



# PLANNING BOARD REPORT PORTLAND, MAINE

## Zoning Ordinance Amendment

### Changes to the Use Requirements in the B-2 zone Addition of Distilleries to Allowed Uses (Zoning Modernization Pilot Project)

#### Applicant

Submitted to: Portland Planning Board Workshop Date: January 13, 2017	Prepared by: Tuck O'Brien, City Planning Director Date: January 17, 2017
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#### I. INTRODUCTION

The B-2 and B-2b zones play a critical role in governing the form and function of much of the commercial and mixed-use development in the city. These zones provide locations for varied commercial and residential development along the city's major arterials, such as Washington Avenue, Forest Avenue, and outer Congress Street. Many of the city's key corridors and nodes are located in the B-2 and B-2b zones.

On December 20, 2016, Luke Davidson of Maine Craft Distilling submitted a Zoning Text Amendment which asked to amend the allowed uses in the B-2 zone to allow his facility to move from Fox St. in the IL-B to a facility at Washington Avenue in the B-2. As the B-2 zone is currently structured, his distillery and tasting room would be prohibited from moving to the B-2 on Washington Avenue, because distilleries are not allowed uses. Mr. Davidson is questioning the policy rationale for this considering the fact that bars, restaurants, commercial kitchens, bakeries, dairies and other uses with similar profiles would be allowed. In addition, Mr. Davidson expressed his concern with what he felt was a frustrating and confusing structure for allowed uses in the B-2 zone. Staff described the plan to implement a simplified use methodology as part of revisions to the Land Use Ordinance after the comprehensive plan is completed. After further discussions related to challenges with schedules relating to Mr. Davidson's tenancy on Washington Ave, staff and the applicant agreed to propose a revised use approach in the B-2, which would serve as a pilot project for larger holistic changes to treating uses citywide.

The key components of proposal agreed upon by Mr. Davidson and staff are:

1. Simplification of the structure of the B-2 by inserting a use table, regrouping uses and reformatting. The proposal reduces the length of the section from 9 to 4 pages;
2. Making change of use between similar uses much more straightforward than previously allowed;
3. Creating a more permissive structure to uses not specifically listed in the code. Recognizing that with the beneficial innovation occurring in the City.

In addition, following the Planning Board's 2016 discussion of drive-thru facilities related to the then proposed CVS on Forest Avenue, the Staff would like to have an additional discussion about the treatment of drive thru facilities in the B2-b zone. Staff is proposing changing drive-thrus from a prohibited use to conditional use which limits the location of drive-thrus to buildings of three or more stories and over 25,000 s.f.

## **II. PROPOSED TEXT AMENDMENTS**

Text amendments are proposed for the B-2 and B-2b zones. These include changes to the formatting of the ordinance, simplification and clarification of text and the treatment of uses. Additional language is proposed to clarify treatment of drive-thrus in the B2-b.

### **A. Re- formatting the 14-182 “Permitted Use” section in the B-2 zone**

Staff is proposing to replace the existing Permitted Use section with a Table of Uses as included in *Attachment I*. The proposed language also corrects some formatting and typographical errors in the body of the ordinance and reorganizes the section for increase ease of comprehension, especially related to the conditional use section.

### **B. Addition of Breweries and Distilleries as allowed uses and simplification of use conversion language**

The proposed language seeks to provide predictability, clarity and transparency to how uses are treated in the B-2 by adding language expanding the number of allowed uses to reflect trends in the Portland economy and the similar performance profiles between similar uses.

Over the past two decades multiple new uses have been introduced into the B-2 to address specific proposals from example in 2015 the use of “commercial kitchen” was added to the code. The rationale for adding the use was described as follows:

A commercial kitchen (with a requirement of retail sales or tasting room) is similar to other permitted uses in the B-2/B- 2b such as bakeries and restaurants. The provision for retail sales or tasting room supports the “people activity” inherent in a B-2/B- 2b retail district. A commercial kitchen as described in this report is a relatively new use which is not reflected in the existing text.

The B-2b purpose section states it is intended to “provide neighborhood and community retail and service establishments” while the B-2 is intended to “provide a broad range of goods and services and general businesses with a mixture of large and small buildings such a grocery stores, shops and services located in major shopping centers and along arterial streets”. Commercial kitchens appear to be consistent with and supportive of these purpose statements.

The B-2b provides a 7,000 square foot floor area limitation on commercial kitchens which is consistent with the existing treatment of bakeries. This provision guards against larger facilities that would more appropriately be located in off-peninsula areas or in industrial zones.

