

Plan Commission  
Meeting of August 24, 2015  
Agenda Item #9  
Legistar #39500

### Summary

I respectfully urge the Plan Commission to (1) carefully consider whether all limited production and processing activities should be allowed in the TSS district and (2) retain the unambiguous definition of what compatibility means (that odors, noise, vibrations and glare cannot extend beyond the property line). As additional matters, I believe that the ordinance should not be amended to require a retail component in all instances, and that amendment is not needed in order to allow wholesale food production as a limited production and processing activity.

### Current Ordinances

#### MGO 28.211

Limited Production and Processing. Uses that produce minimal off-site impacts due to their limited nature and scale, are compatible with office, retail and service uses, and may include wholesale and off-premises sales. Limited production and processing includes, but is not limited to, the following:

- (a) Apparel and other finished products made from fabrics.
- (b) Blueprinting.
- (c) Computers and accessories, including circuit boards and software.
- (d) Electronic components, assemblies, and accessories.
- (e) Film, video and audio production.
- (f) Food and beverage products, except no live slaughter, grain milling, cereal, vegetable oil or vinegar processing.
- (g) Jewelry, watches and clocks.
- (h) Milk, ice cream, and confections.
- (i) Musical instruments.
- (j) Novelty items, pens, pencils, and buttons.
- (k) Precision dental, medical and optical goods.
- (l) Signs, including electric and neon signs and advertising displays.
- (m) Toys.
- (n) Wood crafting and carving; and
- (o) Wood furniture and upholstery.

#### MGO 28.151

Limited Production and Processing. All such uses shall be compatible with adjacent nonindustrial uses. Odors, noise, vibration, glare and other potential side effects of manufacturing processes shall not be discernable beyond the property line.

#### MGO 28.061, Table 28D-2 and MGO 28.072(1), Table 28E-2

Limited production and processing is a conditional use and is subject to the supplemental regulations in the CC-T, CC, and DC districts.

## Proposed Ordinance Changes

MGO 28.211 would add:

- (p) Wholesale production of foods.

MGO 28.151 would (1) delete the conditional use requirement that odors, noise, vibration, glare and other potential side effects of manufacturing processes not be discernable beyond the property line and (2) require a retail component: “All such uses shall be compatible with adjacent nonindustrial uses and be accompanied by a retail component.”

MGO 28.061, Table 28D-2 would add:

Limited Production and Processing as a conditional use, subject to the supplemental regulations, in the TSS district.

### Issues

1. This proposal would add 15 types of limited production and processing (“LPP”) in the TSS district, not just wholesale food production. Allowing all of these activities in a TSS district may be fine, but the full extent of the activities should be reviewed, not just wholesale food production.
2. All LPP approved as a conditional use would be required to “be accompanied by a retail component.” Per the Drafter’s Analysis, this is “so that area visitors and residents will have immediate access to the locally produced items.”

This does not make any sense for some LPP activities (e.g., producing blueprints or precision dental goods).

Also, this requirement would have prevented the Plan Commission’s recent conditional use approvals, as none of the applications made any mention of a retail component:

- Porchlight’s food production program on Lien Road (Legistar #38529), zoned CC-T.
  - A wooden pallet production facility on N. Stoughton Road (Legistar #38018), zoned CC.
  - SuperCharge! Foods, which produces and processes microgreens, 1900 E. Washington (Legistar #33921), zoned CC-T.
3. The Plan Commission would lose the unambiguous standard that it currently applies in determining whether a LPP use is “compatible” with adjacent non-industrial uses: “Odors, noise, vibration, glare and other potential side effects of manufacturing processes shall not be discernable beyond the property line.”

If “compatible” is not defined, ambiguity is created. Ambiguity is resolved in favor of the free use of private property.

“This court has consistently resolved all ambiguity in the meaning of zoning terms in favor of the free use of private property. Zoning ordinances are in derogation of the common law and, hence, are to be construed in favor of the free use of private property. [citation] The

provisions of a zoning ordinance, to operate in derogation of the common law, must be in clear, unambiguous, and peremptory terms. [citations]” *Cohen v. Dane County Bd. of Adjustment*, 74 Wis.2d 87, 91 (1976)

If this proposal is adopted, the Commission could rely on the general factors to deny a conditional use permit for LPP activities, factors which are considerably less specific. For example, that the use would be detrimental to or endanger the public health, safety, or general welfare, or that the use would substantially impair or diminish, in a foreseeable manner, the uses, values and enjoyment of other property in the neighborhood for purposes already established.

Currently, if the aroma of roasting coffee beans would extend beyond the property line, the Commission would deny a LPP conditional use permit, and it would have a clear standard for revoking a conditional use permit. In contrast, the proposal would permit LPP activities to intrude upon residential and business neighbors. This does not make sense when other uses, whether commercial or residential, are located within feet of the LPP activity.

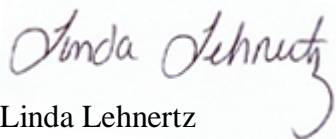
An alternative already exists for those LPP activities that intrude upon neighbors: the LPP activity may be performed as a permitted use in any of the employment districts (TE, SE, SEC, EC, IL, IG).

4. The DC district is not mentioned in the proposal. However, LPP is a conditional use in the DC district, subject to the supplemental regulations. Deleting the requirement that odors, noise, vibrations and glare cannot extend beyond the property line would also impact the DC district.
5. Adding “wholesale production of foods” to MGO 28.211 is not needed. Currently, LPP activities “may include wholesale and off-premises sales.” Currently, LPP permits production and processing of “[f]ood and beverage products, except no live slaughter, grain milling, cereal, vegetable oil or vinegar processing.”

The Porchlight and the SuperCharge! Foods conditional use approvals (discussed above under 2.) are evidence that the ordinance does not require any change in order to permit “[w]holesale production of foods”.

6. It is not clear what would happen with future bakeries. Williamson Street has three wholesale bakeries (all have a retail presence) that were approved prior to the zoning code rewrite. Wholesale bakeries are only permitted as conditional uses in the CC-T and CC district (and as permitted uses in some employment districts). Yet, if all other wholesale food production can be a conditional use in the TSS and DC districts, consideration should be given as to whether bakeries should be similarly treated.

Respectfully Submitted,



Linda Lehnertz