

**MILWAUKIE PLANNING  
COMMISSION**

**MILWAUKIE CITY HALL  
10722 SE MAIN STREET**

**AGENDA  
TUESDAY, December 9, 2008  
6:30 PM**

		<b>ACTION REQUIRED</b>
<b>1.0</b>	<b>Call to Order</b>	
<b>2.0</b>	<b>Procedural Matters</b> If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. Thank You.	
<b>3.0</b>	<b>Planning Commission Minutes</b> Approved PC Minutes can be found on the City web site at: <a href="http://www.cityofmilwaukie.org">www.cityofmilwaukie.org</a>	<b>Motion Needed</b>
<b>4.0</b>	<b>Information Items – City Council Minutes</b> City Council Minutes can be found on the City web site at: <a href="http://www.cityofmilwaukie.org">www.cityofmilwaukie.org</a>	<b>Information Only</b>
<b>5.0</b>	<b>Public Comment</b> This is an opportunity for the public to comment on any item not on the agenda.	
<b>6.0</b>	<b>Public Hearings</b>	<b>Discussion and Motion Needed For These Items</b>
<b>7.0</b> 7.1	<b>Worksession Items</b> Transportation Code Amendments (MMC Chapter 19.1400) project briefing Staff Person: Susan Shanks	<b>Information Only</b>
<b>8.0</b>	<b>Discussion Items</b> This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	<b>Review and Decision</b>
<b>9.0</b>	<b>Old Business</b>	
<b>10.0</b> 10.1	<b>Other Business/Updates</b> Code and Comprehensive Plan update pages	<b>Information Only</b>
<b>11.0</b> 11.1 11.2 11.3	<b>Next Meeting:</b> January 13, 2009 (no meeting December 23, 2008) CSU-08-04 Bridge City Community Church Sign Review CSU Pond House Application - Booktique bookstore and other Ledding Library Uses Officer Elections <b>The above items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.</b>	
<b>Forecast for Future Meetings:</b> January 27, 2009 – Parking Code Update briefing – <i>tentative</i>		

## 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

### Public Hearing Procedure

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.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.
12. **TIME LIMIT POLICY.** All meetings will end at 10:00pm. The Planning Commission will pause hearings/agenda items at 9:45pm to discuss options of either continuing the agenda item to a future date or finishing the agenda item.

#### Milwaukie Planning Commission:

Jeff Klein, Chair  
Dick Newman, Vice Chair  
Lisa Batey  
Teresa Bresaw  
Scott Churchill  
Paulette Qutub

#### Planning Department Staff:

Katie Mangle, Planning Director  
Susan Shanks, Senior Planner  
Brett Kolver, Associate Planner  
Ryan Marquardt, Associate Planner  
Li Alligood, Assistant Planner  
Alicia Stoutenburg, Administrative Specialist II  
Marcia Hamley, Administrative Specialist II  
Paula Pinyerd, Hearings Reporter



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Katie Mangle, Planning Director

**From:** Susan P. Shanks, Senior Planner

**Date:** December 2, 2008 for December 9, 2008 Worksession

**Subject:** Progress Update on Transportation Code Amendment Project and Downtown Public Area Requirements

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## **ACTION REQUESTED**

No action is requested at this time. This is a briefing on the status of the City's Transportation Code Amendment (TCA) project, including an update on staff's recommendations for changes to the downtown public area requirements (PAR) code section. It is the third and final briefing staff plans to provide the Commission on this project. Staff seeks Planning Commission feedback on key code language recommendations prior to entering the code amendment adoption process, which is expected to begin in January 2009 and conclude in March 2009.

## **BACKGROUND INFORMATION**

### **Project Purpose**

As described in the project's Scope of Work, which the Planning Commission reviewed in March 2008, staff identified a number of issues to be addressed by this code amendment project. The four main issues are as follows:

- The City's transportation regulations use project cost thresholds to trigger transportation improvements. This approach has resulted in substantial requirements for small projects, particularly for tenant improvements, residential remodels/additions, and downtown projects.
- The City's transportation regulations do not adequately reflect the City's responsibility to consider a project's impacts prior to exacting transportation improvements. This omission has created liability issues for the City.
- The City's transportation regulations do not empower the Engineering Director to find common sense solutions to street and sidewalk improvements. Discretion and design flexibility is especially important when required improvements need to respond to existing street and development conditions. The lack of discretion and flexibility in the code has resulted in unnecessary process and expense for property owners and the City.
- The City's regulations that apply to downtown Public Area Requirements do not give applicants or staff adequate guidance on how to comply with the stated requirements. Additionally, they do not explicitly require the City to relate required improvements to a

project's impacts, which is contrary to constitutional law on this subject. As an interim measure, the Planning Director made a formal interpretation in October 2007 requiring staff to consider a project's impacts and to evaluate whether the project's impacts are proportional to the required improvements.