In recognition of the benefit of allowing a diversity of vibrant uses to strengthen our community centers, the proposed amendment seeks to add additional flexibility to the zone to facilitate the introduction of new uses with similar characteristics as enumerated uses. Accordingly, Staff is proposing deleting the existing Sec. 14-

484 Prohibited Uses, which read, “Uses not enumerated in Sections 14-182 and 14-183 as either permitted uses or conditional uses are prohibited”.

Staff proposes to replace the above with:

Uses not listed as permitted or conditional uses above shall be considered as the closest use in character and impact in the use table in 14-482, as determined by the Planning Authority. The Planning Authority may impose reasonable conditions on the proposed use to ensure that it is similar in character and impact to a use on the table.

If it is determined that the use is not similar to any of those uses, it shall not be permitted. The determination of the Planning Authority may be appealed by the property owner, lessee of the space, or property owner within 100 feet of the proposed use. That appeal shall be heard by the Planning Board in a public hearing.”

### **C. Increasing Ease of Moving Between Similar Uses**

In the proposed B-2/ B-2b Permitted Use Table included in *Attachment 1*, uses are grouped into Use categories such as Housing (H), Commercial (C), Institutional (S), Automobile (A) etc. Uses within the same group may be changed substituted without being considered a change of use. The proposed ordinance reads:

Uses within the same group lettering may be substituted without being considered a change of use, provided all dimensional and other requirements of this section are met. However, no additional parking shall be required for changes within the same use group except for the provision of additional housing units. (*See footnote 1*)

This language is intended to bring the B-2 zone in-line with the site plan ordinance which the definition of Change of Use (Sec. 14-522). The categories do not quite line up as cleanly as intended so more work will be needed to refine this.

### **D. Re-examining the role of Drive-Thrus in the B-2 and B-2b**

The proliferation of drive-thrus in the B-2 zone has been a matter of intense debate for over 15 years in Portland. Over the years various efforts have been adopted to reduce the amount and impact of this use. Restrictions have been placed to further reduce the types of uses where drive-thrus are allowed included eliminating drive-thrus as allowed uses with in the B-2b zone. Staff is considering leveraging the demand for drive-thrus for banking and pharmacy uses to incentivize construction of multistory buildings that contain residential uses. Although this proposal is not explicitly related to the above considering the issues debated by the board related to drive thru uses last Spring we thought a discussion would be timely.

As a starting place for conversation the language proposed by staff would re-introduce drive-thrus into the B-2b for banking and pharmacy uses only if combined into multi-story buildings containing residential uses. This language is modelled in part on the language regarding this banking drive-thrus in the B-7 zone.

The proposed language is as follows:

Drive-throughs accessory to banking and pharmacy uses in the B2b and B2c zones are only permitted in buildings of three or more stories containing residential uses. The drive-through use be located as much as practicable under the upper levels of the building. (14-183 (c) Conditional Uses)

### **III. COMPREHENSIVE PLAN**

The proposed text amendments have been designed to allow the B-2 zones to better accomplish its purpose as a community business zone, particularly as they relate to uses with similar impact profiles which would serve the purpose of decreasing the auto dependence of uses in these zones. In this, the amendments comport with the city's Comprehensive Plan.

The Comprehensive Plan, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the city, and clearly advocates dense commercial and mixed-use development that both serves and suits the neighborhood context.

The proposed amendment is also in compliance with the following goals and policies of the COMMUNITY COMMERCIAL POLICIES AND LAND USE PLAN – September 1987-1988, which was adopted as part of the comprehensive plan:

#### **Development Goals**

- Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.
- Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.

Similarly, the final *Sustainable Portland* report includes policies such as “support[ing] and enhanc[ing] a citywide system of neighborhood business districts that are neighborhood-oriented, provide local services within a walkable distance from neighborhood population centers, and are linked by transit.”

### **IV. PUBLIC COMMENT**

Staff has received no public comment on the proposed text amendments to date.

### **V. NEXT STEPS**

1. Staff would like input on the overall structure of the approach and on the types of uses included;
2. The clarity of the formatting of the new use section as a model for other zones; and
3. To gather feedback on the revised approach to address drive-thru uses in the zone.

