

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RECOMMENDING)
THE CITY OF MILWAUKIE'S REQUEST)
FOR ACKNOWLEDGMENT OF COMPLIANCE)
WITH THE LCDC GOALS)

RESOLUTION NO. 80-134
Introduced by
The Planning and
Development Committee

WHEREAS, Metro is the designated planning coordination body under ORS 197.765; and

WHEREAS, Under ORS 197.255 the Council is required to advise LCDC and local jurisdictions preparing comprehensive plans whether or not such plans are in conformity with the statewide planning goals; and

WHEREAS, LCDC Goal #2 requires that local land use plans be consistent with regional plans; and

WHEREAS, Milwaukie's comprehensive plan, as amended February 4, 1980, has been evaluated following the criteria and procedures contained in the "Metro Plan Review Manual" and found to comply with LCDC goals and to be consistent with regional plans adopted by CRAG or Metro prior to November, 1979, as summarized in the staff report attached as Exhibit "A"; and

WHEREAS, The city of Milwaukie is now requesting that LCDC acknowledge its comprehensive plan as complying with the statewide planning goals; now, therefore,

BE IT RESOLVED:

1. That the Milwaukie comprehensive plan is recommended for compliance acknowledgment by the LCDC.
2. That the Executive Officer forward copies of this resolution and the staff report attached hereto as Exhibit "A" to

LCDC, the city of Milwaukie and appropriate agencies.

3. That subsequent to the adoption by the Council of any goals and objectives or functional plans after November, 1979, the Council will again review Milwaukie's plan for consistency with regional plans and notify the city of Milwaukie of any changes that may be needed at that time.

ADOPTED by the Council of the Metropolitan Service
District this 13th day of March, 1980.


Presiding Officer

MB/gl
4363/65

EXHIBIT "A"

MILWAUKIE PLAN ACKNOWLEDGMENT REVIEW

Introduction

The city of Milwaukie is located in Clackamas County along the east bank of the Willamette River, just south of Portland. The City evolved from a small town in the 1940's to an industrial center in the war years to a suburban community beginning in the 1950's. The population doubled between 1960 and 1975, largely a result of large annexations to the City. From the 1975 population of 18,059, it is expected to reach a level of 20,250 by 1990.

The Milwaukie plan sets out policy and land use designations for land within the City limits and is, therefore, a "complementary plan."

Metro conducted both draft and final preliminary reviews of the plan and the city has been very cooperative in responding to and resolving identified problems. At the time of Metro's acknowledgment review, a number of plan and ordinance inconsistencies and omissions were identified. Upon being made aware of these deficiencies, the City began amendment proceedings. Following completion of the required hearings process, the Milwaukie Council adopted the necessary plan and ordinance amendments on February 4, 1980. This review reflects those amendments.

The Milwaukie plan was developed with the assistance of the consulting firm, Wilsey and Ham. In general, the plan is well organized, thorough, concise and innovative.

Conclusion and Recommendation

Metro finds that Milwaukie's comprehensive plan complies with all State goals and regional policies. Metro recommends that the Land Conservation and Development Commission (LCDC) grant compliance acknowledgment of the city of Milwaukie's comprehensive plan. Further, Metro extends congratulations to Milwaukie and its citizens for a commendable job.

0. General Requirements

The City has included all general requirement items within its comprehensive plan package.

Goal #1 Citizen Involvement

The City has provided an extensive program for citizen involvement. The Comprehensive Planning Steering Committee, Neighborhood Councils, Community Planning Organizations, Technical Advisory Group and Special Task Forces compose the various avenues for citizen input into the plan's development. Neither Metro nor the Department of

Land Conservation and Development (DLCD) has received any complaints of Goal #1 violations. For citizen participation in post acknowledgment, a Comprehensive Plan Review Committee (CPRC) will be appointed not only to monitor and review the plan's effectiveness and make recommended amendments, but also to serve as the Committee for Citizen Involvement (CCI) to ensure citizen participation in this process. The CPRC will consist of one representative from each of five neighborhoods within the City, each of the Advisory Committees, business representative, County Planning Organization representative and a Planning Council and City Council representative. The CPRC will report annually to the Planning Commission on its findings and recommendations, to be forwarded onto the City Council.