In general, the purpose of the TCA project is to evaluate, refine, and reorganize the City's transportation regulations and standards to make them easier to understand, use and defend. The project's primary focus is overhauling Milwaukie Municipal Code (MMC) Chapter 19.1400, which is the City's main regulatory document for transportation improvements. However, since the City's transportation regulations and standards are currently dispersed among many documents, the project includes review of and possible changes to a number of different documents and code provisions, namely:

- MMC Chapter 19.1400 (which applies to the entire city);
- MMC Section 19.312.5 (which applies only to downtown);
- MMC Title 12 (which deals with streets and sidewalks generally);
- MMC Chapters 17.28 and 17.32 (which deal with land division improvements);
- Transportation Design Manual;
- Milwaukie Downtown and Riverfront Plan Public Area Requirements;
- Public Works Standards.

Since the start of this project, staff has gained an in-depth understanding of how the City's current transportation regulations and standards were developed. This research revealed some key City policies and practices, namely:

- The City has consistently relied on permit value to trigger transportation improvements for downtown and non-downtown development.
- The City has been and continues to be relatively aggressive when it comes to requiring transportation improvements for non-single-family development and redevelopment.<sup>1</sup>
- Single-family development was initially excluded from the City's transportation improvement requirements. This changed in 2001 when the requirements of Chapter 19.1400 were amended to apply to new single-family development. Chapter 19.1400 was amended again in 2002, resulting in the current version of this chapter, which applies to some single-family substantial redevelopment projects in addition to new single-family development.

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<sup>1</sup> This statement is based on staff's evaluation of the City's past and current transportation regulations. Prior to 2001, the City required full street improvements for new development and when a project's permit value was more than 50% of the value of the land. The City required partial street improvements when the permit value was less than 50% of the value of the land. This permit value approach is still in use for downtown projects. Since 2001, the City has required full street improvements for new development, land divisions, and when a project's permit value exceeds \$200,000.

### **Proposed Solutions**

Upon completion of this research, project staff documented and compiled all known problems, conflicts, and inconsistencies within and between the various documents and code provisions that contain transportation regulations. Staff then identified potential solutions to these problems, making sure to take Milwaukie's code history and constitutional law into consideration. Staff is on the verge of completing the final draft version of Chapter 19.1400, which incorporates all of the solutions identified below.

- Follow Council direction to ensure that the code is constitutional, consistent, and balanced. This will reduce the City's liability exposure and potentially reduce the number of appeals related to transportation exactions.
- Treat downtown and non-downtown projects the same with regard to triggers and process, including the fee in lieu of construction (FILOC) option. This will result in a consistent approach to transportation exactions.
- Replace value-based transportation improvement triggers with impact-based triggers, and exclude development projects with no transportation impacts from transportation improvement requirements, such as single-family home remodels that don't add additional square footage. This will ensure that the City exacts transportation improvements only when there are impacts to the transportation system.
- Reduce the level of review required for projects that trigger transportation improvements when no transportation impact study or land use application is required. This will eliminate unnecessary process and expense for property owners and the City.
- Require proportionality analyses for transportation-related exactions as appropriate. This will ensure that the City's code conforms to constitutional case law on this subject and will reduce the City's liability exposure.
- Give the Engineering Director more discretion to apply a range of design solutions. This will allow for more context-sensitive transportation improvements.

The flow chart entitled Process for Evaluating and Determining Transportation Improvements, which is included as Attachment 1, diagrams most of the above-listed proposed code changes and how they relate to one another. Staff proposes to insert a modified version of this flow chart into Chapter 19.1400 to make the transportation facilities review process easier to understand. Additionally, staff is proposing new code language that describes the key determinations that occur in the course of the City's transportation facilities review process. The proposed new determination language is included for your review as Attachment 2 to this report.

### **Key Issues**

Of the four main issues that were identified at the beginning of this project, staff's recommendations for addressing three of them have substantive policy implications that require more explanation and analysis. The first involves a single code section in Chapter 19.1400 entitled Applicability. The second involves multiple code sections in Chapter 19.1400 and is best characterized as introducing more flexibility into the code by giving the Engineering Director more decision-making authority throughout the transportation facilities review process. The third involves a single code section in the Downtown Zones chapter of the zoning code and involves a new, more consistent approach to requiring improvements in downtown Milwaukie.

**1. Applicability.** This section determines which development projects will be subject to the requirements of Chapter 19.1400. Staff proposes to replace value-based transportation improvement triggers with impact-based triggers so that only those development projects that have an impact on the transportation system are subject to the requirements of Chapter 19.1400. The proposed new applicability code language is included as Attachment 4 to this report. Staff is seeking the Commission's feedback on the following questions:

- Does the proposed code language capture the right development projects?
- With regard to single-family residential expansions, does the proposed code language exact the right transportation facility improvements?

**2. Flexibility.** Staff proposes to introduce more flexibility into Chapter 19.1400 by giving the Engineering Director the authority to make key determinations during the transportation facilities review process using guidelines specifically developed for each type of determination. The proposed new code language for the various determination guidelines is included as Attachment 5 to this report. Staff is seeking the Commission's feedback on the following questions:

- Is it desirable and appropriate for the Engineering Director to have the authority to make these kinds of determinations?
- Are the proposed guidelines adequate for making these kinds of determinations?

