

PLANNING DIVISION STAFF REPORT

January 27, 2020



PREPARED FOR THE PLAN COMMISSION

Proposal: Zoning Text Amendments
Legistar File ID #: 58804, 58869, 58870 and 58895
Prepared By: Planning and Zoning Staff

The following is a summary of the proposed zoning text amendments for Plan Commission consideration.

58804 – Amend Secs. 28.072(1) and 28.127(2) to add the use “tasting room” as a Conditional Use under the use group “Food and Beverages” in DC (Downtown Core) and UMX (Urban Mixed Use) districts, and as a prohibited use in the Alcohol Overlay District

With the adoption of Ordinance No. 18-00118, the City allowed Tasting rooms as Conditional Uses in certain zoning districts. The correlating Downtown Zoning Districts were not included, nor was an exclusion from the Alcohol Overlay District.

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 Conditional Use in the DC and UMX district. As a Conditional Use, the City will be able to exercise regulatory oversight similar to that provided to traditional licensed establishments. The use is being excluded from the Alcohol Overlay District because the use is similar to a “tavern” from a use and occupancy perspective, and the use “tavern” is excluded from the Alcohol Overlay District.

Staff supports this amendment.

58869 – Amend Section 28.067(3)(a) to exempt principal buildings from the Front Yard Setback requirement in Commercial Corridor-Transitional (CC-T) zoning as long as other principal buildings on the site occupy 30% of more of each street frontage on the lot.

The CC-T front yard setback requirement varies. See attached existing front setback language.

Many larger commercial sites have the capacity for multiple buildings, often with space available for an additional principal building or buildings deeper into the site, behind another principal building. For example, the site containing the HyVee Grocery Store on E. Washington Avenue, the Northgate Shopping Center on Sherman and Aberg, and some of the larger auto sales lots on Odana Road have this characteristic. In CC-T, the zoning ordinance currently requires all principal buildings to provide up to a maximum 100' front yard setback, which renders the areas beyond this distance unusable for additional detached principal buildings, if the sites are large/deep. The proposed ordinance does maintain a requirement for at least one building to be constructed with a setback no greater than 100' first, with subsequent, additional buildings being allowed deeper in the site after the established minimum built frontage requirement has been met (30% is being proposed). Most of these Planned Multi-use sites also require a Conditional Use review and an Urban Design Commission approval due to size, use, number of dwelling units proposed, and cross-connections and other development characteristics.

This amendment was previously discussed by the Plan Commission for drafting at a PC work session in 2015. At that meeting, the Plan Commission directed staff to draft an amendment that ensured the frontage was developed first, or concurrently, with buildings deeper into the site allowed after frontage placed buildings have been approved/constructed.

Staff supports this amendment.

58870 - Amend Secs. 28.082(1) and 28.151 to allow Clinic-Health and Physical, Occupational or Massage Therapy as permitted uses in Industrial Limited (IL) Districts with supplemental regulations.

This ordinance amends Sections 28.082(1) and 28.151 of the Madison General Ordinances to allow the land uses *Clinic-Health* and *Physical, Occupational or Massage Therapy* as permitted uses in the Industrial Limited (IL) Districts. This ordinance also provides supplemental regulations that will apply to those uses, including that such uses shall not exceed five thousand (5,000) square feet in floor area and that the establishment have a Transportation Demand Management Plan approved by the Traffic Engineer and Transit Manager.

Typical IL districts contain a mix of light manufacturing uses, offices, warehousing, flex-space, limited storage and warehousing, and limited retail and service uses that primarily serve the industrial/employment uses within the greater area. The proposed uses are similar in characteristic to retail use and service uses, which are allowed, but limited in IL districts. *Clinic-Health* and *Physical, Occupational or Massage Therapy* uses can be compatible with otherwise industrial areas, however, limiting the size of the uses, similar to how retail uses are limited in the IL district, will allow smaller-

scale establishments, that create less traffic impact and less dependency on transit, which often is lacking in IL districts. Requiring approval of a Transportation Demand Management Plan is intended to have the business operator acknowledge and address any gaps in transit availability or the lack of transit service to a site, prior to the use being established.

While staff doesn't oppose this amendment, it recommends that the Plan Commission give careful consideration to this item.

58895 – Create MGO Section 9.29 and amend Section 28.151 to create an annual permit for tourist rooming houses, amend the supplemental regulations applicable to tourist rooming houses, amend definition of Tourist Rooming House (TRH), amend the definition of bedroom, and create definition for “Primary Residence.”

