaining to the provisions of this title; and
12. Obtain, record, and maintain a non-conversion agreement for any areas constructed below flood protection elevation subject to inspection at least once a year.

C. Requirement to Notify Other Entities and Submit New Technical Data**1. Community Boundary Alterations**

The Floodplain Administrator will notify the Federal Insurance Administrator (FIA) in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBMs) and FIRMs accurately represent the community's boundaries. Include within such notification a

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copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

2. **Watercourse Alterations**

Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification will be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:

- a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or
- b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

The applicant will be required to submit a Conditional Letter of Map Revision (CLOMR) when required under section (Requirement to Notify Other Entities and Submit New Technical Data) 4.2.3.3. Ensure compliance with all applicable requirements in Subsection 18.16.020.C (Requirement to Notify Other Entities and Submit New Technical Data) and Subsection 18.20.010 (Alteration of Watercourses).

3. **Requirement to Submit New Technical Data**

A community's flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the City must notify the FIA of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Sub-Section 65.3. The City may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.

The Floodplain Administrator will require a CLOMR prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the DFE.

An applicant must notify FEMA within six (6) months of project completion when an applicant has obtained a CLOMR from FEMA. This notification to FEMA must be provided as a LOMR.

The applicant will be responsible for preparing all technical data to support CLOMR/LOMR applications and paying any processing or application fees associated with the CLOMR/LOMR.

The Floodplain Administrator will be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable state and federal laws.

D. **Substantial Improvement and Substantial Damage Assessments and Determinations**

Conduct Substantial Improvement (SI) (as defined in Chapter 18.08) reviews for all structural development proposal applications and maintain a record of SI calculations

within permit files in accordance with Section 18.16.020.B (Information to be Obtained and Maintained). Conduct Substantial Damage (SD) (as defined in Chapter 18.08) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area (as established in Subsection 18.12.020.A) are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

~~E. Interpretation of FIRM and Flood Management Area Boundaries~~

~~Make interpretations, where needed, as to exact location of the boundaries of the special flood hazard and/or flood management areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 18.04.130.~~

18.16.030 Establishment of Floodplain Development Permit

A. Floodplain Development Permit Required

A Floodplain Development Permit must be obtained through application on forms furnished by the City Engineer before construction or development begins within any area horizontally within the regulatory floodplain established in Subsection 18.12.020.A. The Floodplain Development Permit is required for all structures, including manufactured dwellings, and for all other development, as defined in Chapter 18.08, including fill and other development activities.

B. Application for Floodplain Development Permit

Application for a Floodplain Development permit may be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. The proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of Subsection 18.16.020.B (Information to be Obtained and Maintained).
2. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.
3. Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods proposed for any non-residential structure meet the floodproofing criteria for non-residential structures in Section 18.20.120 (Nonresidential Construction).
4. Description of the extent to which any watercourse will be altered or relocated.
5. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.
6. The amount and location of any fill or excavation activities proposed.

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18.16.040 Variance Procedure—~~Appeal Board~~

The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

- A. ~~The Planning Commission as established by the City shall hear and decide appeals and requests for variances from the requirements of this chapter.~~
- B. ~~The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Engineering Director in the enforcement or administration of this chapter.~~
- C. ~~Those aggrieved by the decision of the Planning Commission or any taxpayer, may have the determination reviewed by the City Council and then under ORS 34.010 to 34.100.~~
- D. ~~In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors and standards specified in other section of this chapter, and:~~
- ~~1. The danger that materials may be swept onto lands to the injury of others;~~
 - ~~2. The danger of life and property due to flooding or erosion damage;~~
 - ~~3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;~~
 - ~~4. The importance of the services provided by the proposed facility to the community;~~
 - ~~5. The necessity to the facility of a waterfront location, where applicable;~~
 - ~~6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;~~
 - ~~7. The compatibility of the proposed use with existing anticipated development;~~
 - ~~8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;~~
 - ~~9. The safety of access to the property in times of flood for ordinary and emergency vehicles;~~
 - ~~10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;~~
 - ~~11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; and~~
 - ~~12. The balancing of potentially adverse environmental impacts that may result from meeting the requirements of this chapter against the need to minimize impacts of new development on flood heights.~~
- F. ~~Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.~~
- G. ~~The Engineering Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.~~

A. Conditions for Variances

1. Generally, variances will be heard by the Planning Commission. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base design flood level, in conformance with the provisions of Subsections 18.04.040.D.1.c and D.1.e and 18.04.040.D.2. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
2. Variances will not be issued within any floodway ~~if any increase in flood levels during the base flood discharge would result~~, unless the project is for the sole purpose of stream, fish, habitat, or other ecological enhancement, or for dam removal.
3. Variances may be issued by the City for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Subsection 18.16.040.A.4 are met, and the structure or other development is protected by methods that minimize flood damages during the design flood and create no additional threats to public safety.
4. Approval criteria

Variances will only be issued upon:

- a. A showing of good and sufficient cause;
- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant due to the physical characteristics of the land that render the lot undevelopable;
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, additional public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances; and
- d. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- e. ~~That there are no practicable alternatives to the variance.~~

B. Variance Notification

Any applicant to whom a variance is granted will be given written notice that the issuance of a variance to construct a structure below the flood protection elevation may result in increased premium rates for flood insurance and that such construction below the design flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance, will be maintained in accordance with Subsection 18.16.020.B (Information to be Obtained and Maintained).

- E. ~~The Planning Commission may impose such conditions as are necessary to limit any adverse flooding or environmental impacts that may result from granting relief.~~
- F. ~~Variances, as interpreted in the National Flood Insurance Program (NFIP), are based on the general zoning law principal that they pertain to a physical piece of property; are not personal in nature; and do not pertain to the structure, its inhabitants, or economic or financial circumstances. They primarily address small lots in densely populated neighborhoods. As such, variances from the flood elevations should be quite rare.~~

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- ~~G. Variances may be issued for nonresidential buildings in very limited circumstances, to allow for a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have a low damage potential, complies with all other variance criteria except subsection A, and otherwise complies with Section 18.04.150, General Standards.~~
- ~~H. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below one (1) foot above base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.~~

18.20 PROVISIONS FOR FLOOD HAZARD REDUCTION

In all regulatory floodplains, the following standards shall be adhered to:

18.20.010 Alteration of Watercourses

- A. The flood carrying capacity within the altered or relocated portion of said watercourse must be maintained. Maintenance must be provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Compliance with Subsection 18.20.010 (Alteration of Watercourses) and Subsection 18.16.020.C.3 (Requirement to Submit New Technical Data) is required.

B. Floodways

Located within the regulatory floodplains established in Subsection 18.12.020.A are watercourses and other areas designated as floodways. ~~Since~~The floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, ~~the following provisions apply:~~

Encroachments within floodways, including fill, new construction, substantial improvements, and other development within a setback of the adopted regulatory floodway, are prohibited unless:

1. The proposal is a dock, boat ramp, or other water dependent structures AND a certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge; OR
2. The encroachment proposal meets the following criteria:
 - a. Is for the primary purpose of fish enhancement;
 - b. Does not involve the placement of any structures (as defined in Chapter 18.08) within the floodway;
 - c. Has a feasibility analysis completed documenting that fish enhancement will be achieved through the proposed project;
 - d. Has a maintenance plan in place to ensure that the stream carrying capacity is not impacted by the fish enhancement project;
 - e. Has approval by the National Marine Fisheries Service, the State of Oregon Department of Fish and Wildlife, or the equivalent federal or state agency; AND

- f. Has evidence to support that no existing structures will be negatively impacted by the proposed activity.

Then an approved CLOMR or may be required prior to approval of a floodplain permit.

~~The placement of any manufactured home within a floodway is prohibited, except in an existing manufactured home park or existing manufactured home subdivision. Subsections A and B of this section must be satisfied.~~

- C. If the requirements of Subsection 18.20.010.B (Floodways) are satisfied, all new construction, substantial improvements, and other development must comply with all other applicable flood hazard reduction provisions of Chapter 18.20.

18.20.020 Compensatory Storage (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:~~

The placement of fill or structures that displaces ten cubic yards or less of flood storage area is exempt from the requirements of this section (18.20.020).

The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area must comply with the following standards:

~~A. No net fill in any floodplain is allowed.~~

B.

C. Development, excavation, and fill must be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.

D. Excavation and fill must not be performed in a manner as to adversely impact other functions of a floodplain, including but not limited to, erosion control, promoting biodiversity, and ground water recharge.

E. All fill placed in a floodplain at or below the design flood elevation in the regulatory floodplain must be balanced with at least an equal amount-volume of soil-material removal in a hydraulically equivalent location.

F. Excavation below bankful stage will not be counted as compensating for fill if such areas will be filled with water in two-year rainstorm conditions or are designated for HCA mitigation.

G. Temporary fills permitted during construction must be removed ~~at the end of construction.~~

H. Uncontained areas of hazardous materials in the regulatory floodplain are prohibited.

I. Excavation to balance a fill must 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:

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1. The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;
 2. The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
 3. Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill must be approved by the City.
- J. New culverts, stream crossings, and transportation projects must be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects must be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings must be as close to perpendicular to the stream as practicable. Bridges must be used instead of culverts wherever practicable.
- K. Excavation and fill required for the construction of detention facilities or structures, and other facilities, must be designed to reduce or mitigate flood impacts and improve water quality. Levees must not be used to create vacant buildable lands.

18.20.030 Utilities and Equipment**A. Water Supply, Sanitary Sewer, and Onsite Waste Disposal Systems**

1. All new and replacement water supply systems must be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. Onsite waste disposal systems must be located to avoid impairment to them or contamination from them during flooding, consistent with the Oregon Department of Environmental Quality.

B. Electrical, Mechanical, Plumbing, and Other Equipment

All new electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities must be elevated at or above the flood protection elevation or must be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities in Substantially Improved structures must be elevated at or above the flood protection elevation.

18.20.040 ~~Anchoring [and] Construction Materials and Methods Structures~~

- A. All new construction and substantial improvements must be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- ~~B. All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.~~
- C. All new construction and substantial improvements must be constructed using methods and practices that minimize flood damage with flood resistant materials below the flood protection elevation.

18.20.050 Tanks

- A. Underground tanks must be anchored to prevent flotation, collapse and lateral movement under conditions of the design flood.
- B. Above-ground tanks must be installed at or above the flood protection elevation.

18.20.060 Use of Other Design Flood Data

When ~~base flood and floodway elevation~~ DFE data has not been provided for flood zones in accordance with Section 18.12.020 (Basis for Establishing the Regulatory Floodplain), the ~~Engineering Director~~ Floodplain Administrator will obtain, review, and reasonably utilize any ~~base flood and floodway~~ flood elevation data available from a federal, state, or other source, in order to administer Section 18.20.

18.20.070 Structures Located in Multiple or Partial Flood Zones

In coordination with the State of Oregon Specialty Codes:

- A. When a structure is located in multiple flood zones on the community's regulatory floodplain maps the provisions for the more restrictive flood zone will apply.
- B. When a structure is partially located in a regulatory floodplain, the entire structure must meet the requirements for new construction and substantial improvements.