**3. Consistency.** Staff proposes that the code treat downtown and non-downtown development projects the same with regard to when they are subject to the requirements of Chapter 19.1400, how they are reviewed, and how improvements are determined. Staff also proposes allowing downtown development the option of paying a fee in lieu of construction. This option is currently available to non-downtown development projects. The proposed new PAR language is included for your review as Attachment 3 to this report. Staff is seeking the Commission's feedback on the following question:

- Is it desirable and appropriate to treat downtown and non-downtown projects the same?

## **Analysis**

### **1. Applicability**

The Applicability section determines which development projects will be subject to (or "trigger") the requirements of Chapter 19.1400. Impact-based triggers are more defensible and more appropriate than value-based triggers for determining whether development projects should be subject to the requirements of Chapter 19.1400. They are more defensible because the City is legally bound to exact only those transportation improvements that are both proportional and related to the impacts that a development project is expected to have on the transportation system. They are more appropriate because impact-based triggers, unlike value-based triggers, will capture development projects that have impacts on the transportation system.

Staff spent a significant amount of time developing and evaluating the proposed applicability code language to ensure that exactions are taken only from those development projects that would have impacts on the transportation system. The proposed draft language divides this section into three subsections:

- What kinds of development projects are subject to Chapter 19.1400;
- How the requirements of Chapter 19.1400 specifically apply to single-family residential expansions; and
- What kinds of development projects are exempt from Chapter 19.1400.

Following direction provided by the Planning Commission at their June 24, 2008 meeting, staff crafted this section in such a way as to require incremental street improvements in response to incremental home expansions in a manner that was clear, objective, and reasonable. As proposed, larger home expansions would potentially be required to construct more street improvements. The order of the potential street improvements is intentional and reflects the order in which street improvements are normally constructed. It should also be noted that the various street improvements on this list is divided into groups of roughly equal cost.

Staff is recommending this incremental exaction approach for a number of reasons, and they are as follows:

- The vehicle trip generation data for single-family homes in the Institute of Transportation Engineers manual indicates that larger homes generate more trips and, as a result, have more impacts on the City's transportation system. The proposed incremental exaction approach is staff's attempt to balance the need for meaningful improvements with reasonable and proportional exactions when warranted by impacts to the City's transportation system. The City Attorney has stated that the proposed incremental exaction approach is both proportional and legally defensible.
- Many streets in the City have paved travel lanes but no pedestrian or bicycle improvements. Requiring home expansions to contribute to the improvement of these incomplete streets is one of the only means by which the City can facilitate the completion of these streets.
- This approach would implement current and past policy direction to complete the City's streets to better support multiple modes of travel.

Not every development project that is captured by the Applicability section would be required to construct street improvements. The Applicability section merely identifies those development projects that would be evaluated for impacts to the transportation system. This section works in conjunction with other sections of Chapter 19.1400, such as Section 19.1405 Rough Proportionality, to determine what, if any, transportation improvements are needed by, warranted by, and/or proportional to a development project's impacts.

## **2. Flexibility**

There are four areas where staff proposes to introduce more flexibility into Chapter 19.1400 by giving the Engineering Director the authority to make key determinations using professional engineering judgment and guidelines specifically developed for each type of determination. The four areas are as follows:

- Transportation Impact Study (TIS) determination: The City currently determines when a TIS is required by using the adopted threshold scoring table in the Transportation Design Manual. This method has proven to be overly rigid and has resulted in inordinate requirements for small development projects. Staff proposes to replace the scoring table

with guidelines to be used by the Engineering Director to determine when a TIS is warranted. It is not an unusual practice for an Engineering Director to make such a determination.

- **Street Design determination:** The City's current street design determination process is rigid and simplistic. It is more suited to the creation of new streets, not the retrofitting of existing streets. This is problematic given that the majority of required street improvements in Milwaukie involve improvements to existing streets. Moreover, requesting a modification to an existing street design standard is overly bureaucratic and expensive. Staff proposes to introduce more flexibility and discretion into the street design determination process in recognition of the fact that a one-size-fits-all approach does not work in Milwaukie and that creating the best street cross section should not be an onerous task. Staff proposes to outright allow a range of street element widths and to give the Engineering Director the ability to consider, amongst other things, existing street and development conditions when making a street design determination. As proposed, the kinds of street design modifications that currently require a land use application would no longer require a land use application.
- **Proportionality determination:** Staff does not propose to substantially change the existing proportionality analysis guidelines other than to have them apply to both on- and off-site street improvements.
- **Fee in Lieu of Construction (FILOC) determination:** Staff proposes to codify existing City practices so that the FILOC determination process is transparent to the public and consistently applied by staff. The proposed new language introducing the FILOC section states that it is the City's policy to require construction of improvements at the time of development unless the Engineering Director determines that at least one of the conditions listed in the guidelines section exists. The proposed guidelines also clarify that the City may accept but cannot require an applicant to pay FILOC.

Staff and the City Attorney believe that these types of determinations are appropriately made by the Engineering Director since the Engineering Director has the requisite training and knowledge and the proposed guidelines provide a framework for consistent analysis across development projects. If an applicant disagrees with the Engineering Director's determination regarding proportionality or street design, the proposed code language gives the applicant the opportunity to appeal the determination to the Planning Commission.

