

# PLANNING DIVISION STAFF REPORT

October 15, 2018



PREPARED FOR THE PLAN COMMISSION

**Proposal:** Zoning Text Amendment  
**Legistar File ID #:** 53215, 53216, 53218, 53221  
**Prepared By:** Planning and Zoning Staff

The following is a summary of the proposed zoning text amendments.

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**53215 Clarify regulations for “health/ sports club, fitness center or studio” as it relates to yoga and martial arts studios and similar uses.**

This ordinance amends the definition of “Health/Sports Club, Fitness Center or Studio” to include yoga and martial arts or similar establishments in the definition and also eliminates the membership-only requirement. It also amends the “School, Arts, Technical, or Trade” definition to remove *martial arts* establishments. Finally, this ordinance makes “Health/Sports Club, Fitness Center or Studio” a permitted use in all nonresidential districts where it is currently allowed as a conditional use.

Currently, uses such as yoga, indoor cycling, personal training gymnasiums, are studios or similar indoor physical/workout establishments can only be classified under the definition of “Schools, Arts, Technical or Trade.” This is because the definition for the use “School, Arts, Technical, or Trade.” includes the words martial arts, and there is no other use that has similar definition. Thus, *Yoga Studios etc.* are allowed only where the use “School, Arts, Technical, or Trade” is permissible. The use “Health/Sports Club, Fitness Center or Studio” cannot be used for the *yoga studios etc.* because of the requirement that this use be offered on a membership basis. Most yoga, personal training, indoor cycling, etc. establishments do not provide their services on a membership basis.

This amendment more correctly classifies the definitions for uses such as yoga, indoor cycling, and personal training gymnasiums, are studios or similar indoor physical/workout establishments, and also the use to describe technical-type schools. The amendment allows the *Yoga Studios etc.* use in most cases as a Permitted Use. The use Health/Sports Club, Fitness Center or Studio is currently allowed as a Conditional Use in certain residential districts, and the amendment does not change that requirement. The amendment does not change the districts or Permitted/Conditional Use status for the use “School, Arts, Technical, or Trade.”

Staff supports this amendment.

**53216 Change the side yard setback requirements in the TR-C2, TR-C3, and TR-C4 zoning districts for newly-created lots with less than 50’ of width.**

This amendment removes as an exception to the side yard setback rule for lots that exist on the date the new zoning code was adopted. It also makes the minimum side yard setback requirement for lots narrower than 50’ in the TR-C2, TR-C3, and TR-C4 districts consistent with the side yard setback requirements in the TR-V districts.

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Currently, lots that are narrower than 50' in the TR-C2, TR-C3 and TR-C4 district that existed at the time of the zoning ordinance effective date (1/2/2013) require a minimum side yard setback of 10% the lot width. Any new lot must use the minimum side yard setback as enumerated in each district bulk standards chart. For example:

- In the TR-C2 District, a 40' wide lot where a two-story dwelling is proposed must provide 6' minimum side yard setbacks (instead of 4' setbacks, 10% of lot width).
- In the TR-C3 District, a 30' wide lot where a single-story dwelling is proposed must provide 5' minimum side yard setbacks (instead of 3' setbacks, 10% of lot width).
- In the TR-C4 District, a single, two or three family dwelling on a 40' wide lot must provide a 5' or 6' minimum side yard setbacks (instead of 4' setbacks, 10% of lot width).

This amendment is intended to align the side yard setback minimum requirements in the residential districts for lots that are narrower than 50 feet in width. These changes make for a more manageable and reasonable building envelope.

Staff supports this amendment.

**53218 Amend Secs. 28.088(4)(a)1., 28.088(4)(b), 28.089(4)(a).2., and 28.089(4)(b) to simplify the loading zone requirements in the Industrial Limited (IL) and Industrial General (IG) zoning districts**

This amendment simplifies the loading area requirements in the IL and IG Districts. Under this ordinance, loading zonings will be allowed in the IL and IG Districts if they are internal to an IL or IG District or if they are screened and adjacent to a lot containing a residential use or adjacent to a collector or higher classification street.

Currently, loading areas in IL or IG may be located behind the building, to the side of the building, or between a building and a street, if that street is internal to the broader zoning district. Many lots in IL and IG are very large, sometimes fronting on multiple streets, including arterial and collector streets, or at the perimeter of the IL or IG district, which is often bounded by major classification streets. The current prohibition on allowing loading facilities facing major streets can make placement of loading facilities problematic. This amendment allows more flexibility for loading facility placement, primarily by allowing loading facilities facing an arterial or collector classification streets, when screened. The amendment directly references existing screening requirement by cross-reference, to loading area screening requirements in the Landscaping regulations section {28.142(9)(c)}.

The amendment also strikes redundant language relating to loading areas currently found within the *Site Standards, outside storage regulations* for IL and IG.