18.20.080 Critical Facilities

Construction of new critical facilities must be, ~~to the extent possible,~~ located outside the limits of the regulatory floodplain. ~~Construction of new critical facilities shall be permissible within the special flood hazard area (SFHA) if no feasible alternative site is available.~~

If allowed by variance in accordance with the provisions of this title, new critical facilities constructed within the regulatory floodplain must have the lowest floor elevated at least three feet above the ~~design~~ base flood height (BFE) or to the height of the 500-year flood, whichever is higher. Access to and from any new critical facility must also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. ~~Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.~~

Existing critical facilities, including future improvements and maintenance to critical facilities, within the limits of the regulatory floodplain are exempt from this requirement.

18.20.090 Miscellaneous Provisions Flood Openings

All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements.

Enclosed areas below the flood protection elevation, including crawl spaces, must:

- A. Be designed to automatically equalize hydrostatic flood forces on ~~exterior~~ walls by allowing for the entry and exit of floodwaters;
- B. Be used solely for parking, storage, or building access;
- C. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:

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1. A minimum of two openings.
2. The total net area of non-engineered openings must be not less than one (1) square inch for each square foot of enclosed area subject to flooding, where the enclosed area is measured on the exterior of the enclosure walls.
3. The bottom of all openings must be no higher than one foot above grade.
4. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they must allow the automatic flow of floodwater into and out of the enclosed areas and must be accounted for in the determination of the net open area.
5. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 must be complied with when applicable.

18.20.100 Garages

- A. Attached garages may be constructed with the garage floor slab below the flood protection elevation, if the following requirements are met:
 1. Not located within a floodway.
 2. The floors are at or above grade on not less than one side;
 3. The garage is used solely for parking, building access, and/or storage;
 4. The garage is constructed with flood openings in compliance with Subsection 18.04.050.1 (Flood Openings) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 5. The portions of the garage constructed below the flood protection elevation are constructed with materials resistant to flood damage;
 6. The garage is constructed in compliance with the standards in Chapter 18.20; and
 7. The garage is constructed with electrical, and other service facilities located at or above the design flood elevation plus 1 foot.
 8. A Non-Conversion Agreement is recorded with title and deed which prohibits alteration of the garage at a later date as to violate the building code and floodplain damage prevention ordinance requirements and the owner(s) and subsequent owner(s) agree to allow a representative of the City of Milwaukie onto the Property and into the building(s) to verify compliance with this Agreement.
- B. Detached garages must be constructed in compliance with the standards for accessory structures in Subsection 18.20.150 (Accessory Structures) or nonresidential structures in Section 18.20.120 (Nonresidential Construction) depending on the square footage of the garage.

18.20.110 Residential Construction

- A. New construction and substantial improvement of any residential structure must have the lowest floor, including basement, elevated ~~one (1) foot~~ at or above the base-flood protection elevation.
- B. Enclosed areas below the lowest floor must comply with the flood opening requirements in Section 18.20.090 (Flood Openings).
- C. Enclosed areas below the lowest floor must be constructed with flood resistant materials.

- D. No enclosed areas below flood protection elevation are permitted at locations sharing a cross section with average floodway velocities that are expected to meet or exceed 5 ft/s.

18.20.120 Nonresidential Construction

- A. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure must have the lowest floor, including basement, elevated ~~one (1) foot at or above the design flood height~~ protection elevation; or, together with attendant utility and sanitary facilities, must:
1. Be floodproofed so that below ~~one (1) foot above the design flood height~~ the flood protection elevation the structure is watertight, with walls substantially impermeable to the passage of water.
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 3. Be certified by a registered professional engineer or architect that the design and methods of construction satisfy the standards of this subsection are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications must be provided to the Floodplain Administrator as set forth in Subsection 18.16.020.B (Information to be Obtained and Maintained).
- B. Non-residential structures that are elevated, not floodproofed, must comply with the standards for enclosed areas below the lowest floor in Section 18.20.090 (Flood Openings).
- C. Applicants floodproofing non-residential buildings must be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level; ~~e.g., a building floodproofed to the base flood level will be rated as one (1) foot below.~~
- D. Applicants must supply a maintenance plan for the entire structure to include but not limited to: exterior envelop of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components, as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.
- E. Applicants must supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.

18.20.130 Manufactured Homes Dwellings

- ~~1. All manufactured homes to be placed or substantially improved on sites:~~
- ~~a. Outside of a manufactured home park or subdivision;~~
 - ~~b. In a new manufactured home park or subdivision;~~
 - ~~c. In an expansion to an existing manufactured home park or subdivision; or~~
 - ~~d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;~~

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~~shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one (1) foot above the design flood height and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.~~

2. ~~Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A130, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions shall be elevated so that either:~~
- ~~a. The lowest floor of the manufactured home is elevated one (1) foot above the base flood elevation; or~~
 - ~~b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and are securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.~~
- A. New or substantially improved manufactured dwellings supported on solid foundation walls must be constructed with flood openings that comply with Section 18.20.090 (Flood Openings).
 - B. The bottom of the longitudinal chassis frame beam must be at or above flood protection elevation.
 - C. New or substantially improved manufactured dwellings must be anchored to prevent flotation, collapse, and lateral movement during the design flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (see FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
 - D. Electrical crossover connections must be at or above design flood elevation plus 1 foot.

18.20.140 Recreational Vehicles

A recreational vehicle placed on sites is required to:

- A. Be on the site for fewer than 180 consecutive days; and
- B. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

Meet the requirements of Section 18.20.130 (Manufactured Dwellings), including the anchoring and elevation requirements for manufactured dwellings.

18.20.150 Accessory Structures

Relief from elevation or floodproofing requirements for residential and nonresidential structures may be granted for accessory structures that meet the following requirements:

- A. Accessory structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in Subsection 18.20.010.B (Floodways).
- B. Accessory structures must only be used for parking, access, and/or storage and must not be used for human habitation.
- C. In compliance with State of Oregon Specialty Codes, accessory structures on properties that are zoned residential are limited to one-story structures less than 200 square feet.

or 400 square feet if the property is greater than two (2) acres in area and the proposed accessory structure will be located a minimum of 20 feet from all property lines. Accessory structures on properties that are zoned as nonresidential are limited in size to 120 square feet.

- D. The portions of the accessory structure located below the flood protection elevation must be built using flood resistant materials.
- E. The accessory structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- F. The accessory structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in Section 18.20.090 (Flood Openings).
- G. Accessory structures must be located and constructed to have low damage potential including no enclosed areas at locations sharing a cross section with floodway velocities that are expected to meet or exceed 5 ft/s.
- H. Accessory structures must not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with Section 18.20.030 (Utilities and Equipment).
- I. Accessory structures must be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the design flood.
- J. A Non-Conversion Agreement is recorded with title and deed which prohibits alteration of the accessory structure at a later date as to violate the building code and floodplain damage prevention ordinance requirements and the owner(s) and subsequent owner(s) agree to allow a representative of the City of Milwaukie onto the Property and into the building(s) at least once a year to verify compliance with this Agreement.

~~18.04.150.D Subdivision Proposals~~

- ~~1. All subdivision proposals shall be consistent with the need to minimize flood damage.~~
- ~~2. 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.~~
- ~~3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.~~
- ~~4. 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).~~

~~18.04.150.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.~~



Proposed Code Amendments

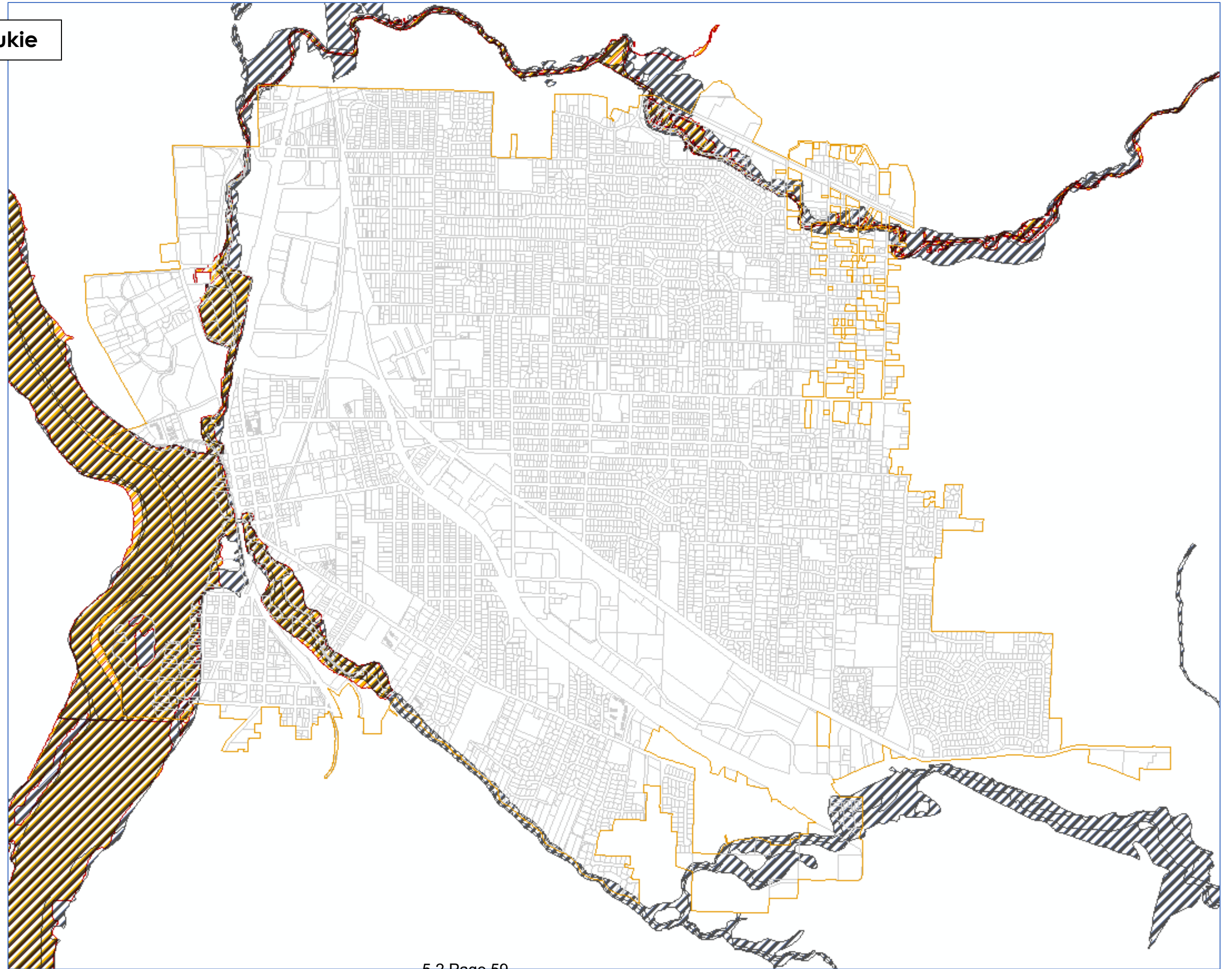
18.04.150.G Crawlspaces Construction

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

1. ~~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.~~
2. ~~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.~~
3. ~~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.~~
4. ~~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.~~
5. ~~The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.~~
6. ~~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.~~
7. ~~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.~~
8. ~~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.~~

Flood Hazard Areas in Milwaukie

-  100-year floodplain (from FEMA)
-  1996 flood areas (from Metro)



ATTACHMENT 3

Brett Kelter

From: Justin Gericke
Sent: Thursday, December 31, 2020 9:51 AM
To: Peter Passarelli
Cc: Brett Kelter
Subject: Re: Referral for comment on proposed amendments to Flood Hazard Regulations (MMC Title 18) -- file #ZA-2020-002

I would use caution deviating from the state's model code language or adding specifics to a definition largely comprised of referenced designations. While these contaminants might be a concern, unless they meet the DEQ definition of hazardous material (which includes EPA designated materials), it appears to me they are not subject to regulation. If they meet that definition, either currently or at some point in the future, they will be covered by the more general language.