### **3. Consistency**

The existing code is currently inconsistent because the transportation improvement triggers for downtown and non-downtown development projects are different. As it currently stands, all downtown development projects are required to contribute at least ten percent of their building permit value to public area requirements. Because the permit trigger threshold is higher for projects outside of downtown, however, a similar non-downtown project may not have to contribute anything to public area requirements. Staff proposes to remedy this by using the same triggers for requiring both downtown and non-downtown transportation improvements.

Staff briefed City Council at their October 7, 2008 work session on the problems and solutions specific to downtown and Council unanimously indicated their support of staff's recommended approach.

Planning Commission Staff Report – Transportation Code Amendment Project Update  
December 9, 2008 – Briefing #3  
Page – 7

### **Alternatives Analysis**

This staff report presents staff's analysis and recommendations as they pertain to proposed key transportation-related code changes. In arriving at these recommendations, staff considered other alternatives, which are more fully described in Attachment 6, and is prepared to discuss these alternatives and entertain others if the Commission does not support some or all of staff's recommendations.

### **Next Steps**

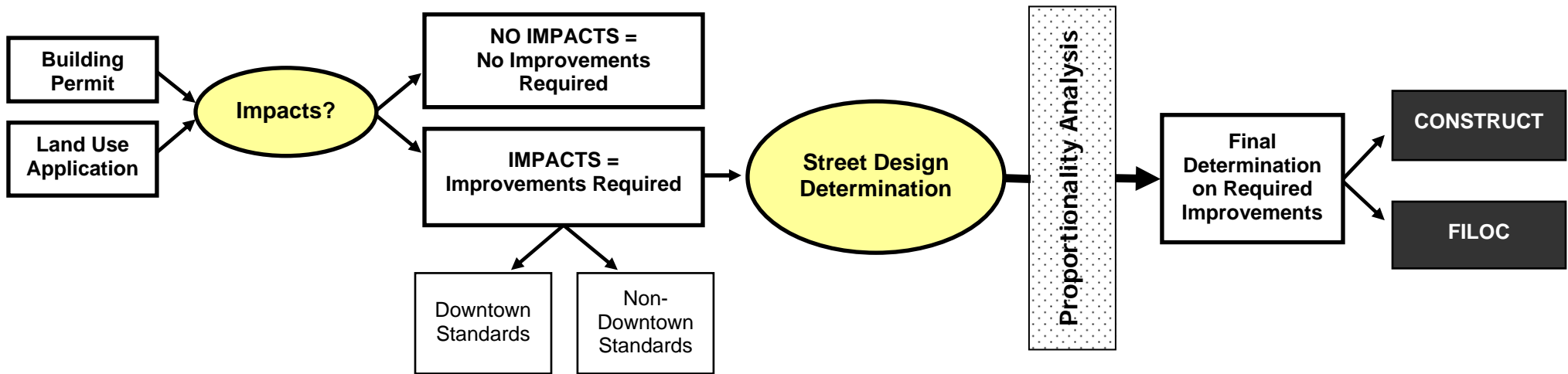
Next steps include review of the final draft proposal by residents, stakeholders, and decision makers. Staff expects the final draft proposal to be complete in the next month. At that time, staff will continue its outreach efforts to stakeholders, including, but not limited to, local developers, neighborhood district associations, and downtown business owners. By January 2009, staff expects to begin the formal code amendment adoption process.

### **ATTACHMENTS**

Attachments are provided only to the Planning Commission and the Epacket, unless noted as being attached. All material is available for viewing upon request.

- Attachment 1 – Process for Evaluating and Determining Transportation Improvements
- Attachment 2 – Draft Code Language for MMC Section 19.1403.4 Determinations
- Attachment 3 – Draft Code Language for MMC Section 19.312.5 Public Area Requirements
- Attachment 4 – Draft Code Language for MMC Section 19.1402 Applicability
- Attachment 5 – Draft Code Language for Various Determination Guidelines
- Attachment 6 – Alternative Analysis Memorandum from Angelo Planning Group

# Process for Evaluating and Determining Transportation Improvements



**ATTACHMENT 2**  
Proposed Draft Code Language  
Determinations Section

**Title 19 ZONING**

**Chapter 19.1400 PUBLIC FACILITY IMPROVEMENTS**

**19.1403 Review Process**

**19.1403.4 Determinations**

There are four key determinations related to transportation facility improvements that occur during the processing of a development permit or land use application, and they are described below. Determinations will take the goals and policies of the TSP into consideration and will be made using the guidelines in this chapter, professional engineering judgment, and best practices.

- A. Transportation Impact Study (TIS). The Engineering Director will determine whether a TIS is required at the beginning of the development or land use review process pursuant to the guidelines contained in Section 19.1404.1. If a TIS is required, a TFR land use application shall be submitted pursuant to Section 19.1403.2.B.
- B. Street Design. Given the City's existing development pattern, it is expected that most transportation facility improvements will involve existing streets and/or will serve infill development. To ensure that required improvements are safe and relate to existing street and development conditions, the Engineering Director will determine the most appropriate street design using the dimensional parameters provided in Table 19.1408.2 and the guidelines contained in 19.1408.2.B.
- C. Proportional Improvements. When transportation facility improvements are required pursuant to this chapter, the Engineering Director may conduct a proportionality analysis to determine the level of improvements that are roughly proportional to the level of potential impacts from the proposed development. Guidelines for conducting a proportionality analysis are contained in Section 19.1405.B.
- D. Fee in Lieu of Construction (FILOC). If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The Engineering Director will approve or deny such requests using the guidelines for making FILOC determinations found in Section 19.1406.A.