Conclusion: The City complies.

Goal #2 Land Use Planning

The City has addressed the various base inventory/data requirements through a series of "Working Papers" (collated into a "Planning Notebook") and supporting studies and documents. Policies have been developed which address local, regional and state concerns. Implementation measures are adequate to carry out the policies and include several innovative techniques which foster fair approval requirements and quality developments (e.g., density bonuses). The sum of all policies within the Milwaukie plan which have direct implementing measures are adequate to meet goal requirements. There are a number of supplementary policies which serve as either a statement of intent or position on certain issues or suggest future work programs. Although these latter policies do not have direct implementing measures, implementation is either implicit in the policy statement or supplementary to compliance requirements.

In addition to the Urban Planning Area Agreement (UPAA) with Clackamas County, the plan contains policy which establishes the County as the jurisdiction retaining final responsibility for all land use actions within the dual interest area. Further, the City has 35 days to comment on proposed land use action or plan amendments affecting the outlying planning area.

Conclusion: The City complies.

Goal #3 Agricultural Lands -- Not applicable.

Goal #4 Forest Lands

The plan states there are no commercial forest lands within the City. Lands with substantial tree coverage have been inventoried and areas designated for tree preservation included within Ecologically Significant Natural Areas. The "Natural Areas" are protected through an "Environmental Protection Ordinance" which sets out objective standards for development and open space preservation.

Conclusion: The City complies.

Goal #5 Open Space, Scenic and Historic Areas and Natural Resources

The City realizes the limited options for open space due to the fact the City is largely developed. Heavy reliance on the private sector for providing open space on the remaining vacant land has been one adopted option. The open space policies are implemented through: (1) the zoning ordinance, which requires a percentage of open space per unit; (2) the subdivision ordinance through administrative reviews; (3) administration of an Environmental Protection Ordinance which allows density adjustments and bonuses for dedicated open space in new development; and (4) the Willamette River Greenway Ordinance. Scenic views will be protected and enhanced through the Greenway program, downtown plan and the McLoughlin Blvd. design plan by the Oregon Department of Transportation (ODOT).

The plan identifies four historic sites: the Pioneer Cemetery, three pear trees at the Waverly Golf Club, an "old stone burr" on 21st St. and a flowering peach tree at City Hall. Historic preservation policy is adequate. The City supports the efforts of the Milwaukie Historic Society. The cemetery and flowering peach tree are protected through City ownership. The "three pear trees" are located outside the City limits and, therefore, not affected by the City's acknowledgment request. The "old stone burr" was a grinding stone located in conjunction with a mill. The mill and stone were destroyed many years ago. Historic preservation will be considered in developing Neighborhood Design Guides and the Park and Recreation Master Plan subsequent to plan acknowledgment.

Significant natural areas containing fish and wildlife habitats are protected through the Environment Protection Ordinance (EPO) and the Willamette River Greenway Zone. There are no mineral and aggregate resources nor significant wetlands.

Conclusion: The City complies.

Goal #6 Air, Water and Land Resources Quality

All the required regional coordination language for air, water and solid waste are in place. Special noise control requirements are instituted for development along designated roadways. There is a provision for the City to review potential noise generating developments and coordinate with DEQ on issuing a "Statement of Compatibility" for local site specific actions and require mitigating measures where appropriate. An analysis of water quality indicates serious degradation of City's waterways. Implementation of the Environmental Protection Ordinances and "208" Water Quality recommendations should prove effective in ameliorating the situation.

Conclusion: The City complies.

Goal #7 Hazards

The plan contains policy to protect against hazards from flood, seismic response and weak foundation soils. The policies are

implemented through a flood hazard zone in the zoning ordinance and through the Environmental Protection Ordinance. These hazard overlay zones are administered by City staff.

Conclusion: The City complies.