Best,

Justin

On Dec 31, 2020, at 8:56 AM, Peter Passarelli <PassarelliP@milwaukieoregon.gov> wrote:

Brett,

I was looking at the definition for hazardous substances and wondered if it would be prudent to add some language that addresses emerging contaminants of concern (pharmaceuticals, endocrine disrupters, PFOS and PFOA, etc).

<https://www.epa.gov/fedfac/emerging-contaminants-and-federal-facility-contaminants-concern>

<https://www.epa.gov/wqc/contaminants-emerging-concern-including-pharmaceuticals-and-personal-care-products>

Thanks

Peter

PETER PASSARELLI

Public Works Director
o: 503.786.7614 c: 217.418.2950
City of Milwaukie
6101 SE Johnson Creek Blvd. • Milwaukie, OR 97206

From: Brett Kelter <KelterB@milwaukieoregon.gov>
Sent: Wednesday, December 30, 2020 6:42 PM
To: Boumann <mike.boumann@clackamasfire.com>; Amos <matt.amos@clackamasfire.com>; MattRinker@hotmail.com; astrantialgr@gmail.com; travis.tomlinson@gmail.com; dlasch@comcast.net; sarah@thegardensmith.com; dave@hammy.org; leygarnett@comcast.net; ray1bryan2@gmail.com; stevendorman3@msn.com; k1ein23@comcast.net; mlpark2001@gmail.com; jeanbaker.milw@gmail.com; pamdenham@gmail.com; echaimov@comcast.net; garymic@gmail.com; paulrasmussen@yahoo.com; Heavytech77@gmail.com; paul.hawkins@daimler.com; e.dominguez@me.com; lisamlashbrook@gmail.com; howie@crazycat.org; drampa82@gmail.com;

ATTACHMENT 3

thomas.landvatter@gmail.com; LinwoodZP@gmail.com; cole7429@comcast.net;
Jeremy.Lorence@nwnatural.com; jbotteron@ncprd.com; schwarz@nclack.k12.or.us;
detchonc@nclack.k12.or.us

Cc: Ann Ober <OberA@milwaukieoregon.gov>; Jason Wachs <WachsJ@milwaukieoregon.gov>; Justin Gericke <GerickeJ@milwaukieoregon.gov>; Samantha Vandagriff <VandagriffS@milwaukieoregon.gov>; Milwaukie Building <Building@milwaukieoregon.gov>; Milwaukie Engineering <Engineering@milwaukieoregon.gov>; Dalton Vodden <VoddenD@milwaukieoregon.gov>; Beth Britell <BritellB@milwaukieoregon.gov>; Leila Aman <AmanL@milwaukieoregon.gov>; Peter Passarelli <PassarelliP@milwaukieoregon.gov>; Laura Weigel <Weigell@milwaukieoregon.gov>

Subject: Referral for comment on proposed amendments to Flood Hazard Regulations (MMC Title 18) -- file #ZA-2020-002

Hello,

I've attached a referral form as reference for a legislative application we have put in process, for proposed amendments to the City's flood hazard regulations, found in Title 18 of the Milwaukie Municipal Code.

The proposed amendments are largely administrative and policy-neutral in nature and are based on a model ordinance provided by the Oregon Department of Land Conservation and Development (DLCD). The proposal is to repeal the existing MMC Title 18 and replace it with very similar language based on the model ordinance. The current code, which was last updated in 2008, is based on an earlier version of a model ordinance previously provided by DLCD for the same purpose. The proposed amendments are necessary to maintain the City's eligibility for participation in the National Flood Insurance Program.

The legislative review process includes a public hearing by the Planning Commission, where the amendments will be discussed and a recommendation sought to carry forward to the City Council, who will be the final decision maker. The initial Planning Commission hearing is scheduled for January 12, 2021, with a Council worksession scheduled for February 2 and a Council hearing for adoption scheduled for March 2. Your comments are welcome at any point during this process.

Public notice of the Planning Commission hearing was mailed to affected property owners on December 22, 2020.

You can find the current "strikeout" and "clean" versions of the proposed amendments on the project webpage at <https://www.milwaukieoregon.gov/planning/za-2020-002>. A staff report for the January 12 Planning Commission meeting should be available on Tuesday, January 5, at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-meeting>.

Please contact me if you have any questions about the proposed amendments or the adoption process. I will be out of the office on Thursday and Friday this week (Dec 31 and Jan 1) but expect to be back at my desk on Monday, January 4, 2021.

I hope you all have a safe and enjoyable start to the new year!

BRETT KELVER, AICP

Associate Planner
he/him/his
City of Milwaukie
o: 503.786.7657 f: 503.774.8236
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

ATTACHMENT 3

Brett Kelter

From: paul.hawkins@daimler.com
Sent: Friday, January 1, 2021 12:24 PM
To: Brett Kelter
Subject: RE: Referral for comment on proposed amendments to Flood Hazard Regulations (MMC Title 18) -- file #ZA-2020-002

This Message originated outside your organization.

Brett,

As a property owner on Kellogg Creek, I read the material and agree with the updates to the text.

Thank you and a Happy New Year
Paul Hawkins,
Lake Road Neighborhood Association

If you are not the addressee, please inform us immediately that you have received this e-mail by mistake, and delete it. We thank you for your support.



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Vera Kalias, Senior Planner
Date: January 5, 2021, for January 12, 2021, Worksession
Subject: Comp Plan Implementation Project Update – Code Concepts

ACTION REQUESTED

None. This is a briefing for discussion only.

ANALYSIS

This update relates to the detailed code audit and initial discussion of housing related code concepts portions of the Comprehensive Plan implementation project. The code audit and findings will set the stage for the detailed code concept development (see discussion below).

Project Background

Creating and supporting housing opportunities, primarily middle housing options in all neighborhoods, has been a key goal for Council and the community. The adopted Comprehensive Plan (Plan) policies call for expanded housing opportunities throughout the city and House Bill 2001 (HB 2001), passed by the state legislature in July 2019, requires the expansion of middle housing options. In November 2019, Council discussed how to proceed with code amendments after the updated plan was adopted, setting the stage for the recently initiated implementation project.

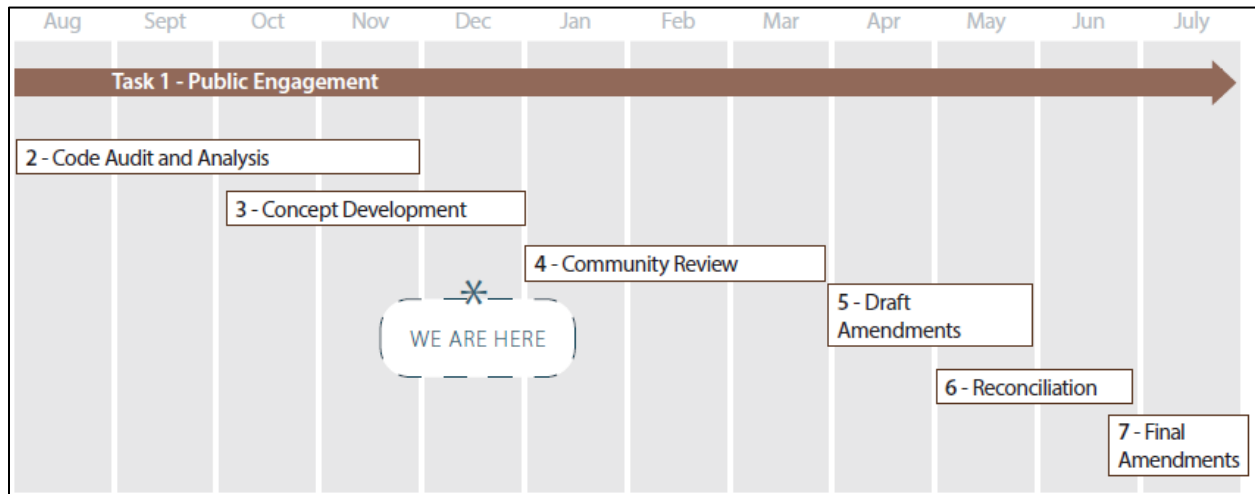
The focus of this phase of plan implementation is housing, but it also includes related changes to parking requirements in residential areas and tree protection and preservation related to residential land. The outcome will be code amendments that balance the city's goal for a 40% tree canopy and implementation of the housing policies outlined in the plan in compliance with HB 2001.

The scope of work for this project includes the following tasks:

1. Public Engagement Strategy
2. Map and Code Audit and Analysis
3. Detailed Concept Development
4. Community Review and Testing
5. Draft Code Changes and Map Amendments

- 6. Code and Map Review and Reconciliation
- 7. Final Code and Map Changes and Adoption

Project Schedule



Code Audit: The purpose of the code audit is to identify which zoning and other code provisions fall short of, or prevent the city from, meeting the goals of Comprehensive Plan and, by extension, the requirements of HB 2001 (see Attachment 1 for the summary report). The code audit provides the basis for the development of the code concepts that will address the findings of the code audit.

