



PREPARED FOR THE PLAN COMMISSION

Proposal: **Zoning Text Amendment**

Legistar File ID #: [70590](#) Updated Flood study as part of City floodplain maps

[70646](#) Food in certain alcohol-serving uses and alcohol uses in the NMX district

Prepared By: Planning and Zoning Staff

[70590](#) – This amendment codifies a recent floodplain study in the Portage Road area near Hayes Road. Periodically, when new flood studies are performed and approved by FEMA, approved studies are provided to the City for adoption by ordinance. Adopting this study by ordinance makes the flood study part of the City’s official floodplain zoning map in the Zoning ordinance, and is mandated by Wisconsin Department of Natural Resources and FEMA. Adoption also maintains the City’s positive status in the National Flood Insurance program.

Staff supports this amendment.

[70646](#) – This amendment modifies the definitions of the following uses which include the sale of alcohol for consumption on the premises: Restaurant-Nightclub, Restaurant-Tavern, Nightclub, and Tavern. This amendment also modifies the supplemental regulations for Restaurant-Nightclub, Restaurant-Tavern, and Nightclub. The changes will allow Nightclubs and Taverns to have kitchens and serve food. The amendment removes capacity calculations for Nightclubs from the zoning code, and capacity will instead be set by the building code. Additionally, some uses within the Neighborhood Mixed-Use (NMX) district are changed from Conditional to Permitted. These changes will not affect the City alcohol licensing process under the responsibility of the ALRC and Common Council.

The code currently partially distinguishes between lower occupant capacity alcohol-related uses (Restaurant-Nightclub and Restaurant-Tavern) and higher occupant capacity alcohol-related uses (Nightclub and Tavern) based on the presence of kitchen facilities. Taverns and Nightclubs are currently not allowed to have kitchens and may only serve pre-packaged food, such as frozen pizzas or popcorn, which do not require a kitchen for preparation.

The proposed code changes will allow Nightclubs and Taverns to have kitchens and serve food. Three characteristics will primarily be used to distinguish between the four uses: the method of calculation for maximum capacity, whether the principal and primary use is serving meals, and whether an entertainment license is required.

For Nightclubs and Taverns, Building Inspection Plan Review’s calculation of maximum capacity assumes that occupants will be standing while consuming alcohol, and fixed seats are not provided. These spaces tend to have higher capacities. The calculation under today’s building code uses information such as floor area, the width and number of exits, number of toilets, and the provision of sprinklers to determine capacity. For businesses classified as Restaurant-Nightclubs and Restaurant-Taverns, Building Inspection Plan Review determines maximum capacity with similar modifiers, and the Zoning code further limits capacity by the number of available seats, number of staff, and a reasonable number of people waiting for seats as shown on

the floor plan. The intent of tying capacity to seating is to ensure establishments that identify as Restaurants, which are lower intensity and more compatible in proximity to more sensitive uses, aren't transforming into Taverns or Nightclubs by removing seating. The ALRC may establish lower capacities than building or zoning code. The lowest of the three capacities is the approved capacity for an establishment.

For Restaurant-Nightclubs and Restaurant-Taverns, the principal and primary use is serving meals to distinguish bona-fide restaurants from Taverns and Nightclubs.

If an entertainment license is required for the use, then a business is either classified as a Restaurant-Nightclub or Nightclub. There is no change to this provision in the code.

Use	Maximum Capacity Determined By?	Principal and Primary Use?	Has Entertainment License?
<i>Restaurant-Nightclub</i>	Number of available seats, number of staff, and a reasonable number of people waiting for seats – as shown on floor plan	Serving meals	Yes
<i>Restaurant-Tavern</i>	Number of available seats, number of staff, and a reasonable number of people waiting for seats – as shown on floor plan	Serving meals	No
<i>Nightclub</i>	Floor Area, Number of Exits, Number of Toilets, and Provision of Sprinklers*	[Silent]	Yes
<i>Tavern</i>	Floor Area, Number of Exits, Number of Toilets, and Provision of Sprinklers*	Serving fermented malt beverages or intoxicating liquors	No

*Current Building Code, not in the zoning ordinance

Additionally, this amendment modifies the NMX district, to allow brewpubs, catering, incidental alcohol sales, restaurant-taverns, and taverns as permitted uses. These uses are permitted uses within the TSS and CCT districts, so this change will better align the NMX district use list with these similar districts. Other alcohol-related uses, including Nightclub, Restaurant-Nightclub, and Tasting Room remain conditional uses in this district like TSS and CCT.

Staff supports this amendment.