With the adoption of Ordinance No. [13-00185](#), the City allowed TRH as a use that may operate in the residence that is occupied by the TRH operator. Since that time, the City has gained experience with TRH operations, from health licensing (Public Health Madison and Dane County), room tax collection (City Treasurer's Office) and zoning requirements (Building Inspection). City Building Inspection staff have fielded inquiries about what is allowed, handled complaints, and have experience with several cases of noncompliance involving TRH operations. Official Notices of Violation, citations, and prosecution to abate noncompliance has proven to be exceedingly difficult.

In the years since the City permitted tourist rooming houses, the tourist rooming house industry has also expanded and changed. With this expansion and change, staff has experienced challenges enforcing TRH regulations, including specifically the requirement that TRH operators obtain a public health license, pay room tax, and comply with applicable zoning regulations. Moreover, prospective TRH operators have expressed confusion over what regulations apply and who is responsible for enforcing them. Because compliance has been left to the operator, many end up not meeting all the specific requirements. By creating an annual permit requirement, this ordinance centralizes TRH requirements in one ordinance. Moreover, it requires TRH operators to submit documentation confirming compliance with applicable regulations and requires TRH operators to update this information on an annual basis. Under the ordinance, failing to take either of these steps can result in permit denial or revocation. Further, this ordinance specifically provides for TRH inspections so that the Building Inspection Staff can ensure that a TRH is being operated in a manner that is consistent with the documentation the operator has provided. In the event that the operator violates any of the requirements in this permitting ordinance, the ordinance contains a process for revoking the TRH operator's TRH permit.

TRH permit

As noted above, this ordinance creates a new requirement that individuals operating a tourist rooming house (TRH) obtain an annual TRH permit from the City, pay an application fee, and pay an annual permit fee (\$100 one-time application fee, \$100 annual permit fee). The permit renewal aligns with the PHMDC renewal license cycle. The permit requires information be provided about the TRH operation, including but not limited to:

- Name/address of the operator, are they an owner or leasee, condominium authorization,
- Address of the TRH,
- floor plans (for calculating maximum occupancy),
- evidence of obtaining health license,
- evidence of registering with the Treasurer's Office for room tax collection,
- a signed lease if they are a renter, allowing TRH use,
- a guest registry format (to confirm required registry meets information requirements),
- contact information for property owner and TRH operator,
- a list of the websites and other locations where the rental will be advertised,
- A signed and notarized affidavit stipulating that the TRH is the operator's primary residence.

Further, the permit process requires:

- Notice be provide to a property owner, if the TRH is being operated by a tenant.
- A site inspection conducted, which is an opportunity for Building Inspection Staff to visit the TRH with the operator, to verify submitted information, go over zoning ordinance requirements and expectations, and thoroughly answer any questions the operator may have.

TRH Zoning Requirements, Supplemental Regulations

This ordinance also makes several changes to existing TRH supplemental regulations contained in Sec. 28.151, of the Zoning Code. These amendments are necessary because as the TRH industry in Madison has expanded, it has become increasingly difficult for staff to enforce certain key provisions of the TRH regulations. For example, two critical provisions of the current TRH ordinance are that 1) the TRH must be the operator's primary residence, and 2) a TRH operator may only rent the TRH for 30 days per calendar year if they are not present at the time of the rental. The combined purpose of these two provisions is to ensure that the TRH operator is on premises the majority of the time a dwelling unit is being rented as a TRH and to prevent investors from purchasing properties for the sole purpose of renting out the entire unit as a TRH. However, increasingly, staff is encountering situations where TRH operators either do not understand or purposely mislead staff with regard to whether a specific dwelling unit being used as a TRH is their primary residence. Other TRH operators have either failed to keep a guest registry or have been reluctant to share the required guest registry, making it difficult

or impossible for staff to determine if TRH operators are exceeding the 30 days of rental days per year when the TRH operator may be absent from premises. Finally, other TRH operators appear to be purchasing or leasing properties in Madison for the sole purpose of renting it as TRH.

Specific changes to MGO 28.151 include:

- Establishing and clarifying the requirement for a valid TRH permit and health license,
- Requiring condominium approval for a TRH occurring in a condominium property,
- Relative to the existing 30 day operator absence allowance: adding language to reference state law which prohibits local regulation of a stay of between 7 days and 29 days a year,
- Modifying the occupant limit, to be two times the number of legal bedrooms, plus children under 12,
- Creating an inspection availability window for staff to visit a site and check on compliance matters,
- Requiring more detailed information about guests similar to what would be required at a hotel stay,
- Establishing a quarterly self-reporting requirement for stays, including number of stays, guest information, owner presence/absence, and TRH advertisement platform, along with an automatic revocation for failure to submit these reports,
- Establishing a requirement that any advertisement for a TRH must contain the issued TRH permit number per MGO 9.29.