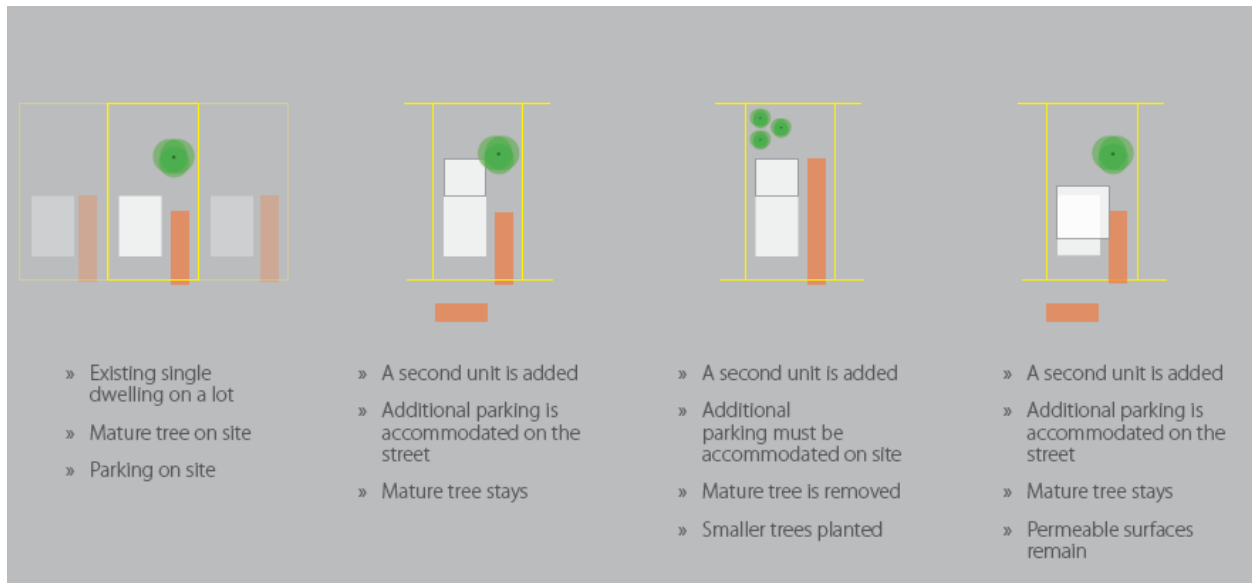
Code Concepts: The code concepts are ways to approach code amendments that will achieve the goals of the project and will be organized into a set of alternatives that can be evaluated and presented to the community for testing and review. At least one alternative will rely on the use of form-based regulations to achieve housing goals. Alternatives related to parking for various housing types and the city’s tree canopy goals will be included. The results of community testing of the code concepts through a public engagement process will directly inform the development of specific code language for the code and map amendments.

Comprehensive Plan Implementation Committee

A joint meeting between the Comprehensive Plan Implementation Committee (CPIC), the Tree Board and the Design and Landmarks Commission (DLC) was held on December 17, 2020. The purpose of the meeting was to review and discuss findings from the code audit, to learn more about clear and objective standards and to facilitate a discussion around detailed code concepts. Attendees received a summary report about the code audit including findings (see Attachment 1) and a copy of the full code audit spreadsheet. The meeting included an overview of clear and objective standards as well as form-based code. The bulk of the meeting was spent in break-out groups discussing how to address clear and objective standards as they relate to the regulation of the middle housing, off-street parking, and trees. A part of this discussion included working

through scenarios designed to initiate a dialogue about trade-offs. The exercise included a property with a single residential unit, a large tree, and one off-street parking spot. Three illustrated scenarios, showing how one additional dwelling could be added to the property were provided, showing the various issues that would need to be resolved, such as:

- Parking on or off-street and how that can impact tree preservation
- Adding the second dwelling unit as a second floor and how that affects site planning



Summary comments from the break out groups regarding the scenarios and clear and objective standards are in Attachment 2.

Next Steps

- Begin planning next public outreach event – code concepts
- Meeting with Jon Hennington, Equity Manager, to strategize outreach
- Residential parking utilization study – Rick Williams
- Additional interviews to focus on code issues

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	Packet
1. Code Audit Summary Report	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. CPIC meeting notes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-meeting>.

Date: 03 December 2020

Subject: Milwaukie Comprehensive Plan Implementation – Code Audit Report

To: City of Milwaukie Project Management Team

From: Marcy McInnelly AIA, Pauline Ruegg, Erika Warhus, Urbsworks, Inc.

CODE AUDIT SUMMARY REPORT

Introduction

Implementing the Comprehensive Plan

In 2015, as part of its project Milwaukie All Aboard, the city initiated a dialogue with the community to update its 20-year old vision statement and identify an Action Plan. Building on its visioning process, the city then spent two years working hand in hand with the community to update its Comprehensive Plan. Updating the Comprehensive Plan is a major undertaking that Oregon requires cities to complete on a periodic basis. An update can be conducted as a check-the-boxes exercise, or it can be used to bring a community together, to foster important conversation about the future, and to memorialize a compelling vision. The Milwaukie Comprehensive Plan adopted in August of 2020 is an example of the latter. Now that it is adopted, the Plan will guide decisions that shape Milwaukie for the next ten to twenty years.

The adoption of the Comprehensive Plan establishes a mandate for Milwaukie to update any lagging land use policies and practices that may be holding the city back from realizing its vision. One major area where current policies and practices need to be updated is the zoning code. The city made it an early priority to update the zoning code in single dwelling residential areas. These areas of the zoning code will need to be amended in order to achieve a number of Comprehensive Plan goals related to increasing community diversity, preparing for population growth, protecting natural resources, and improving climate resiliency.

The effect of these zoning changes will be both very large and very slow. Very large in that the Milwaukie areas affected equal over 70% of the land within the City; very slow in that these changes will occur somewhat randomly, lot by lot, and gradually over a long period of time. While the changes are very important, they will not happen overnight. Making the changes does create a framework for addressing historic patterns of inequity.

Exclusion and lack of affordability

Changes to Milwaukie's zoning are focused on a singular aspect of American cities from a certain era: single family zoning. Most western US cities and suburban areas developed after regulations were adopted in the mid-19th century that dictated the size of residential lots; the form and shape of dwellings; the types and numbers of households that could live in them; and requirements for providing parking on-site. In effect, single family zoning created large areas with only one kind of housing, which many Americans could not afford. These neighborhoods became monocultures of housing, and by extension, monocultures of people, segregated by age, race, income, and household type.

The Comprehensive Plan touches on how Oregon, as a state, and areas in Milwaukie enacted "Exclusion Laws." These laws banned slavery but also prohibited Black people from settling or remaining in the territory, and later from owning property or entering into contracts. Exclusion was further enacted through specific discriminatory laws and housing practices, such as racist deed restrictions (only banned in 1948). More subtle forms of exclusion continued, largely through the mapping and designation of single family zoning over wide expanses of America cities, including Milwaukie. By the time of the 1968 passage of federal Fair Housing Laws, racial exclusion practices continued "de facto," through zoning.

Richard Rothstein, in "The Color of Law," details how even after all of the achievements of the civil rights movement—the desegregation of schools, swimming pools, water fountains, employment, and transportation—one remaining

form of segregation in neighborhoods remained: segregated zoning. Single family zoning enacts systemic exclusion that still exists today. By end of 1960s, the civil rights movement had persuaded much of the country that racial segregation was wrong, and harmful, to both Blacks and whites, and “incompatible with our self-conception as a constitutional democracy”—but zoning in cities was largely left untouched.

After decades of exclusion ranging from being denied home loans, having neighborhoods in which they lived “redlined” (when federal certifiers designated neighborhoods ineligible for loans), facing discrimination in employment, and receiving less pay, Black people were denied the opportunity to own a home. Unable to join the middle class and build generational wealth through homeownership, they were essentially excluded from the American dream which White people had access to for decades. Generations of denial have compounded to make it harder for Black people to buy single family homes today. Exclusion and segregation persists between Black and White people in neighborhoods zoned exclusively for single family homes.

Milwaukie’s history in this regard is not unique; every metropolitan city in America had similar laws and practices in place. Milwaukie is unique, however, in setting a vision for a more diverse community and articulating policies to accomplish this vision in its Comprehensive Plan.

Addressing a housing crisis, needs, and goals

Major generational and demographic shifts that affect housing supply and demand are taking place in Oregon and the country. Some of these affect the entire country and state—such as the recent Great Recession, new households forming, young people growing up, older people downsizing. Some of these affect Milwaukie in particular, such as the development of the MAX Orange Line light rail and increasing population. These national and local trends have combined to create a housing crisis; the supply of housing is not keeping up with the demand, and the need for affordable housing has reached a state of emergency.

The Oregon legislature recently passed House Bill 2001 (HB 2001) intended to address this crisis. Milwaukie, having declared a state of housing emergency since 2015, is ahead of other cities in Oregon. Using its vision and adopted Comprehensive Plan, Milwaukie is well prepared to address housing needs. The City has already made numerous incremental amendments that partially address the issues of housing choice and affordability and bring the zoning code closer in alignment with city goals. The purpose of this project is to think bigger and be bolder—to rethink the single-family neighborhood, and in the process, rethink the role of parking and how to codify the contribution of trees.

A policy mandate and how the current zoning code falls short

The purpose of this document is to explain which zoning provisions and procedures fall short of or prevent the city from meeting its Comprehensive Plan goals. A code audit is one of the first steps. In Milwaukie, the code audit is primarily targeting the zoning code, but there are many related documents that will need to be amended—either as a part of this project or future efforts.

A policy mandate

Adopted policy documents establish a clear policy mandate for this project, which can be summarized in three main themes: housing, tree canopy, and parking.

1. Increase the supply of middle or attainable housing and provide equitable access and housing choice for all
2. Increase the tree canopy and preserve existing trees
3. Manage parking to enable middle housing and protect trees

The code audit

In September the consultant team initiated the Milwaukie Comprehensive Plan Implementation Code Audit. The team audited existing policies and regulations to identify barriers preventing the city from achieving the goals of the Comprehensive Plan. Specifically, the team identified existing policies in the Comprehensive Plan and other policy documents that support the city's goals and vision and reviewed regulations, including policy documents related to urban forestry, affordable housing, and House Bill 2001. The team then reviewed regulations including the zoning code, public works standards, and draft tree code to pinpoint requirements in conflict with identified policies that need to be changed. This memo summarizes key findings and recommendations to address identified obstacles.

FINDINGS AND ISSUES

Following is a summary by the three primary themes of the major findings of code regulations that fail to meet the project objectives identified through the code audit.

Policy Mandate 1: Increase the supply of middle and attainable housing and provide equitable access and housing choice for all

Goal 7 of the Comprehensive Plan recognizes that the shift to permit more forms of housing will require zoning and code changes in order to remove barriers. Additional housing types will need to be allowed in low and medium density zones. The scale and location of this new housing should be consistent with city goals of tree protection and complement the public realm. Further support for the development of denser forms of housing is found in the recent Housing Needs Analysis (HNA). The HNA notes a projected need for 1,150 additional new housing units by 2036, with 54% of these new units anticipated to be some form of attached housing. Both the Comprehensive Plan and Milwaukie Housing Affordability Strategy cite the need to enable equitable housing options that meet the needs of all residents, including in low and medium density zones.

Milwaukie's Comprehensive Plan goals are aligned with the intent of Oregon's Housing Choices Bill (HB 2001) to increase the amounts and types of housing available across Oregon. This will require establishing development standards that regulate size, shape, and form rather than focusing exclusively on density. Additional regulatory and maps changes will be needed in order for the City of Milwaukie to be compliant with House Bill 2001 and the accompanying proposed Oregon Administrative Rule (OAR) Division 46, known as OAR 660-046.