Goal #8 Recreation

The City has limited recreational opportunities due to an insufficient amount of vacant land. Much of the recreational need is served by facilities outside the City and this situation is likely to continue in the future. A park and recreational need assessment has been developed, with a master park plan detailing park designs to be developed in subsequent years. The plan calls for heavy reliance on developers to dedicate land and adjust upward the allowable density on the balance of the developable parcel. There is also a provision in the subdivision ordinance which allows the City up to 18 months, following plat approval, to purchase land from owners of proposed development for park purpose. Developers are also encouraged to provide vest pocket parks in commercial developments. The Greenway Design Plan and Downtown Improvement Plan will address recreational needs as well.

Conclusion: The City complies.

Goal #9 Economy of the State

The City has initiated a number of studies to identify the economic opportunities and constraints. Policy is directed toward expansion of the employment base to serve Milwaukie area residents. The policies are implemented through the zoning ordinance and public facilities and services plans.

Conclusion: The City complies.

Goal #10 Housing

The city of Milwaukie's housing policies and implementing measures are commendable. Presently there are about 4,862 single family and 1,938 multi-family dwelling units within the City. Plan policies will allow a 44.3 percent single family and 55.7 percent multi-family housing mix on vacant buildable lands resulting in an overall net residential density at full development of 6.2 units per acre. This favorable mix may be further enhanced by density bonuses for developments of high quality. The plan allows for an array of housing types, including both detached and attached single family housing, townhouses, apartments, condominiums and mobile homes.

Apartments are permitted outright in the High Density Zones and permitted as a conditional use in other zones. The plan indicates that 53 percent of all new residential units will be developed within the High Density Zones. This proportion of apartments, in combination with the variety of other lower cost types of housing provided in other zones, would be adequate to meet the City's housing

needs, even where the conditional use standards are too vague and discretionary to pass the "St. Helens test."

An evaluation of the conditional use standards is essential, however, to a judgment on the adequacy of Milwaukie's provisions for mobile homes. Although the City is providing for adequate numbers of a sufficient variety of other types of lower-cost housing to meet its housing needs, the plan does include a policy that "manufactured housing is encouraged in the City as long as building codes, density standards and other applicable policies are met" (Plan, p. 32). As in our review of Beaverton's plan, Metro finds that the City must carry through on its commitment to encourage mobile homes with ordinance provisions which do not subject the use to vague and discretionary approval standards.

Mobile homes are permitted as a conditional use in the R-10, R-7, R-5, R-3, and R-2 zones. Metro finds that Milwaukie's ordinance provisions (unlike Beaverton's) are adequate for this purpose. The reasons for this finding, contrasted with those for Beaverton, are summarized in the following table.

	Milwaukie	Beaverton
zones permitted as a conditional use	includes zones with lot sizes appropriate to mobile homes (R-3, R-5 and R-7)	allowed only in zones with lot sizes too large to be appropriate (R20 and R40), too small for effective competition for land (R2), or, in R3.5, with insufficient land available for park development (2-9 total vacant acres)
nature of discretionary power	governs attachment of conditions only, not approval or denial	includes standards governing approval or denial
nature of standards guiding exercise of discretion	all standards listed (though not exhaustive) are clear, objective and reasonable	standards for approval are vague and discretionary

Conclusion: The City complies.

Goal #11 Public Facilities and Services

The Milwaukie plan has adequate inventories and policy addressing all criteria under Goal #11. More specifically, the City has received recent funding for a needed water storage facility which will relieve water shortage problems experienced in hot summer months. The Clackamas Water District, which serves the Milwaukie area, anticipates the need for expansion in approximately five years should the present population trend continue.

Clackamas County Sanitary District #1 shares the Kellogg Creek Sewerage Treatment Plant with Milwaukie. The plant is adequate to serve a population of 100,000. The Oak Lodge Sanitary District, which serves the area south of Milwaukie, may require expansion of facilities to serve the ultimate population for that area. Although the older section of Milwaukie's sewer system suffers some leakage, this would only be an immediate problem if the Kellogg Plant were at or approaching capacity, which is clearly not the case.