Zoning Definitions

The ordinance also creates and modifies some zoning ordinance definitions:

1. Creates a definition for "primary residence",
2. Modified the definition of "bedroom", for purposes of clearly identifying rooms that qualify as "bedrooms" and calculating allowed maximum occupancy,
3. Modified the definition of "tourist rooming house" to make it clear the TRH use may occur within only one dwelling unit in a building.

The City generally views TRH as an important part of the hospitality industry in our city and region, and values that people that choose to operate TRH. The revisions to the TRH ordinance language are intended to ensure compliance with the ordinance, a safe environment for both guests and the operators, collection of the required room tax, and an equal treated between hotel operators, TRH's, and all other providing lodging to the visitors of our City.

Staff supports this amendment.

28.067 - COMMERCIAL CORRIDOR - TRANSITIONAL DISTRICT.

(3) Dimensional Requirements .

- (a) Front Yard Setback . Unless designated otherwise on the zoning map, for new buildings and additions exceeding fifty percent (50%) of the building's original floor area, a minimum of fifty percent (50%) of the street-facing building wall shall be set back no more than twenty-five (25) feet. Front yard setbacks on the zoning map may be designated as a specific location (build-to-line) or as a range.

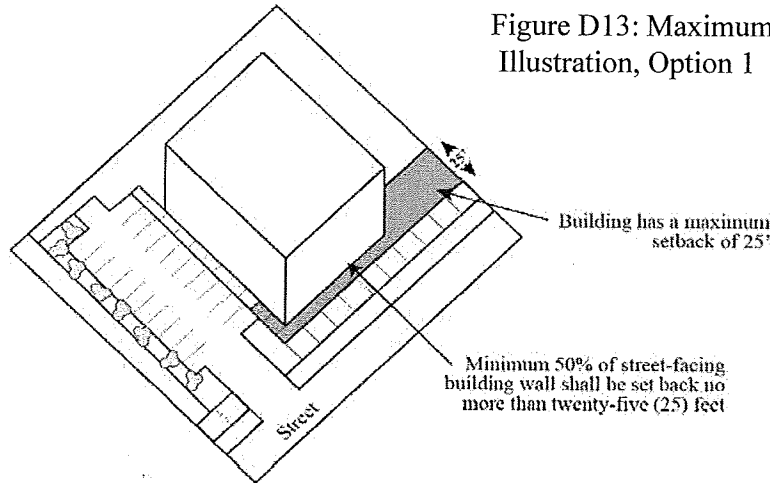


Figure D13: Maximum Setback Illustration, Option 1

2. If there is no on-street parking in front of the lot, a building may be setback of up to sixty-five (65) feet from the front property line, provided that at least seventy percent (70%) of the street-facing building wall is setback no more than sixty-five (65) feet. This setback shall allow for one (1) drive aisle and up to one (1) row of parking between the building and the street.
3. Alternatively, if there is no on-street parking in front of the lot, the following greater setbacks can be allowed if approved as a conditional use:
 - a. A building may be setback of up to eighty-five (85) feet provided that at least seventy percent (70%) of the street-facing building wall is setback no more than eighty-five (85) feet. This setback shall allow for one (1) drive aisle and up to two (2) rows of parking between the building and the street.
 - b. If traffic circulation, drainage and or other site design issues are shown to require additional space, the setback may be extended to a maximum of one hundred (100) feet.

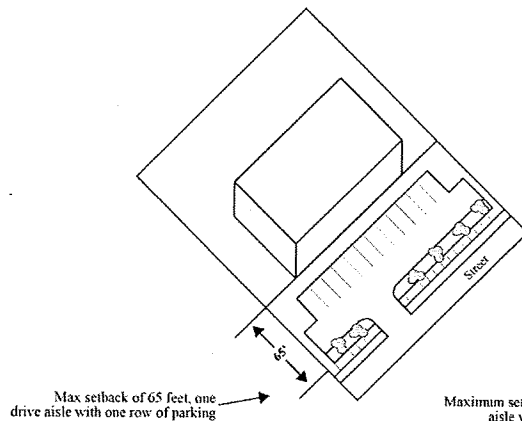


Figure D14: Maximum Setback Illustration, Option 2

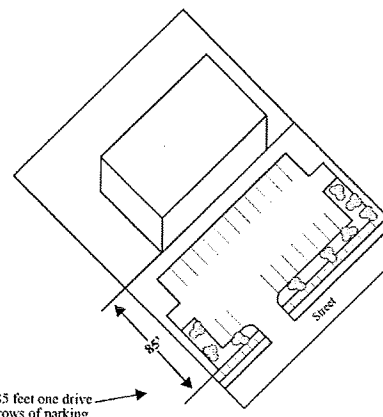


Figure D15: Maximum Setback Illustration, Option 3