Code amendments that will support this policy mandate are found in the following sections:

- Title 17 - Land Division – Sections regarding Application Procedure and Approval Criteria, Flag Lot Design and Development Standards
- Title 19 – Zoning (all sections)

Removing barriers to middle housing

Many sections of the land division and zoning code place requirements on developments with multiple units or multiple lots that single detached dwellings are not also required to meet. These types of requirements negatively affect the cost and feasibility of middle housing and are not required of detached single dwelling development. For example, land use review is required for Accessory Dwelling Units (ADUs) and duplexes, but not for single dwellings.

HB 2001 generally prohibits additional requirements for middle housing that are more restrictive or create a greater burden than are faced by single detached dwellings in the same zone. For example, the maximum height of a middle

housing-type dwelling cannot be lower than the maximum height allowed for single detached dwellings in the same zone, and setbacks cannot be greater.

Similarly, Title 17 land division requirements, particularly those in 17.12.020 - Application Procedure and Approval Criteria, create a greater burden on development with four or more lots by requiring a Type III review, which is a more difficult review procedure. This will negatively affect cottage cluster or townhouse developments.

Key Issues

- **Large number of undifferentiated residential zones that do not permit middle housing equitably**

While eight residential zones exist in Milwaukie, several of them are minimally used and are almost identical to other zones in terms of development standards and permitted uses. This creates a lack of clarity about the intent of each residential zone and how it meets stated Comprehensive Plan Goals. Also of note is that the large majority of residentially zoned lands are mapped in the R-10 and R-7 zones. These low-density zones only allow duplexes and ADUs through land use review, including a discretionary Type II review using subjective approval criteria; as a result the vast majority of the city does not meet the policy goal to provide opportunities for a wide range of rental and ownership housing choices and to remove barriers to development of these middle housing types. While the code does permit some middle housing types (duplexes, rowhouses, cottage clusters and ADUs) in some zones, not all types are defined and permitted as required by HB 2001. All middle housing types will need to be allowed in zones that permit single detached dwellings, with duplexes permitted on all lots and other middle housing types permitted in areas defined through this code update and engagement process.

- **Housing types are regulated using permitted land use table**

Currently each housing type is treated as a separate permitted use regulated in the permitted use tables and defined across base zones (Tables 19.301.2 and 19.302.2). This approach confuses housing types with the broader residential land use category. It would be more consistent with the Milwaukie vision to separate housing types from land uses so that the “uses allowed” table for residential zones only lists land uses (e.g., commercial). The categories of residential land uses should be limited (e.g. group living or household living). A separate housing types table would specify which housing types are permitted in which zones and how (e.g. permitted, not permitted, conditional).

- **Housing types confused with household types**

The zoning code uses terms for housing types that are in conflict with goals for equity, affordability, and also conflict with HB 2001 requirements. Definitions for housing types should be based on the building form and lot type rather than who lives in it; for example “single detached dwelling” refers to one house not attached to any other houses located on its own fee-simple lot whereas “single-family detached home” refers to both the building form and lot type but also who lives in the home. Who lives in a home is irrelevant. Definitions should be clearly defined to be consistent with the Milwaukie vision and implementation goals in order to truly promote a wide range of housing types for all types of households living in the city. Terms should be updated and used consistently in all applicable sections of the code (e.g. parking provisions, land use table, etc.).

- **Restrictive standards limit the development of certain housing types**

The middle housing types that are currently allowed are subject to further restrictive and subjective development standards (including in Section 19.500 Supplementary Development Regulations) that discourage their development. For example, cottage cluster housing is subject to standards for size, height, orientation, and required yards in addition to prescriptive design standards addressing individual units and the site. Another example is if a duplex is not allowed outright in a zone, it is required to be located so as “not to have substantial impact on the existing pattern of single-family detached dwellings within the general vicinity,” and its design must be “generally

consistent with surrounding development.” Similar restrictive development and design standards impact the potential development of ADUs, rowhouses, and flag lots.

· **Lack of equitable review processes for housing types**

Different housing types are subject to different review processes in the Milwaukie code. The current regulations need to be carefully evaluated to reduce or eliminate any procedural discrimination for certain housing types. For example, duplexes are currently subject to Type II review in the R-10 and R-7 zones when single dwelling detached homes are not subject to any land use review (Table 19.301.2). This difference in review creates a barrier to achieving the city’s goal of permitting the development of middle housing through new construction and conversions and promoting housing choice for all by creating a more difficult process for certain housing types and in certain zones.

· **Expensive street and frontage improvements**

Public facility improvements (including street, sidewalk, and planter strips) are required for an additional unit as well as an addition greater than 1,500 square feet to an existing home. This includes the development of ADUs and conversions of single units into duplexes. These improvements present barriers to development of these housing types by adding cost. In addition, a traditional curbed street improvement creates a potential conflict with existing established trees that may be in the right-of-way; the required width for new planter strip widths may not be generous enough to accommodate larger trees. More flexible options that allow for rural-character street design would reduce the burden of cost on new and converted middle housing units while maintaining an essential element of Milwaukie’s character. For example, the Island Station Neighborhood Greenway has street types with gravel shoulders and no planter strips. This could be a good model for certain contexts.

Recommendations

- Allow duplexes across all residential zones
- Amend permitted residential types to include triplexes, quadplexes, and townhouses (currently referred to as rowhouses)
- Review low density and moderate density zones to identify areas where triplexes, quadplexes, townhouses, and cottage clusters are a permitted use
- Consolidate residential zones and revise zoning map to expand the area in which middle housing types are permitted equitably across the entire city
- Decouple housing types from uses table and clean up definitions to remove confusions with household types
- Simplify and reduce the amount of design standards applicable to middle housing types and make them clear and objective so that all housing types, whether detached single units or larger number of attached units, are subject to the same standards
- Permit all middle housing types to be permitted using the same approval type as single family dwellings are subject to today
- Increase flexibility for street and frontage improvements and permit creative street designs to reduce the burden of cost on middle housing development

Policy Mandate 2: Increase the Tree Canopy and Preserve Existing Trees

Trees are key to Milwaukie’s quality of life. It is clear that trees are very important to Milwaukians and are a major contributor to the quality of life in Milwaukie, and, could be considered a signature feature of the city to be nurtured and protected. They contribute to property value and are also important to reducing stormwater runoff, improving residents’ health outcomes, helping the city meet its climate change goals and reducing heat island effect.

Because many of the most magnificent trees that contribute to Milwaukie are on private property, it is appropriate that there be greater protection of those trees in order to achieve the community's goals. This means trees on private property will be regulated differently than they have been in the past in order to preserve the existing and contribute to the future canopy of the city.

Changing the code to preserve trees on private property will have implications for city staff; there will be more applications to manage and a greater load on review boards. A culture shift may be required on the part of citizens, the development community, and city staff; one that promotes a collaborative approach to tree preservation and planting. The city established a Tree Board recently and the committed Public Works department views trees as another form of citywide infrastructure. If site and tree specific conversations occur early in the application process, there will be a much better understanding of goals and priorities by all parties.

Both broad and detailed support for preserving and increasing the tree canopy throughout Milwaukie is found in the Comprehensive Plan, Climate Action Plan, and Urban Forestry Management Plan. In Goal 3 of the Comprehensive Plan a target is established for a 40% tree canopy using a combination of development code and other strategies. Goals recognize that flexibility is needed in the siting and design of buildings and design standards in order to preserve existing large and old-growth trees while also increasing the tree canopy in areas that are currently deficient. The Urban Forestry Management Plan and Climate Action Plan bolster these objectives with possible implementation actions, but do not indicate which regulatory changes might contribute the most to achieving canopy goals. The Urban Forestry Management Plan further notes that the tree canopy is not equitable across the city and supports implementation actions that, while reducing barriers to affordable housing, also increase equitable access to trees and their benefits.

Code amendments that support this policy mandate are found in the following sections:

- Title 16 – Environment, 16.32 – Tree – Code (and related code section, Public Works Standards, 5.0030)
- 19.200 Definitions, Tree-related definitions
- 19.402 Natural Resource Overlay Zone
- 19.1200 Solar Access Protection
- Draft Tree Preservation Amendments

Other sections that were reviewed and for which amendments are recommended that are not part of this project:

- 19.401 Willamette Greenway Overlay Zone

Key Issues

- **Solar access requirements are potentially in conflict with tree canopy goals**
Understanding how solar access provisions are enforced over time, especially regarding tree planting, growth and future shading, will be important. The approved tree list should be updated to clarify which trees are preferred, noting which do not interfere with solar collection. A list of solar-friendly trees should also be listed on the city website.
- **Additional consideration should be given to native trees and other climate change suited species**
This should also include measures to ensure species, size, and structural diversity as recommended in the Comprehensive Plan and Urban Forest Management Plan policies to encourage the propagation of a diversity of species that increase forest resiliency.
- **Flexible standards for tree preservation, especially as it relates to middle housing development, should be further explored**
Standards for tree preservation and planting should consider site and neighborhood characteristics to ensure it blends into larger patterns of the area. Included in this analysis should be consideration given to areas identified as

deficient in tree canopy in an effort to make tree plantings more equitable across the city. These standards should include protection measures during construction.

- **Consider enforcement of tree planting and preservation after development is completed**

Continued funding and staffing resources are needed for successful enforcement.

Recommendations

- Create more distinct code sections in Section 16.32-Tree Code for development and non-development related code criteria, and create standards for the preservation and planting of priority street tree species with development
- Reference desired tree species and conditions in updated public works standards and revised code for private residential property; ensure they include native trees , other climate change suited species and support canopy goals
- Ensure newly planted trees have access to adequate soil volumes that support their long term growth to maturity
- Create enforcement mechanisms to ensure newly planted trees become established and are properly managed for the long term as condition of permit approval
- For projects in which tree preservation on site is not feasible, explore fee-in-lieu programs, i.e., the property owner or developer pays into a fund

Policy Mandate 3: Manage parking to enable middle housing and protect trees

Goals 6 and 8 of the Comprehensive Plan, along with strategies identified in the Climate Action Plan and Milwaukie Housing Affordability Strategy, offer strong support for minimizing parking in new developments in order to reduce vehicle emissions and encourage the use of alternate transportation. There is a desire to create a more energy efficient land use pattern in Milwaukie. This includes infill development and neighborhood hubs that includes mixed-use development while providing a wider range of rental and ownership choices.

There is also a strong desire to create more housing opportunities for all income levels throughout Milwaukie, not just in areas where multi dwelling units are allowed. The Milwaukie Housing Affordability Strategy identifies right sizing parking requirements to user patterns as critical to achieving this. Right sizing parking can help provide flexibility and both reduce the cost of housing production and increase viability for a range of unit types. Appropriate management may also be necessary. Reducing the amount of parking provided will also preserve more trees.