**ATTACHMENT 3**  
Proposed Draft Code Language  
Public Area Requirements

**Title 19 ZONING**

**Chapter 19.300 USE ZONES**

**19.312 Downtown zones.**

**19.312.5 Public Area Requirements.**

- A. Purpose. The design of streets, sidewalks, and public spaces is critical to the overall character and vitality of the downtown zones. The Milwaukie Downtown and Riverfront Plan Public Area Requirements provide specific design details and criteria for improvements within the public right-of-way, to establish a common urban design thread and link the different land uses and architectural styles of the downtown zones. The Public Area Requirements also guide the development of capital improvement programs for public right-of-way areas. Public area improvements include elements of the public right-of-way such as streets, sidewalks, lighting, landscaping and public furniture.
- B. Applicability. The downtown and riverfront public area requirements shall apply to downtown development that meets the applicability provisions of 19.1402. Public area requirements are located in the Milwaukie Downtown and Riverfront Plan Public Area Requirements.
- C. Review Process. All downtown development projects that require a land use application and are subject to Chapter 19.1400 per the applicability criteria in 19.1402 shall schedule a pre-application conference with the City prior to submittal of the land use application. Land use applications for downtown development projects shall be submitted in accordance with Sections 19.1403.2.

**ATTACHMENT 4**  
Proposed Draft Code Language  
Applicability Section

**Title 19 ZONING**

**Chapter 19.1400 PUBLIC FACILITY IMPROVEMENTS**

**19.1402 Applicability**

- A. Chapter 19.1400 applies to the following types of development in all zones:
1. Partitions
  2. Subdivisions
  3. Replats that increase the number of lots
  4. New construction (including redevelopment)
  5. Modification or expansion of an existing structure (including single-family residential expansions as described in 19.1402.B below), or a change or intensification in use that results in any one of the following:
    - a. A new dwelling unit.
    - b. Any increase in gross floor area.
    - c. Any projected increase in vehicle trips per day, as determined by the Engineering Director.
- B. Chapter 19.1400 applies to single-family residential expansions as described below. The following requirements are roughly proportional to the incremental impacts resulting from single-family residential expansions.
1. For expansions that increase the combined gross floor area of the primary structure and any habitable accessory structures by at least 100% or 1500 square feet, whichever is less, all of Chapter 19.1400 applies.
  2. For expansions that increase the combined gross floor area of the primary structure and any habitable accessory structures by less than 100% or 1500 square feet, the following requirements apply.
    - a. For expansions of less than 100 square feet, no improvements are required.
    - b. Expansions of 200-449 square feet shall provide one of the required improvements listed in 19.1402.B.3, if applicable.
    - c. Expansions of 450-799 square feet shall provide two of the required improvements listed in 19.1402.B.3, if applicable.
    - d. Expansions of 800-1149 square feet shall provide three of the required improvements listed in 19.1402.B.3, if applicable.
    - e. Expansions of 1150-1499 square feet shall provide four of the required improvements listed in 19.1402.B.3, if applicable.
  3. For single-family residential expansions that are subject to Section 19.1402.B.2 above, the required transportation facility improvements apply in the following order of priority. If the first required improvement already exists and complies with applicable standards, then the second improvement applies, and so forth. If all of the listed improvements

already exist and comply with applicable standards, then no transportation facility improvements are required.

- a. Right-of-way dedication.
  - b. Roadway widening.
  - c. Access improvements that bring access into conformance with City standards as much as practicable.
  - d. Curb and storm drainage improvements that bring curb and storm drainage into conformance with City standards.
  - e. Sidewalk construction.
4. Single-family residential expansions shall provide adequate public utilities as determined by the Engineering Director.
  5. Construction or expansion of garage and carport structures shall comply with the requirements of Chapter 12.16 Access Management Standards. Existing nonconforming accesses may not go further out of conformance and shall be brought closer into conformance to the greatest extent practicable.
- C. Exemptions. Chapter 19.1400 does not apply to the following types of activities in all zones:
1. Modifications to single-family residential primary structures or habitable accessory structures that do not result in an increase in gross floor area.
  2. Construction or expansion of non-habitable residential detached accessory structures. Garage and carport construction or expansions are only partially exempt. See Section 19.1402.B.5 above.
  3. Replats that do not increase the number of lots.
  4. Property line adjustments.
  5. Redevelopment of a structure following partial or total accidental destruction when all of the following criteria are met:
    - a. The redeveloped structure has a gross floor area no larger than the structure that was destroyed.
    - b. The use of the structure remains the same as the use that existed before the structure was destroyed.
    - c. A building permit is submitted to and approved by the City within 2 years of the date of accidental destruction.
- If redevelopment of a structure following accidental destruction does not meet all three of these criteria, the redeveloped structure shall be subject to Sections 19.1402.A and B as applicable. Redevelopment of a structure following non-accidental destruction shall constitute new construction and is not exempt from Chapter 19.1400.
6. Operation, maintenance, and repair of existing public facilities.
  7. Public capital improvement projects.