Staff supports this amendment.

**53221 Amend Secs. 28.211, 28.151, 28.061, 28.072, 28.082 and 28.091 to add Tasting Room as a use, to amend the supplemental regulations of Restaurant-Nightclub, and make Restaurant-Nightclub a Conditional Use in all districts where it is allowed.**

This ordinance makes a number of changes to the zoning uses that include alcohol sales within the *Food and Beverages* use categories, and adds "Tasting Room" as a use in the *Food and Beverages Use* category and *Accessory Uses and Structures* category. The ordinance also changes the Permitted/Conditional Use classification for some of these uses.

#### Restaurant-Nightclub:

A restaurant-nightclub is simply defined as a restaurant-tavern that has an entertainment license. Many restaurant-tavern establishments desire to offer live entertainment in addition to food and alcoholic beverages, which changes the definition of the use from *Restaurant-Tavern* to *Restaurant-Nightclub*.

This ordinance amends the supplemental regulations for Restaurant-Nightclub. Under the current ordinance, only restaurant-nightclubs that operate between the house of midnight and 5 a.m. require Conditional Use approval. This ordinance eliminates the "hours" restrictions, and makes all Restaurant-Nightclub uses a Conditional Use. This ordinance also removes the exception in the supplemental regulation making Restaurant-Nightclubs established before the effective date of the zoning ordinance a Permitted Use (as opposed to a nonconforming use). This exception is very unusual, and treats this use as different from any other nonconforming use. This language is confusing now and will only stand to become more confusing as the years go on and the ordinance is amended (for whatever reason) in the future. Also, it is contrary to the spirit of the Wisconsin Statutes on nonconforming uses because it basically exempts this specific use from the nonconforming use ordinances and statutes this particular use. There do not appear to be any other areas on the zoning ordinance where a similar clause exists.

Any existing Restaurant-Nightclub that was not approved with a Conditional Use will be classified as a nonconforming use, and regulated per Sec. 28.191, Nonconforming uses. An establishment may apply for a Conditional Use approval at any time to obtain an approval, should they wish to remove the nonconforming use classification.

#### Nightclub:

A *Nightclub* is simply defined as a *Tavern* that has an entertainment license (and no kitchen). When the ordinance creating the nightclub use was originally adopted in 2014, it was contemplated that uses such as smaller music venues or comedy clubs would be the primary type of establishment. What the City has seen is that existing or new Tavern uses desire to offer live entertainment periodically, in addition to alcoholic beverages, which changes the definition of the use from *Tavern* to *Nightclub*.

This ordinance amends the supplemental regulations for *Nightclub*. Similar to *Restaurant-Nightclub*, this ordinance also removes the exception in the supplemental regulation making nightclubs established before the effective date of the ordinance a Permitted Use (as opposed to a nonconforming, see above). The ordinance also removes a requirement for provide entertainment a minimum of two nights a week and limiting the hours the establishment may be open before or after an entertainment event. A few examples:

- An establishment may desire to only provide entertainment once or twice a month, which would run afoul of the requirement to provide entertainment a minimum of two nights per week.
- An establishment may provide entertainment during morning or afternoon hours (like a jazz

brunch) which is not providing entertainment “at night.”

- An establishment may have a “happy hour” entertainment event in the early evening, but would be required to close two hours after the event, when the use would otherwise operate like a tavern into evening hours.

This ordinance does not change the use classification (Conditional) for *Nightclub*, except for the AP Airport District, where the use is change from Permitted to Conditional.

Restaurant-Tavern:

This ordinance change the use classification from Conditional to Permitted in the LMX Limited Mixed-Use District and the NMX Neighborhood Mixed-Use District. LMX and NMX are not significantly different form TSS Traditional Shopping Street, where the use is a Permitted Use. Staff believes the Conditional Use requirement is not necessary for this use in the LMX and NMX districts.

Tasting Room:

Tasting rooms are a relatively new use that are becoming more frequently requested in Madison. Tasting Rooms are places that offer beer, wine, or liquor for consumption on the premises that was manufactured or rectified on the premises or at an off-site location associated with the Tasting Room. Under state law, as long as these establishments sell only the beer, wine, or liquor that they manufacture or rectify, they do not require a class A or B liquor license and, therefore, do not have regulatory oversight by the City like other similar alcohol and beverage uses. They are licensed by the Wisconsin Department of Revenue. Accordingly, this ordinance adds Tasting Room as a use and makes it a Conditional Use in both the *Food and Beverages* use category and accessory use category in all Employment Districts and as a Conditional Use in the food and beverage category in NMX, MXC, TSS, CC and CC-T. As a Conditional Use, the city will be able to exercise regulatory oversight similar to that provided to traditional licensed establishments.

Staff supports this amendment.