Code amendments that support this policy mandate are found in the following sections:

- 19.200 Definitions, Parking-related definitions
- 19.505.4 Parking Spaces Location
- 19.600 Off-Street Parking and Loading

Other sections that were reviewed regarding to this policy mandate, and for which amendments are recommended but are not part of this project:

- Public works standards – 5.0110 Private Streets/Alleys

Key Issues

- **Ensure adequate parking**

While many Milwaukians still drive and own cars, the community has expressed a clear desire to increase its share of people who don't own cars, who own fewer cars, and who bike or walk for many of their needs. It will continue to be

important consider parking that allows people to store their cars at or near their homes for the foreseeable future. However, there are a number of strategies that can be put into place that can help the city achieve multiple objectives while still providing enough parking to meet most people's needs. It does signal a major change in that parking will become the commodity it is and will no longer be as free or abundant. This change will happen over time, and hopefully in concert with other investments in transportation that provides people with more options to not drive.

- **Managing parking in residential zones (off-street)**

Parking requirements are another area where the current zoning code (Section 19.600 Off-Street Parking and Loading) places additional burdens on middle housing. Parking requirement can impact the affordability of housing in a number of ways. Currently the requirement for a minimum of one space per dwelling unit and 1.25 spaces for housing that includes 3 or more dwelling units that are over 800 square feet makes many forms of middle housing infeasible, financially and physically. In order to comply with HB 2001, only one parking space may be required for middle housing, and on-street parking may be allowed to count toward the requirement.

- **Managing parking in residential zones (on-street)**

Section 19.600 includes a purpose statement that generally supports many aspects of the policy mandate, such as "provide adequate, but not excessive, space for off-street parking. However, "avoid parking-related congestion on the streets," may be problematic. It assumes that on-street parking causes congestion, and also assumes auto congestion is an issue. On local streets in particular, on-street parking can reduce auto speeds (congestion) and make streets safer. This language may preclude ideas about reprioritizing and rethinking local streets that have been brought up by the community. Likewise managing parking is an important way for the city to achieve housing affordability and tree canopy goals. There are opportunities throughout Milwaukie to use the on-street parking system to help offset onsite parking demand. This approach may require some form of residential parking management at some point in the future. In addition to addressing off-street parking requirement in the zoning code, public works standards for streets and implications for on-street parking, will also need to be addressed. Historically, most cities have not managed on street parking in residential zones, however new approaches to parking will be needed to balance housing and transportation needs.

- **Achieving greater flexibility for parking**

Currently Section 19.600 does not permit on-street parking to count toward meeting parking requirements for new development. This section also precludes unbundling of onsite parking from housing, and may prohibit parking spaces from being rented or sold separately from the dwelling unit. In future Milwaukie neighborhoods where managing parking and middle housing options are more prevalent, permitting the "unbundling" of parking from dwelling units can make middle housing more economically feasible and affordable. Additional design standards in Section 19.607 further regulate the location and design of parking and have an impact on the feasibility and cost of developing middle housing. For example, off-street parking is not permitted within the required front or side yard or within 15 feet of the front lot line. This requirement essentially requires two parking spaces for each unit as the parking cannot be provided in the first 15 feet of the driveway approach. This standard has been a barrier to the conversion of garages as ADUs and reduces the potential developable area for middle housing types.

- **Importance of on-street parking**

Permitting parking on the street to count against parking requirements can make a lot of sense if the goal is to reduce the cost of housing, since even a surface parking space adds cost to housing. And if the street is already paved (or planned to be paved or widened), it makes sense to use already-paved space for parking instead of adding additional paved area on private property. Any strategy to reduce overall paved area in the city will benefit natural resource protections and trees, and reduce stormwater runoff.

Recommendations

- Explore the feasibility of reducing parking minimums in light of use of on-street space and on-site design
- Tailor reduction of parking minimums in tandem with use of on-street space, and on-site design to neighborhood supply and demand
- Ensure parking minimums comply with HB 2001
- Consider the usefulness of technology (e.g., car stackers), and if appropriate ensure the code does not preclude their use
- Consider defining active transportation and how it can be required in a residential development to address goals for better connectivity, transit, etc. in the Plan
- Clarify those active transportation measures which can be addressed by development, as opposed to ones which require infrastructure investments commonly made by the public sector
- Employ data to quantify underused on-street space in affected neighborhoods and “calibrate” to real impacts of new development on existing supply
- Adjust code requirements to reflect true capacity
- A request for “reducing” a minimum standard (using the on-street, for instance) will have an impact on on-street parking, which is currently not allowed. Amend approval criteria to permit lowering the minimum requirement or locating parking off-site
- Eliminating current exemptions/reductions process and use requirements of the Transportation Demand Management (TDM) in 19.605.3 Exemptions and By-Right Reductions to Quantity Requirements
- Consider building TDM measures in as options for developers along with lower parking minimums
- When considering stacker technology for parking solutions (see above), review height maximum of 8 feet for cottage cluster garages

APPENDICES

Attachment A: Code Audit

The Code Audit Summary (Attachment A) provides an in-depth review of relevant policies as well as relevant regulations. It is a spreadsheet with the following sheets:

1. Policy Review

- Lists relevant goals and policies from the Comprehensive Plan
- References related code sections
- Identifies any issues or areas for discussion

2. Code Audit (regulatory review)

- Lists relevant sections of the code that might be in conflict with identified goals and policies
- Provides issues for discussion and recommended fixes to existing regulations

3. Public Works Audit

- Lists relevant sections of the standards that might be in conflict with identified goals and policies
- Provides issues for discussion and recommended fixes to existing regulations

Attachment B: Milwaukie Residential Zones – Summary Tables

Attachment B summarizes, in a series of tables, relevant regulations from the Milwaukie Municipal Code. Summary tables include the following:

Title 17– Land Division

- Boundary Change Actions Table

Title 19 – Zoning

- Use Comparison Summary Table
- Development Standards Comparison Summary Table
- Other Applicable Development Standards Table
 - Accessory Structures Standards Table
 - Site Design Standards Table
 - Cottage Cluster Housing Development and Design Standards
 - Rowhouse Design Standards
 - Off-Street Parking Standards / Additional Design Standards
 - Public Facility Improvements
 - ADU design and development standards and review requirements
 - Duplex development standards and review requirements
- Approval Types Summary Table / By Residential Zone

Attachment C: Summary of HB 2001 Compliance Paths

Attachment C summarizes the different ways a city may comply with House Bill 2001 and the accompanying proposed Oregon Administrative Rule (OAR) Division 46.

Date 20_1223 | **Subject** CPIC #4 – Interactive Exercise Summary | **To** Vera Kolas, City of Milwaukee | **From** Marcy McInelly (Urbsworks), Kimi Sloop (Barney & Worth) | **Copy** Pauline Ruegg, Erika Warhus

CPIC #4 – INTERACTIVE EXERCISE FACILITATORS GUIDE

Exercise Context: The context for the interactive exercise will be set with a presentation of the overview of the policy mandate, code audit findings, and descriptions of “clear and objective standards” and form-based codes earlier in the CPIC meeting agenda.

Purpose: The purpose of the interactive exercise is to engage the CPIC, Tree Board, and Design and Landmarks Committee in a discussion of the elements that can be regulated through clear and objective standards for trees, middle housing, and parking; and to help them understand the challenges and trade-offs involved when all three elements must be regulated at once.

Format: Each pre-assigned small group break out session will have 30 minutes to discuss the questions. Each group will be discussing the same questions. Each group will have a facilitator to facilitate the discussion, a scribe to take notes, and a person to report out the key ideas from each group. The scribe will share their screen so everyone can see the notes that are being taken (just as you would if it was a small group discussion with a flip-chart). The scribe will also have the graphic for Question 4 as a separate PDF file so that meeting participants can see the graphic and the flipchart at the same time.

Roles:

- **Facilitator** – ask the questions, keep track of time, make sure that everyone is able to participate in the discussion. Answer technical questions if asked to provide clarity.
- **Scribe** – take notes on the attached form. Record the key themes and quotes. Answer technical questions if asked to provide clarity. Assist with keeping track of time.
- **Group spokesperson** – one of the participants will report out the key take-aways from the discussion (4 minutes).
- **Participants** – CPIC, Tree Board, and Design and Landmarks Committee members who will participate in the conversation in the break out session.

Steps:

1. Facilitator reminds everyone that all input is valuable and to be respectful of other’s opinions regardless of whether or not you agree. Remind the group that we are discussing the standards that can be measured – clear and objective standards - and their tradeoffs (for example, the concept of protecting mature trees); the details will come later (for example, the specific diameter at breast height of a tree to protect).
2. Discuss questions 1-3 for about seven minutes each.
3. Before moving on to Question 4, select a committee person to be the spokesperson for the group (Note – you will automatically be put back into the large group at the end of the 30 minutes so make sure to select someone before the time is up)
4. Discuss question 4 for seven minutes.
5. Use the last couple minutes to wrap up the discussion, go over key themes for the spokesperson, etc.

Q1: Middle Housing (7 minutes)

EXAMPLE OF A CLEAR AND OBJECTIVE STANDARD FOR HOUSING

C. Standards

1. The front of a garage or carport can be no closer to the front lot line than the longest street-facing wall of the house that encloses living area. The following exceptions apply:

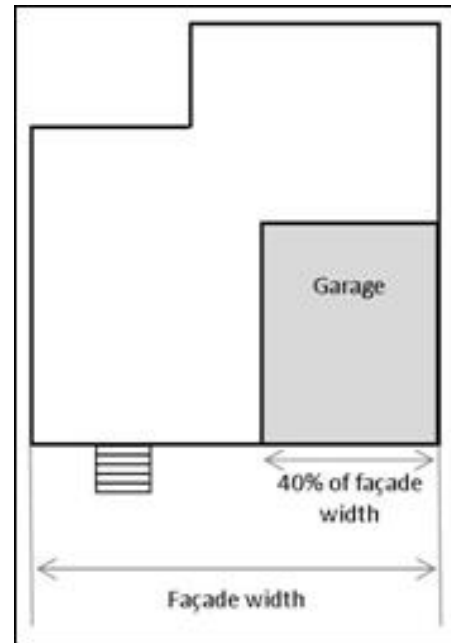
- a. A garage or carport may extend up to 5 ft in front if there is a covered front porch and the garage or carport does not extend beyond the front of the porch.
- b. A garage may extend up to 5 ft in front if the garage is part of a 2-story façade that has a window at least 12 sq ft in area on the second story that faces the street.

2. The width of a street-facing garage door(s), as measured between the inside of the garage door frame, may not exceed 40% of the total width of the street-facing façades on the same street frontage as the garage door. See Figure 19.505.2.C.2.

Notwithstanding this limit, a dwelling is allowed one (1) 12-ft-wide garage door, regardless of the total width of street-facing façades. The maximum allowed garage door width may be increased to 50% of the total width of the street-facing façade if a total of 7 detailed design elements in Subsection 19.505.1.C.4 are included on the street-facing façade.

Figure 19.505.2.C.2

Maximum Garage Width



Questions

Referring to the example, what are other development standards you feel should apply to middle housing residential structures?

How can they be regulated using clear and objective language? *Clear and objective means the requirement is measurable and can be met with a yes or no answer.*

Facilitator prompts: Form, shape, location, other?