**ATTACHMENT 5**  
Proposed Draft Code Language  
Various Determination Guidelines

**Title 19 ZONING**

**Chapter 19.1400 PUBLIC FACILITY IMPROVEMENTS**

**19.1404 Transportation Impact Study**

A transportation impact study (TIS) identifies the impacts of a proposed development on the surrounding transportation system and the adequacy of the transportation system to serve the proposed development. The TIS provides a framework for evaluating transportation impacts and assessing proportionate mitigation of impacts.

**19.1404.1 TIS Determination Guidelines**

- A. Based on information provided by the applicant about the proposed development, the Engineering Director shall determine when a TIS is required and shall consider the following when making that determination.
1. Changes in land use designation, zoning designation, or development standard.
  2. Changes in use or intensity of use.
  3. Increase in trip generation.
  4. Potential impacts to residential areas and local streets.
  5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to, school routes and bikeways and walkways identified in the TSP.
  6. Potential impacts to intersection level of service (LOS).
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**19.1405 Rough Proportionality**

The purpose of this section is to ensure that required transportation facility improvements are roughly proportional to the potential impacts of the proposed development. The rough proportionality requirements of this section apply to both frontage and non-frontage improvements. A proportionality analysis will be conducted by the Engineering Director for any development that triggers transportation improvements pursuant to this chapter, with the exception of development subject to Section 19.1402.B. A proportionality analysis may be conducted at the discretion of the Engineering Director for development that triggers transportation improvements pursuant to Section 19.1402.B. The Engineering Director shall take into consideration any benefits that are estimated to accrue to the development property as a result of any required transportation facility improvements. A proportionality determination can be appealed consistent with Section 19.1403.5. The following general provisions apply whenever a proportionality analysis is conducted.

- B. The following shall be considered when determining proportional improvements:
1. Condition and capacity of existing facilities within the impact area in relation to City standards. The impact area is generally defined as the area within a one-half (1/2) mile

radius of the proposed development. If a TIS is required, the impact area is the TIS study area.

2. Existing vehicle, bicycle, pedestrian, and transit use within the impact area.
3. The effect of increased demand on transportation facilities and other approved, but not yet constructed, development projects within the impact area that is associated with the development proposal.
4. Applicable TSP goals, policies, and plans.
5. Whether any route affected by increased transportation demand within the impact area is listed in any City program including school trip safety; neighborhood traffic management; capital improvement; system development improvement, or others.
6. Accident history within the impact area.
7. Potential increased safety risks to transportation facility users, including pedestrians and cyclists.
8. Potential benefit the development property will receive as a result of the construction of any required transportation facility improvements.
9. Other considerations as may be identified in the review process.

### **19.1406 Fee in Lieu of Construction**

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

- A. FILOC Guidelines. The City may accept a fee in lieu of construction of required transportation facility improvements if one or more of the following conditions exist:
  1. Required improvements are not feasible due to the inability to achieve proper design standards.
  2. Required improvements would create a safety hazard.
  3. Required improvements are part of a larger approved capital improvement project that is listed as a funded project in the City's Capital Improvement Program (CIP) and is scheduled for construction within three (3) years of the City's approval of the development proposal.

### **19.1409 Transportation Facility Requirements**

#### **19.1409.2 Street Design Standards**

Table 19.1409.2 contains the street design elements and dimensional standards for street cross sections by functional classification. Dimensions are shown as ranges to allow for flexibility in developing the most

appropriate cross section for a given street or portion of street based on existing conditions and the surrounding development pattern. Guidelines for the Engineering Director to use when making cross section determinations are provided below and in section 19.1409.1.H. Standards for design speed, horizontal/vertical curves, grades and curb return radius are specified in the Public Works Standards.

B. Street Design Determination Guidelines

The Engineering Director shall make the final determination regarding right-of-way and street element widths using the ranges provided in Table 19.1409.2 and the additional street design standards in Section 19.1409.2.A. The Engineering Director shall also determine whether any individual street element may be eliminated on one or both sides of the street in accordance with Figure 10-1 of the TSP. When making a street design determination, the Engineer Director shall consider the following:

1. Needs and/or options for environmentally beneficial and/or green street treatments.
2. Multi-modal street improvements identified in the TSP.
3. Existing development pattern and proximity of existing structures to the right-of-way.
4. Existing right-of-way dimensions and topography.



# Memorandum

**Date:** October 23, 2008

**To:** City of Milwaukie Planning Commission  
Susan Shanks, City of Milwaukie

**From:** Serah Overbeek, Planner  
Mary Dorman, Project Manager

**Re:** Milwaukie Transportation Code Update - Alternatives Analysis

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The purpose of this memo is to provide the Planning Commission with background information about certain elements of the proposed code revisions presented in the Draft Transportation Code Amendments document. This memo is intended to highlight specific issues for which alternative approaches were explored and to explain why the proposed approach was chosen.