The City does have some problems with storm drainage. The problems were studied and proposed improvements submitted to the citizens for obligation bond financing. The 1975 bond program was defeated. The plan policy indicates the original 1970 Storm Drainage Study will be used as a guide in constructing that part of the storm drain system of highest priority. Additionally, drainage plans for new developments are reviewed by the planning director.

The City Council has adopted the Interim Guidelines for Storm Water Run-Off Management in the Johnson Creek Basin. The City has the responsibility to adopt adequate implementing measures to carry out the guidelines by July, 1980. With minor amendments to the Flood Hazard Zone requirements and the Environmental Protection Ordinance, implementing measures will be adequate.

The police and fire facilities in Milwaukie are identified as overcrowded and poorly located. Policy in the plan establishes a program to address these problems.

Conclusion: The City complies.

Goal #12 Transportation

The plan contains inventories and policy addressing all criteria items under Goal #12. Regional transit is well addressed with emphasis placed on supporting McLoughlin Boulevard improvements and transit options within the Oregon City Corridor. The plan encourages coordination with all transportation actors, including Metro, Tri-Met, ODOT, Clackamas and Multnomah Counties and neighboring cities.

Conclusion: The City complies.

Goal #13 Energy Conservation

The necessary background/inventory information is included within the plan. Policies for energy conservation are centered around land use, transportation, construction and design. The policies are implemented through the various implementing ordinances.

Conclusion: The City complies.

Goal #14 Urbanization

As stated previously under Goal #2 comments, Milwaukie has adopted an

Urban Planning Area Agreement with Clackamas County for the dual interest area outlying the City. The City and dual interest area are well within the Metro Urban Growth Boundary. The majority of land within the City and immediately outside is developed and therefore presumptively immediate urban. Of special concern to the City are the Overland Park, Clackamas Town Center and Kellogg Lake areas. The City has adopted special coordination policy urging Milwaukie's participation in planning and plan implementation for these areas. Annexation actions by the City will be based on a feasibility analysis which weighs the social and economic benefits of each annexation.

Conclusion: The City complies.

Goal #15 Willamette River Greenway

Milwaukie has adopted an amended Greenway Boundary to include Kellogg Lake. Land uses within the boundary are specified with development subject to Willamette Greenway conditional use approval. A Greenway Design Plan is proposed for development which will, upon completion, replace the conditional use provision. The Design Plan will designate areas for public acquisition. Residential uses are subject to natural resource and recreation policies within other elements of the plan and non-residential uses must be water-oriented.

Conclusion: The City complies.

MB:bk
6393/111

A G E N D A M A N A G E M E N T S U M M A R Y

TO: Metro Council
FROM: Executive Officer
SUBJECT: Recommending The City Of Milwaukie's Request For Acknowledgment of Compliance With The LCDC Goals

Res 80-134

I. RECOMMENDATIONS:

- A. **ACTION REQUESTED:** Adoption of the attached Resolution that LCDC grant acknowledgment of the city of Milwaukie's request for compliance. The Council should act on this item at its March 13 meeting in order to ensure that its recommendation is considered by LCDC (see background).
- B. **POLICY IMPACT:** The recommendation is consistent with the criteria and procedures contained in the Metro Plan Review Manual. The review did not identify any major issues which would require significant policy interpretation or set an important precedent for future reviews, but findings on the City's provisions for mobile homes, discussed under Goal #10 (Housing), do further define Metro's position on the meaning and application of LCDC's "St. Helen's" policy.
- C. **BUDGET IMPACT:** None

II. ANALYSIS:

- A. **BACKGROUND:** Milwaukie submitted its plan to LCDC for acknowledgment in December, 1979. Based on plan and ordinance deficiencies identified during the Metro acknowledgment review, the City Council initiated a number of amendments. The Metro Planning and Development Committee took action on the Milwaukie plan at its January 16 meeting. The Committee concurred with the staff recommendation of approval based on the assumption that the proposed amendments would be adopted as proposed prior to final Metro action. When the City Council adopted the amendments on February 4, it revised amendments addressing mobile homes. As proposed, mobile homes would have been permitted outright in residential zones. As revised and adopted, mobile homes are now permitted as a conditional use. Metro staff found the conditional use standards to be clear and objective (see acknowledgment review, Exhibit "A," Goal #10).