Q2: Trees (7 minutes)

EXAMPLE OF A CLEAR AND OBJECTIVE STANDARD FOR TREES

Note: This is an example goal and standard, not an existing adopted standard

1. All trees greater than 30" Diameter Breast Height (DBH) shall be preserved.

If the tree cannot be preserved the options are (example options):

- a) Replace the tree with multiple smaller trees on the same site or lot.
- b) Pay an "in lieu fee" into a mitigation fund which is used to implement urban forestry goals in another location within the city. An example is a local urban forestry fund for tree maintenance, preservation, and/or tree planting.

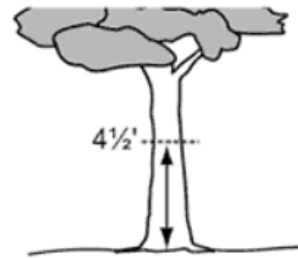
Examples of exceptions that are often specified in urban forestry standards:

- A tree may be removed if it is a nuisance tree, a hazard tree, it conflicts with an approved building permit, it is dead, in an advanced state of decline, or has sustained physical damage.

Example of a removal standard:

- If a tree is removed it must be removed in a manner consistent with the tree care industry standards outlined in the most current version of the ANSI A300 Standards for Tree Care Operations.

**Figure 80-4
Measuring Tree Size for Existing Trees**



Questions

Referring to the example, what are other development standards you feel should apply to trees on private property?

How can they be regulated using clear and objective language? *Clear and objective means the requirement is measurable and can be met with a yes or no answer.*

Facilitator prompts: Size, location, value to canopy, other?

Q3: Parking (7 minutes)

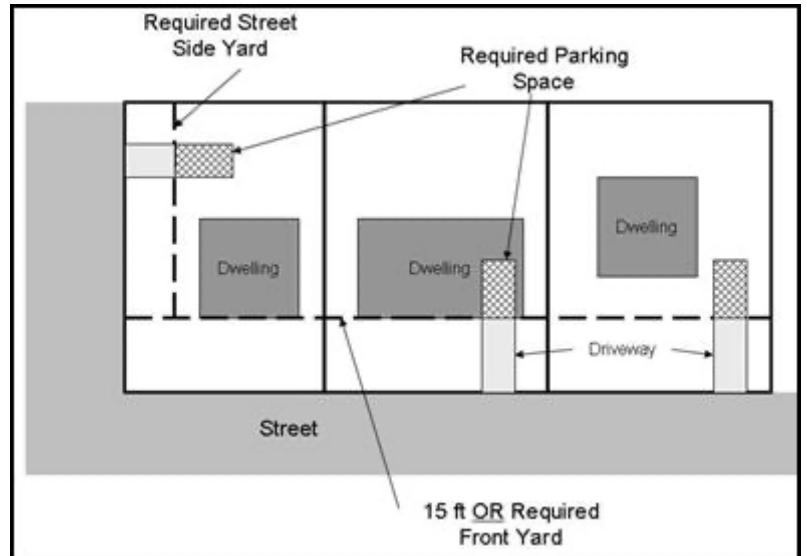
EXAMPLE OF A CLEAR AND OBJECTIVE STANDARD FOR PARKING / MIDDLE HOUSING

B. Location

1. Off-street vehicle parking shall be located on the same lot as the associated dwelling, unless shared parking is approved per Subsection 19.605.4.

2. No portion of the required parking space is allowed within the following areas.

- a. Within the required front yard or within 15 ft of the front lot line, whichever is greater.
- b. Within a required street side yard.



Questions

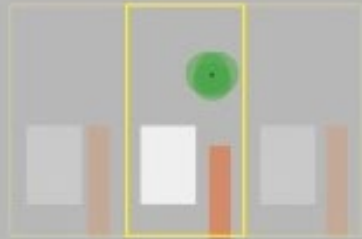
Referring to the example, what are other development standards you feel should apply to parking on private property?

Referring to the example, what are other development standards you feel should apply to parking on the street?

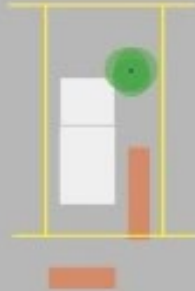
How can they be regulated using clear and objective language? *Clear and objective means the requirement is measurable and can be met with a yes or no answer.*

Q4: Trades-offs (7-10 minutes) – remember to select a spokesperson

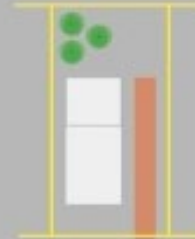
MEASURING TRADEOFFS



- » Existing single dwelling on a lot
- » Mature tree on site
- » Parking on site



- » A second unit is added
- » Additional parking is accommodated on the street
- » Mature tree stays



- » A second unit is added
- » Additional parking must be accommodated on site
- » Mature tree is removed
- » Smaller trees planted



- » A second unit is added
- » Additional parking is accommodated on the street
- » Mature tree stays
- » Permeable surfaces remain

ATTACHMENT 1

Questions

Referring to the example, we are starting with a residential lot with a single dwelling structure on it, along with a big tree, and one parking space.

We are adding one additional unit to create a duplex structure.

Two dwelling units can be created on this site in the follow ways: 1) Through an internal conversion, 2) with new construction or 3) by adding a structure.

We are discussing the different trade-offs, as follows

Scenario 1:

- Add a structure that is low profile and attached to the original structure.
- The building footprint expands to about 1.5 times its original size.
- The additional parking space is accommodated on the street.
- The large tree on site remains.

Scenario 2:

- Add a structure that is low profile and attached to the original structure.
- The building footprint expands to about 1.5 times its original size.
- The additional parking space must be accommodated on the site.
- The large tree on the site is taken down, and younger replacement trees are planted on the site.

Scenario 3:

- Add a structure that is higher profile, in the form of stacked dwelling units.
- The building pops up to 2 or 2- $\frac{1}{2}$ times its original height, while the building footprint remains nearly the same.
- The additional parking space is accommodated on the street. The large tree on site remains.
- There is more space for trees and permeable surfaces in this scenario, since the building footprint stays the same and additional parking is accommodated on the street

CPIC #4 – INTERACTIVE EXERCISE – GROUP NOTES

Public Meeting Group (Vera)

Question 1: Housing

- Duplexes already in community, triplexes and quad may be more difficult
- Need to plan for denser housing around transportation corridors
- Consider lot coverage limitations, units must fit within the same coverage
 - May help with affordability
- Undeveloped, pervious surfaces are really important for trees (stormwater, natural resources)
- Community character is important – historic homes and common neighborhood design

What should the code be thinking about?

- Duplexes are already in the community, questions more around triplex/quadplex
 - Duplexes fit in well, similar to SFH (blend in)
- Triplexes/Quadplexes design features? Direction for designers/developers?
 - Combination of setbacks and lot coverage
- SE neighborhoods blend
- No standards for planting trees
- Transportation planning
 - Location of higher density housing is important
 - Proximity to transit lines promote walkable communities
 - Scattered community members (CCC) presents challenges for transportation planning
 - High density housing proximity to transit corridors help with planning
- Limits on sizing of houses or buildings for lot coverage
- Square footage limitations for units/lot coverage?
- Maintaining size of 'standard lot coverage' but divide into more units
 - If we can come up with the same standards for compatible lot coverage, more units, same characteristics
 - May make the units more affordable/mechanism for affordability?
- Maintaining larger proportion of pervious surfaces
 - Sustainability is important
 - Too much concrete used in new development
 - Worth building up to maintain pervious surfaces
 - Pervious surfaces = watershed management
- Community character
 - Historic properties - Milwaukie doesn't have the best list of properties, Older properties have more space around them
- Developable land
 - Standards for historic properties? Houses on those lots can be put further back on lot
 - Form is important, more to the design
 - Special section for historic homes/properties - New developments may not fit in form and scale
 - Volume and shape issue when compared to neighborhood design

ATTACHMENT 2

- May need to identify neighborhood designs (gables/midcentury design) - Milwaukie doesn't have those requirements for SFH now
- Need to be careful about how we talk about homes fitting in form/scale

Question 2: Trees

- Adequate planning for tree soil volume and space requirements
- Trees can impact sidewalks, need smart planning
- Flexible sidewalk design can allow for more trees and their benefits
 - Benefits to pedestrians walking on sidewalks
- City should highlight stormwater benefits for trees, maybe offer incentives like City of Portland
- Large trees need to be preserved
 - Replacement needs to be equivalent
- Developers need to follow construction and tree selection best management practices
- Trees promote community character, hide some building flaws
 - "Trees hide a lot of sins"
- Million Tree Program – Soil volume is important
 - 16ft²
 - 36ft² medium
 - 100ft² mature
- Large units create challenges for tree space
- Larger trees require more land resources
- Trees can impact active transportation infrastructure, ADA
- Tree planting standards (root location, tree species for locations)
- Allow for flexible sidewalk design to allow for trees in ROW
- Stormwater benefits needed by roads
- Shading folks walking below
- Create Stormwater incentive with trees
- City of Portland subsidies for new trees
- Trees provide ecosystem benefits. need to codify preservation
- Need to maintain large trees on site
 - Hard stops for DBH
- Developer responsibility for strategic planting and maintenance
 - Construction BMPs
 - Smart locations
- Any removal of trees over a certain size needs a 1:1 at least replacement - Inch for inch
- Trees = community character, hide sin

Question 4: Trade-offs

- Milwaukie streets may not be suitable for higher levels of on street parking
- Most in group in favor of building higher for less natural resource/pervious surface impact
- Consider street design for increased on street parking and pedestrian presence
- Consider pervious construction materials for sidewalks
- Not every house needs a parking space
- Concern with on street parking

ATTACHMENT 2

- Neighborhoods lack sidewalks
- Add cars to the streets can require folks to walk in the street
- Streets may be in poor condition
- Discretionary review of street conditions in on street parking needed
- Building upwards to maintain tree and pervious surfaces
- Street design may be needed to increase ability to walk/park on street in absence of resources for larger infrastructure build out
- Do the least harm – choose number three
- Why do sidewalks have to be concrete?
 - ADA accessibility
 - Stormwater – water runoff
- Does every house have to have a parking space?