### **VI. ATTACHMENTS**

1. Proposed Text Amendments to Portland Land Use Code, Div. 10. B 2 and B 2b Community Business Zones

**Sec. 14-182. Table of Uses**

Group <sup>1</sup>	Use	B-2	B-2b	B-2c
R	Single family home	Y	Y	Y
R	Two family home	Y	Y	Y
R	Three family home	Y	Y	Y
R	Multifamily housing	Y	Y	Y
R	Combined live/work spaces provided the living space is at least 33% of the total net floor area	Y	Y	Y
C	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
C	Personal services, as defined in section 14-47	Y	Y	Y
C	General retail establishments	Y	Y	Y
C	Pharmacies with retail sales	Y	Y	Y
C	Banking Facilities	Y	Y	Y
C	Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m. unless otherwise authorized by the City Council	Y	Y	Y
C	Drinking establishments, as defined in section 14-47 and bars as defined in section 14-217.5 (a)(1)	Y	Y	N
C	Billiard parlors	Y	Y	Y
C	Funeral homes	Y	Y	Y
C	Miscellaneous repair services, excluding motor vehicle repair services	Y	Y	Y
C	Communication studios or broadcast and receiving facilities	Y	Y	Y
C	Health clubs and gymnasiums	Y	Y	Y
C	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
C	Theaters and performance halls	Y	Y	Y
C	Hotels, Motels and Inns	Y	Y	Y
C	Bakeries, breweries, distilleries and similar uses with a retail component, under 10,000 net sf.	Y	Y	Y
C	Bakeries, breweries, distilleries and similar uses with a retail component, 10,000 net sf. or greater	Y	N	N
C	Expansion of existing dairies	Y	Y	Y
C	Drive-throughs associated with a permitted or conditional	C	C	C

<sup>1</sup> Uses within the same group lettering may be substituted without being considered a change of use, provided all dimensional and other requirements of this section are met. However, no additional parking shall be required for changes within the same use group except for the provision of additional housing units.

City of Portland Code of Ordinances Sec. 14-218

	use <sup>2</sup>			
C	Registered medical marijuana dispensaries	Y	C	C
C	Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure, under 7,000 net sf.	Y	Y	Y
C	Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure, 7,000 net sf. or greater	Y	N	N
I	Long term, extended and intermediate care facility	Y	Y	Y
I	Clinics, as defined in section 14-47	Y	Y	Y
I	Places of assembly	Y	Y	Y
I	Kindergarten, elementary, middle and secondary schools	Y	Y	Y
I	College, university, trade schools	Y	Y	Y
I	Municipal buildings and uses	Y	Y	Y
O	Lodging houses	Y	Y	Y
O	Day care facilities	Y	Y	Y
O	Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding	Y	Y	Y
O	Accessory uses, as provided in section 14-404 <sup>3</sup>	Y	Y	Y
O	Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if for weddings, seminars, receptions, business meetings and the like and if the facility is less than 4,000 net sf.	Y	Y	Y
O	Studios for artists and craftspeople, less than 4,000 net sf. per space	Y	Y	Y
W	Wind energy systems, as defined and allowed in Article X, Alternative Energy	Y	Y	Y
A	Auto service stations	C	N	N
A	Expansion of auto service stations in existence as of November 15, 1999	C	C	C
A	Car washes	C	C	C
A	Automobile dealerships	C	C	C
P	Printing and publishing establishments of 10,000 gross sf. or less	C	C	C
P	Expansion of existing printing and publishing establishments of greater than 10,000 gross sf. in existence since April 4, 1988	C	C	C
P	Wholesale distribution establishments of 10,000 gross sf.	C	C	C

<sup>2</sup> In the B-2b and B-2c zones drive-throughs are only allowed as outlined in 14-183(b) 8.

<sup>3</sup> Expansion of accessory uses into space used by a permitted use shall not be considered a change of use

	or less			
P	Research and development and related production establishments of 10,000 gross sf. or less	C	C	C

Y- Permitted N- Not permitted

C- Conditional use, see section 14-183 for specific standards in addition to the general conditional use standards

**14-483 Conditional Uses**

- a) "A" group conditional uses. Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:
  - i. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.
  - ii. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.
  
- b) Drive-throughs: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:
  - i. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.
  - ii. Noise: Any speakers, intercom systems, or other audible means of

communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.

- iii. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.
- iv. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and
- v. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
- vi. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.
- vii. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:
  - 1. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;
  - 2. Car washes shall be designed to avoid the tracking of residual waters into the street
- viii. In the B2b and B2c zones, drive-throughs are only permitted when associated with banking and pharmacy uses and in buildings of three or more stories. Drive-throughs associated with restaurant, automotive or uses other than pharmacies and banking are prohibited. The drive-through use be located as much as practicable under the upper levels of the building.

- c) Use Group "P": Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:
- i. Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.
  - ii. Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.
- d) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the same standards as outlined in the **[B-1 zone?]** are met in addition to Sec 14-430.

**Sec. 14-184. Prohibited uses.**

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If it is determined that the use is not similar to any of those uses, it shall not be permitted. The determination of the Planning Authority may be appealed by the property owner, lessee of the space, or property owner within 100 feet of the proposed use. That appeal shall be heard by the Planning Board in a public hearing.