

**LEGISTAR #55878 - Body**

DRAFTER'S ANALYSIS: This ordinance creates a new category of land use known as Incidental Uses.

The Zoning Code currently defines Principal Use as the “main use of land or buildings as distinguished from a subordinate or accessory use.” The Zoning Code also allows for accessory uses, which are defined as uses “on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure and serving the occupants of the principal use or structure.” Thus, the Zoning Code contemplates that a building or structure will contain a single principal use and may contain accessory uses that customarily go with that principal use. While mixed-use districts allow multiple principal uses on a single property or in a single building, those uses must be in separate units on the land or in the building and thus are treated similarly to single use properties with respect to the classification of principal and accessory uses.

This scheme matches the historical use of properties: each piece of land or structure is used for a principal – single – purpose perhaps accompanied by accessory uses that are customarily associated with that principal use. In recent times, staff has seen an increase in requests of property owners to conduct multiple uses on a land or in a structure that may not customarily go hand-in-hand. Up to this point, Staff has approved such requests by approving multiple principal uses on the same property. However, doing this runs counter to the basic idea of a principal use as being the “main use” of the property. In other words, by definition, a property cannot have more than one principal because there would then be no “main use” of the property. Staff has been unable to call these additional uses accessory uses because oftentimes the additional uses are not “customarily incidental to” the principal use. Thus, there is a need for the zoning code to acknowledge a person may have multiple distinct uses of a property but only one principal use.

This amendment creates a new use category known as Incidental Uses. It removes the word “incidental” from the definition of accessory use and defines incidental use as “a use that is affiliated with but subordinate to a principal use of land or structure.” Unlike accessory use, an incidental use does not have to be of the type customarily associated with the principal use. Instead, it must be affiliated with the principal use, such as through common ownership. Under this amendment, any principal use identified in the district use tables may also be an incidental use subject to the same use category (Permitted or Conditional) and same supplemental regulations, where applicable.

This amendment also recognizes there may be incidental uses that need to be specifically identified because there is no principal use that would apply. An example of such an incidental use is the incidental sale of alcohol. Over the last several years, staff has received numerous requests from business owners (primarily retail businesses) who want to supplement their business with the sale of alcohol to their customers. Currently, however, there is no way to approve such a use without adding an additional “principal use” to the property. Thus, this amendment also creates “Incidental Alcohol Sales” which would allow a property owner holding a class B license to sell alcohol to users of a principal use as long as the sale of alcohol does not exceed 25% of the gross receipts of the owner’s uses on the land. This zoning change has no impact on the separate issue of obtaining any needed alcohol license.

\*\*\*\*\*

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 28.130 entitled “Lots With Incidental Uses” of Subchapter 28I: General Regulations of the Madison General Ordinances is created to read as follows:

**“28.130 LOTS WITH INCIDENTAL USES.**

Any lot containing a principal use may also contain incidental uses that are affiliated with but subordinate to the principal use. Allowed incidental uses are those specifically included and identified as incidental uses in the district use tables as well as any principal use identified in the district use tables. Incidental uses do not include uses identified as accessory uses in the district use tables.”

2. Section 28.151 entitled “Definitions” of Subchapter 28O: Definitions and Rules of Construction of the Madison General Ordinances is amended by creating therein the following:

“Incidental Alcohol Sales. The sale of alcohol when such sales are affiliated with but subordinate to a principal use or structure, where the owner or operator of the principal use or structure holds a Class B license under Sec. 38.06, and where the sale of alcohol does not exceed 25% of the gross receipts of the owner’s uses on the land.”

“Use, Incidental. A use that is affiliated with but subordinate to a principal use of land or structure.”

3. Section 28.151 entitled “Definitions” of Subchapter 28O: Definitions and Rules of Construction of the Madison General Ordinances is amended by amending therein the following:

“Use, Accessory. A use on the same lot with, and of a nature customarily ~~incidental and~~ subordinate to, the principal use or structure, and serving the occupants of the principal use or structure.”

“Use, Principal. A principal use is the main use of land or buildings as distinguished from a subordinate, incidental, or accessory use.”

4. Table 28D-2 of Section 28.061 entitled “Mixed-Use and Commercial Districts Uses” of the Madison General Ordinances is amended by amending and creating therein the following:

“Mixed-Use and Commercial Districts							
	LMX	NMX	TSS	MXC	CC-T	CC	Supplemental Regulations
<b>Food and Beverages</b>							
<u>Incidental Alcohol Sales</u>	C	C	P	P	P	P”	

5. The Table 28E-2 of Subsection (1) of Section 28.072 entitled “Downtown District Uses” of the Madison General Ordinances is amended by amending therein the following:

“Downtown and Urban Districts						
	DC	UOR	UMX	DR1	DR2	Supplemental Regulations
<b>Food and Beverages</b>						
<u>Incidental Alcohol Sales</u>	P	P	P”			

6. Table 28F-1 of Subsection (1) of Section 28.082 entitled "Employment District Uses" of the Madison General Ordinances is amended by amending therein the following:

"Employment Districts"							
	TE	SE	SEC	EC	IL	IG	Supplemental Regulations
<b>Food and Beverages</b>							
<u>Incidental Alcohol Sales</u>	C	C	C	C	C	C"	

7. Table 28G-1 of Subsection (1) of Section 28.091 entitled "Special District Uses" of the Madison General Ordinances is amended by amending therein the following:

"Special Districts"						
	A	UA	CN	PR	AP	Supplemental Regulations
<b>Food and Beverages</b>						
<u>Incidental Alcohol Sales</u>				C	P"	