The deadline for Metro recommendation for LCDC is March 17, 1980.

- B. ALTERNATIVES CONSIDERED: Metro staff did not find any issues which warranted serious consideration of an alternative recommendation (i.e., for denial, conditional acknowledgment or a continuance).
- C. CONCLUSION: Metro's recommendation for approval will support local planning efforts while protecting regional interests.

JH:bk
7195/92
3/13/80

Metropolitan Service District

527 SW Hall Portland, Oregon 97201 503/221-1646

Memorandum

Date: March 13, 1980
To: Metro Council
From: Mike Butts and Mike Holstun
Subject: Supplemental Report to the Milwaukie Plan Acknowledgment Review

Re: Letter from the Oregon Manufactured Housing Dealers Association regarding Milwaukie's Request for Acknowledgment of Compliance

The Oregon Manufactured Housing Dealers Association has expressed concern that Milwaukie's zoning ordinance established approval standards for mobile homes which are preempted by both federal and State law. The City's zoning ordinance allows mobile homes as a conditional use, requiring conformance with the Uniform Building Code. Federal law (Federal Register, May 13, 1976, Section 3282.11a) codified by Oregon law (ORS 44.200), states that federal standards preempt State and local control over mobile home building codes.

Metro agrees that Milwaukie's mobile home approval standards (i.e., conformance with the UBC) conflict with federal and State standards, but feels it is not appropriate for LCDC to arbitrate federal or State law.

Metro concurs with the Oregon Manufactured Housing Dealers Association that this situation can be remedied as an update item, as it is not critical for compliance under goal requirements.

Re: 1,000 Friends of Oregon objection to Milwaukie's Request for Acknowledgment of Compliance.

1,000 Friends of Oregon has argued that LCDC should not acknowledge Milwaukie's plan and ordinances as in compliance with statewide planning goals. Specifically, they argue that to comply with Goal #10, the City must specify clear and objective criteria governing zone changes.

This argument is essentially an extension of the St. Helens housing policy which requires clear and objective development standards for needed housing types. In 1,000 Friends v. City of Milwaukie, LCDC No. 79-002, the Commission extended the

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St. Helens policy to invalidate an apartment moratorium that lacked "reasonably expressed standards" in its exception procedures.

While the objection that a zone amendment procedure should contain objective criteria is not without merit, it is not a requirement that is clearly expressed in Goal #10. LCDC has pursued a procedure of clarifying statewide planning goals through contested cases and compliance acknowledgment hearings rather than by adopting administrative rules. Metro has requested State policy clarification on the adequacy and consistency of zoning ordinances in a letter dated November 15, 1979. To date, a response to our detailed questions has not been received. Thus, jurisdictions such as Milwaukie are placed in the uncertain position of having to anticipate how LCDC will interpret the general language of Goal #10.

While Milwaukie's view of the need for definite and objective standards for rezoning decisions may be at odds with LCDC's, the City can only be faulted for failing to anticipate an unexpressed position. Metro stands in no better position to anticipate whether LCDC will extend the St. Helens policy to rezoning procedures, and it would be improper for Metro to anticipate by recommending denial of acknowledgment.

Staff review of Milwaukie's plan and ordinances has proceeded on the assumption that the City will in good faith grant rezoning to allow higher densities in conformance with the comprehensive plan as supply and demand requires. Until LCDC determines that such a presumption falls short of Goal #10 requirements, Metro's favorable recommendation on the Milwaukie plan and ordinances should not be changed.

If, after a thorough review of the issues of rezoning, the LCDC comes to the conclusion that an amendment to Milwaukie's zoning ordinance prior to acknowledgment is appropriate, then a conditional acknowledgment would be appropriate.

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7362/119