The three issues highlighted in this memo are:

1. **Applicability.** The applicability language determines which developments are subject to the public improvement requirements in Chapter 19.1400. Staff explored several ways to refine and improve the applicability language so that only projects of appropriate type and scale are reviewed.
2. **Review process.** Staff considered a number of ways to streamline the review process for projects that trigger public improvement requirements.
3. **Proportionality.** Staff identified a need to codify a process that evaluates whether required public improvements are proportional to a project's impacts.
4. **Engineering discretion.** In an effort to provide more flexibility in the way public improvement requirements are applied by the city, staff identified several areas where more discretion could be given to the Engineering Director.

## **Applicability**

The existing applicability language in Chapter 19.1400 uses a permit value threshold to determine when the public improvement requirements apply to expansion and redevelopment projects. These value-based triggers have proven to be unbalanced, as they sometimes fail to capture projects with impacts on public facilities and sometimes capture projects with little or no impacts. Furthermore, the existing approach does not adequately address the city's responsibility to consider proportionality when exacting public improvements. This has resulted in liability issues for the city on several occasions. Finally, the code currently treats downtown development differently from non-downtown development in terms of applicability. Both use value-based thresholds, but downtown development has a separate set of thresholds, which unnecessarily complicates the code.

To address these issues, staff explored the option of replacing the value-based thresholds with impact-based thresholds such as an increase in building square footage or an intensification of use.

With this type of approach, the intent is to only capture projects that will potentially impact public facilities and therefore, should require some improvements as mitigation. Staff also resolved to use the same thresholds for both downtown and non-downtown development. Although downtown development has a different set of improvement standards that must be met, the method for determining when to apply the standards is the same. This will allow the city to apply a more consistent approach to exacting transportation improvements.

Initially, staff considered using three quantifiable thresholds for applicability of public improvement standards:

- An increase in gross floor area of more than ten percent or 2,500 square feet;
- The addition of a new dwelling unit; or
- An increase in vehicle trips per day greater than 5 in residential districts, or 25 for non-residential districts.

However, there were concerns that these thresholds may still fail to capture projects that could have an impact on public facilities. After some discussion, staff revised the thresholds to include:

- A new dwelling unit;
- Any increase in gross floor area; or
- Any projected increase in vehicle trips per day

These broadened thresholds capture more projects and allow staff an opportunity to review them for potential impacts. The intent with this approach is not to require public improvements for all projects that fall within the thresholds, but to allow staff a “closer look” at projects in order to determine when public improvements are appropriate and what is proportional. It’s important to note that the above thresholds do not apply to single-family home expansion or remodel projects. Because single-family projects are smaller in scale and have less potential impact on public facilities, they are handled separately, as discussed below.

#### Single-Family Remodels

There was some question about how to address public improvement requirements for single-family remodels and expansions. Currently, the code requires public improvements for single-family projects depending on the value of the improvements relative to the value of the permit. As with other projects, this results in an uneven application of public improvement requirements and does not address proportionality. Staff considered two basic options for dealing with single-family redevelopments:

- Exempt single-family expansions and remodels from all public improvement requirements. This is a somewhat common practice in other jurisdictions. However, Milwaukie has a large number of residential neighborhoods that are lacking in basic public facilities such as sidewalks, curbs and adequately paved streets. The community has expressed a desire for improvements in their neighborhoods. Therefore, to exempt single-family expansions from any public improvements did not seem aligned with community values and the priorities of the city.
- Require some public improvements for single-family remodel projects that add to the total square footage of the building. This accounts for the incremental impacts created by single-family expansions. Staff developed a prioritized list of public improvements, ranging from right-of-way dedication to sidewalk construction, that could be required depending on the size of the home expansion. The intent with this approach is to allow the city to exact some limited improvements from single-family projects in a way that is fair and proportional to the impacts of the project.

Using this structure, staff initially developed expansion size ranges, starting at 100 square feet, with corresponding improvement requirements. For example, a 301 - 500 square foot home expansion could be required to dedicate right-of-way and provide curb and storm drainage improvements (as deemed appropriate by engineering staff). However, after some further discussion and analysis, staff determined that the square footage ranges were too low and may actually capture more single-family projects than the existing approach. As a result, the threshold ranges were increased so that any single-family expansion less than 200 square feet will be exempt from all public improvement requirements. Over 200 square feet, public improvements will be required incrementally, depending on the size of the expansion. Staff feels that this approach will allow the city to balance its need for public improvements with its responsibility to be fair and equitable to applicants.

### **Review Process**

The city has two types of development review processes: building permit review and land use review. Land use review generally takes more time and staff resources because of the public notice and hearing requirements and the potential for appeals. The current code requires land use review, either Type I or Type II, for any project that is subject to the public improvement requirements in Chapter 19.1400. In addition, the code also requires land use review for adjustments to the standards. Staff found that this amount of land use review was often times excessive and resulted in unnecessary delays and expenses for the city and property owners.