Group 1 (Laura)

Question 1: Housing

- Each new unit should have a primary entrance that faces the street
- Square footage bonus (height) if new middle housing opts not to provide on-site parking

Question 2: Trees

- Need a standard that accounts for different tree forms
- Some of the language in the example(s) is subjective/discretionary
- Prioritize the retention of existing mature trees (hard to replace them with a fund . . .)
- Establish requirements (or incentivize) the planting of street trees
- Don't penalize the removal of a tree that could impact solar access
- Treat trees as critical infrastructure
- Require inch-for-inch replacement/mitigation
- Provide flexibility for setbacks and footprint location in order to preserve mature trees

Question 3: Parking

- Do not require more parking for duplexes than for single-family houses
- Don't prioritize parking over trees and neighborhood character (provide flexibility)

Question 4: Tradeoffs

- If you choose to remove the mature tree, could you provide the additional needed parking on the street (instead of on the site)?
- Additional height is not a concern
- Fee in lieu of retention or off-site mitigation option are important
- Healthy mature canopy is important (not simply the number of trees)
- Preferable to retain the existing mature tree, regardless of building footprint or parking impact
- Diversity of design/form is important—deprioritize consistency of form in favor of prioritizing tree preservation

Group 2 (Peter)

Question 1: Housing

- Lot width and depth – ties in to garage width
- Challenge of narrow lots for rowhouses
- Dimensional form of housing – height, setbacks

ATTACHMENT 2

- Density – how many units can be built on a lot
- Parking requirements on-site, esp. in case of multiple units on the lot
- Street-facing requirements
- Common space (public and private) – physical accessibility (ADA compliant)
- Private open space – percentage, where trees are planted, how much space they need to perform, every unit required at least Y square feet of private space, X SF/unit multiplied by # of units for public space, how much space to put tables and chairs - functionality
- Minimum dimension in every direction - measurable

Question 2: Trees

- Size of tree – increase canopy, trunk size (4.5 ft measurement) most important
- Challenge of defining size – 8-10 inches
- Specific species – heritage trees, certain varieties that are endangered (white oaks)
- Tree varieties facing climate shift (ex Port Orford Cedars) – promoting climate resiliency
- “Best tree is a living tree”
- Criteria for ecological/habitat benefits – ex. Messy apple trees – food security in addition to canopy
- Replacement trees – what trees, trees that thrive, location, etc.

Question 4: Tradeoffs

- Every street is different – context matters, for example where parking is at a premium
- Different trees at different ages – sensitivity of roots, ways to take advantage of providing more space for parking without hurting trees ex. Raised sidewalk at Ledding Library
- Do you meet inch per inch tree size ex. 3 smaller trees that equal diameter of larger tree
- Scenario with parking on-site could be acceptable if tree is below standard for saving, still provide canopy in other ways
- “How do you replace one tree and then decide how many trees need to replace that one tree?”
- 3 trees that could potentially get large – how to cap that so remaining space is viable for development
- What are tree canopy goals for that specific neighborhood – neighborhood where trees are at a premium
- Process piece – did you consult with city arborist, taken into account neighborhood tree goals – less prescriptive, more requiring applicant to fully consider context

Group 3 (Marcy)

Question 1: Housing

- What percentage of the lot they take up? Total area of the lot?
- Placement of setbacks?
- What percentage of the total footprint is vegetated area?
- The increase in density that comes with middle housing should be distributed with guidelines
- Equitably distributing the intensity of middle housing
- Density based on public transportation
- Is the density adding everywhere, or around corridors or hubs?
- We can apply the same façade rules to multifamily housing
- Having case studies of the code to see how these affect housing types
- The need to add to existing utilities by adding housing units, and the effects in existing housing

Question 2: Trees

- Milwaukee should regulate tree removal on private property
- Mechanism in place to assist homeowners in maintaining trees; street, private (regulated)
- If street trees are required, and the homeowners are required to maintain, this should be shared equitably
- Damage the tree may be causing infrastructure or homes

ATTACHMENT 2

- Preserving trees can run up against clear and objective standards for structures

Question 3: Parking

- Condense parking into a designated area for multiple lots for the neighborhood
- Minimize the requirements for parking
- Reduce or negate the parking requirements within a certain distance of a high frequency line
- Community education can garner more support for parking changes
- Parking approaches specific to certain zones
- Parking enforcement will increase

Group 4 (Kimi)

Question 1: Housing

- Site/Lot coverage and permeable surface standards.
- A minimum of 1000 cubic feet of soil protected and available for planting.
- Designation of open space.
- Dwelling unit size of additional units on site. Maybe a maximum floor area limit for a quadplex/tri plex to aim for more affordable units
- Parking. Example of looking at parking at a block level. Mention of diagonal parking. Looking at impact the block level not just the unit level.
- Sidewalks. Ensuring safe access when there is new development.

Question 2: Trees

- NO exceptions for tree planting and mitigation and affordable housing. Ensure equitable access to trees and their benefits for all.
- No more than 50% of the square footage of the critical root zone and area equal to a radius of 1' per trunk diameter undamaged and protected by construction?
- Are there no impacts exceeding a 4" grade change within an area surrounding a tree equal to a radius of 6" to 1" trunk diameter?
- Are there no impacts at all within an area measured as a radius of 3" per inch of trunk diameter?
- If the tree needs to be removed and plating mitigation trees is necessary, is there a minimum of 1000 cubic feet of soil that can be on site?
- Contiguous canopy – preserve and put a higher value on tree canopy. Is there a system of habitat movement being given preference? Forgive parking spaces to protect trees. Trees are part of a connected system should be prioritized for protections.
- Species of trees, and percentage of species to ensure diversity of trees to ensure that the entire system does not get decimated.

Question 3: Parking

- Delineation of property line and the public right of way on unimproved sidewalks.
- What is a creative solution to addressing the lack of sidewalks in our neighborhoods?
- This a block wide or community wide scenario that may not be solved at an individual property level.
- Type of pavement (permeability)
- Standard for maximum parking area and maybe that can be increased if using pervious materials.
- No parking on the site if they are able to formalize the parking space in front of a house as a tradeoff to not having a driveway for example.
- Consider alley way designs if applicable. Utility/driving/parking garage entrances
- Stepbacks and distance from the street.
- Concern about adding a cost burden to housing.

ATTACHMENT 2

Question 4: tradeoffs

- If we are talking about tradeoffs perhaps we should go back to the drawing board and try and find a more creative design solution that meets all three objectives instead of compromising. This is the ideal.
- Scenario 3 – because it leaves most permeable surface
- Scenario 1 would be an alternative if the cost of option 3 is more to ensure more affordability.
- Need to allow all three scenarios – when is the third image (Scenario 2) the preferred alternative? Depends on the grade of the street, the improvements along the curb, if there is an internal conversion maybe there isn't a need for additional parking. If we need want to avoid Scenario 2 code needs to nudge toward option 3.
- Decisions are site specific. Are the trees even worth preserving? Is the building worth building on to?



CITY OF MILWAUKIE

To: Planning Commission
From: Laura Weigel, Planning Manager
Date: January 4, 2021, for January 12, 2021, Work session
Subject: Update on Proposed Revisions to Planning Commission By-laws

ACTION REQUESTED

Review the draft revisions to the Planning Commission By-laws for discussion with City Council on February 16, 2021.

BACKGROUND INFORMATION

On October 8, 2019 the Commission discussed outreach and coordination with the city's neighborhood district association (NDA) leaders. Commission members recommended an adjustment to the bylaws to include an annual joint meeting between the Commission and the chairs and land use committees of the NDAs. On December 10, 2019, NDA leaders attended the Planning Commission meeting to discuss increased outreach and communication between the Planning Commission and NDAs. At that meeting, both the Planning Commission and NDA leaders agreed that a yearly joint meeting would be beneficial and should be included in the Planning Commission Bylaws. The Planning Commission discussed that once a year may not always be enough and requested to add language reflecting the desire to meeting more than once if necessary.

Additionally, a new comprehensive plan policy was in adopted in 2020 that impacts the bylaws. The new plan policy states that the Council will appoint a Community Involvement Advisory Committee (CIAC). The policy was created based on the requirement by Statewide Planning Goal 1.

1. Citizen Involvement -- To provide for widespread citizen involvement. The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized **committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land use decisions....** If the governing body wishes..... to **assign such responsibilities to a planning commission**, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program.

The policy was left open to give the Council freedom to appoint the Planning Commission or to create a new independent committee when and or if funding was available. Until a larger discussion is had regarding the creation of a new committee the Council recommended appointing the Planning Commission as the CIAC which was reflected in the draft by-laws discussed with Planning Commission on November 24, 2020 (Attachment 1).

The Planning Commission stated that the topic had been discussed over the last several years and there did not seem to be a clear consensus on the best path forward. Planning Commission voiced and has voiced in the past several concerns regarding the revisions to the by-laws:

- Preference for a standalone committee that focuses on all matters of public involvement not just land use
- It is not clear what the role and responsibilities of the CIAC are
- Concerned that interim status would become permanent
- Perception of conflict with Planning Commission acting as the CIAC
- Planning Commission has already has a heavy workload

As an interim solution several ideas were discussed, including more clarity about the time commitment to the CIAC, the addition of a sunset clause to ensure the Planning Commission does not remain the CIAC for an extended amount of time, and a thorough assessment of what the CIAC roles and responsibilities should be in the future. The by-laws have been revised to reflect the discussion and the Planning Commission requests that the City Council consider the revisions in the bylaws and assess developing a committee that has a focus on community wide engagement that is broader than just land use.

Additionally, Chair Massey suggested that signing authority for the Planning Commission meeting notes be assigned to staff instead of the Chair. The bylaws have been revised to reflect this request.

Furthermore, recognizing the value of allowing people to attend meetings virtually, the PC discussed the role of technology in conducting Planning Commission meetings after the pandemic. Not requiring people to attend meetings in-person could result in broader participation in the planning process by capturing those who would otherwise be unable to do so based on personal circumstance, including potential future Planning Commissioners. The Planning Commission would like to continue this conversation in 2021.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	E-Packet
1. Revisions to Planning Commission Bylaws from November 24, 2020 Revisions.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = materials provided to Planning Commission 7 days prior to the meeting.

E-Packet = packet materials posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-64>, available 7 days prior to the meeting.

ATTACHMENT 1

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.

1 Adopted by Resolution 19-2010; Amended by Resolution XX-2021, Effective XXXXX, 2021

ATTACHMENT 1

- 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. **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.
- C. **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.

Deleted: The Chair shall sign all documents memorializing Commission actions in a timely manner after action by the Commission.¶
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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.

ATTACHMENT 1

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.

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

Upon approval of the minutes by the Commission, a staff representative will sign and make the minutes available to the public within a reasonable time after the meeting.

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

ATTACHMENT 1

- 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.

4 Adopted by Resolution 19-2010; Amended by Resolution XX-2021, Effective XXXXX, 2021

ATTACHMENT 1

- 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.

1. The Commission shall serve as the Community Involvement Advisory Committee (CIAC) for the City until December 31, 2022 when a separate CIAC may be formed by the City Council . Each Commissioner shall be considered appointed to the CIAC at the same time as he or she is appointed to the Commission and shall serve on the CIAC for the duration of their term or until December 31, 2022 when a separate CIAC may be

5 Adopted by Resolution 19-2010; Amended by Resolution XX-2021, Effective XXXXX, 2021

formed. Upon the formation of a separate CIAC, the Commission shall no longer serve as the CIAC.

a. The CIAC shall implement the City's Citizen Involvement Program pursuant to the requirements and relevant guidelines set forth in Statewide Planning Goal 1 and the Comprehensive Plan. The Planning Commission reserves time on every agenda to meet if needed as the CIAC, and holds an annual meeting each winter or spring to review the Citizen Involvement Guidelines and program as it relates to land use.

- 2. Other Duties. At least once per year, the Commission shall hold a meeting at which Neighborhood District Association (NDA) leaders (e.g., the NDA chair and the chair of the land use committee) have been invited to discuss land use issues and community outreach with the Commission.

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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.

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