To address this issue, staff explored ways to reduce the amount of land use review, while still ensuring compliance with Chapter 19.1400. For some projects, compliance can be reviewed as part of the building permit process, eliminating the need for any land use review. However, with certain projects, land use review is necessary in order to provide public notice and the opportunity for a public hearing. Considering this, staff decided on the following approach:

- For development that is not subject to a concurrent land use review (conditional use, design review, etc) and does not require a Transportation Impact Study (TIS), compliance with Chapter 19.1400 will be reviewed as part of the building permit process. No land use review is required.
- For development that is subject to a concurrent land use review, compliance with Chapter 19.1400 will be reviewed as part of that land use review.
- For development that is not subject to a concurrent land use review, but does require a TIS, the applicant will be required to submit a land use application that will be reviewed through a Type II procedure.

The TIS determination is made by the Engineering Director and depends on the scope of the proposed development and its potential impacts to surrounding transportation facilities. Using the TIS as a “trigger” for when to require land use review ensures that more complex projects with potential impacts go through additional review, while smaller projects can move right to the building permit phase.

Additionally, staff opted to remove the language requiring a Type II review for adjustments and instead provide more flexibility within the standards so that the adjustment process is no longer necessary. This approach is discussed in more detail in the next section.

### **Proportionality**

By law, a jurisdiction must consider proportionality when requiring applicants to construct, or pay a fee for, public improvements as part of their development. Milwaukie’s existing code does require

the city to consider proportionality for off-site improvements, but not for improvements along the site's frontage. Furthermore, the current code language does not adequately describe proportionality or how it is determined.

Staff identified language to codify a process that evaluates whether the required improvements are proportional to the project's impacts, for both on and off-site improvements. In addition, staff wanted to further define the term "rough proportionality" and provide guidelines for how a proportionality determination is made. In order to reduce staff time and resources, staff initially considered requiring the applicant to supply the proportionality determination, using the guidelines provided in the code. However, to account for the complexity of proportionality determinations, and to ensure more consistency in how determinations are made, staff ultimately opted to keep this task within the engineering department.

### **Engineering Discretion**

Staff has found that certain elements of the existing code are overly prescriptive and do not provide enough discretion for the engineering department to require fair and suitable improvements. In some instances, the current code language has obligated staff to impose standards or procedures that were inappropriate to the specific development. To remedy this situation, staff explored areas of the code that could be revised in order to provide more flexibility for developers and give more discretion to the Engineering Director to respond to site-specific conditions.

### Street Design Standards

The street design standards regulate how new or improved streets are constructed. They include required widths for total right-of-way, travel lanes, sidewalks, bike lanes and landscape strips. The existing standards are highly prescriptive and staff has had trouble applying them to constrained development sites. To grant greater flexibility in the street design standards and eliminate the need for the Type II adjustments process, staff suggested using a range of allowable widths for the street elements. In conjunction with the ranges, the revised code language gives the Engineering Director the discretion to determine which widths, within the allowable ranges, are most appropriate given the specific characteristics of the development site. This effectively creates a customized street cross-section that is realistic for the site and its surroundings, and still complies with the standards. It allows the city to exact street improvements without placing undue burden on the applicant.

### Transportation Impact Study

In the current code, the determination of when a TIS is required is made using a scoring approach that assigns points to certain types of developments and their potential impacts. For example, a project that will result in more than 25 through trips on a local street is assigned 50 points. If a project scores above a certain threshold, then a TIS is required. Engineering staff has found that this method is rigid and can result in inordinate requirements for relatively small projects. Furthermore, the TIS guidelines are currently located in the Transportation Design Manual (TDM), a document that is intended to be dissolved as part of this code update project.

Therefore, staff opted to create a new TIS section in Chapter 19.1400. The new section uses some of the same language from the TDM in terms of general provisions and what must be included in a TIS. However, instead of the scoring method, the new section provides a list of criteria that will be considered by the Engineering Director in deciding whether or not to require a TIS. The criteria include items such as anticipated increase in vehicle trips, change in land use designation, and potential impact to local streets. The intent with this approach is to provide developers with a list of

general categories that are considered, while still allowing engineering staff discretion in how a project is evaluated with regard to requiring a TIS.

#### Fee-in-lieu of Construction (FILOC)

The existing code gives the city the authority to collect a fee in lieu of construction of required public improvements. However, the FILOC program does not currently apply in downtown districts and the code does not contain formal language outlining how the program is administered. Staff has expressed the need to revise the existing code so that a FILOC can be collected in any district, including downtown. In addition, the city would like to have more detailed language in the code that explains when FILOC might be applied and how the collected fees are spent.

The purpose of the FILOC program is to recognize that in certain situations, it may not be appropriate for an applicant to construct required public improvements. This may be due to a potential safety hazard, protected natural features on the site, or an approved capital improvement project that eliminates the need for the applicant to construct the public improvement. In those instances, the city may request a fee in an amount equal to the construction cost of the public improvements; the fee can be used later on a different public improvement project. Staff developed a number of criteria for determining when to collect a FILOC for required public improvements. Again, the intent is to allow the Engineering Director the discretion to make case-by-case determinations based on specific site characteristics.

In addition, the revised code provides an outline of how the collected fees will be spent by the city. Staff emphasized the need to ensure developers that fees collected will be spent in a timely manner and used for construction of improvements that will benefit the subject site and be located within the same general area.