



CITY OF MOLALLA

117 N. Molalla Avenue
PO Box 248
Molalla, OR 97038

Staff Report

Agenda Category: Ordinances

Agenda Date: 1/10/2024

From: Dan Zinder, Senior Planner

Approved by:

SUBJECT: Ordinance 2024-01; a development code amendment that modifies Molalla Municipal Code (MMC) Table 17-2.2.030 Uses Allowed By Zoning District, to remove the use category “Bars and Taverns (those established after 2010 shall not be located within 500 feet of another bar or tavern)” and hereafter consider bars and taverns under the “Commercial Retail Sales and Services” use category.

FISCAL IMPACT: None/NA

RECOMMENDATION/RECOMMEND MOTION: Staff Recommends that Council adopt Ordinance 2024-01.

BACKGROUND: Per the Allowed Uses table found in section 17-2.2.030 of the Molalla Municipal Code, Molalla’s Development Code currently allows Bars and Taverns to operate, subject to Conditional Use Permit review, in both Commercial Zones (C-1 and C-2) and in the Light Industrial Zone (M-1). Additionally, the code requires that any bar or taverns established after 2010 *“shall not be located within 500 feet of another bar or tavern.”*

The code does not define a Bar or Tavern, and does not define how to administer the 500-foot rule (e.g. property line to property line, door to door, building to building, etc...).

With these concerns in mind Staff took this provision to the Planning Commission on 10/4/23 for a recommendation concerning this provision and the Planning Commission voted to remove the 500-foot standard and merge the *“Bars and Taverns...”* use with the same category used for restaurants – *“Commercial and Retail Sales and Services.”*

This would remove the 500-foot prohibition and alleviate the need to define Bars/Taverns, and interpret how to measure the 500-foot prohibition. However, it would also remove the ability to place a Bar or Tavern on Light Industrial (M-1) property.

Staff brought the same provisions to City Council on 11/8/2023 with the Planning Commission’s recommendation to merge the *“Bars and Taverns...”* category with *“Commercial Retail Sales and Services”* thereby eliminating the 500-foot rule and Conditional Use permit requirement, but also eliminating Bars and Taverns from the M-1 zone. This would eliminate the need to define Bars and Taverns and how to measure the 500-foot rule.

Ordinance No. 2024-01: Changing the Use Category of Bars and Taverns

Staff also provided two alternative options for consideration:

1. Leave the existing use category and conditional use permitting requirements in place, define Bars and Taverns, and interpret how to measure the 500-foot rule.
2. Eliminate the 500-foot rule for Bars and Taverns, change the use to Permitted in the C-1 and C-2 Zones (instead of Conditional Use) and allow them in the M-1 zone subject to Conditional Use. For this option a definition for Bars and Taverns would still need to be developed.

City Council concurred with the Planning Commission that the “*Bars and Taverns*” use should be merged with the “*Commercial Retail Sales and Services*” use. Staff brings an ordinance that accomplishes this today.

Exhibits:

1. Proposed Amendment to MMC Table 17-2.2.030
2. Findings of Fact
3. Map of Affected Areas



ORDINANCE NO. 2024-01

AN ORDINANCE OF THE CITY OF MOLALLA, OREGON CHANGING THE USE CATEGORY FOR BARS AND TAVERNS

WHEREAS, the City of Molalla Comprehensive Plan defines the City of Molalla as a “recreation community” and promotes the establishment of many and diverse commercial uses; and

WHEREAS, the existing regulation on bars and taverns lacked definitions that would allow objective application of when a proposal is a bar or tavern or another use such as a restaurant; and

WHEREAS, the existing regulation on bars and taverns lacked definitions that would allow objective application of whether a proposed bar is within 500 ft of an existing bar; and

WHEREAS, Oregon law requires that any establishment that serves alcohol also provides food service, further blurring the line between bar and restaurant; and

WHEREAS, the Molalla Comprehensive Plan determines that restaurants are part of the community’s identity as a “recreational community;” and

WHEREAS, the Molalla Comprehensive Plan advises that the City maintain a 5-year land supply for industrial uses; and

WHEREAS, this ordinance was properly and timely noticed to DLCD, Molalla Pioneer, the City’s Website, and all property owners within the Industrial zones; and

WHEREAS, Planning Commission recommended this ordinance to City Council on November 4, 2023.

Now, Therefore, the City of Molalla ordains:

Section 1. Molalla Municipal Code Table 17-2.2.030 is hereby amended consistent with Exhibit 1, which is incorporated herein and adopted by reference.

Section 2: The findings related to this amendment, attached as Exhibit 2, are incorporated herein and adopted by reference.

Section 3. Effective Date. This Ordinance shall take effect 30 days after enactment.

The First Reading was held on January 10, 2024 and moved to a Second Reading by _____ vote of the City Council.

The Second Reading was held on _____ and adopted by the City Council on _____.

Signed this ____ day of _____ 2024.

Scott Keyser, Mayor

ATTEST:

Christie Teets, CMC
City Recorder

EXHIBIT 1 – PROPOSED AMENDMENT

Existing Language – Black

Proposed Removals – ~~Strikethrough~~

Molalla Municipal Code Table 17-2.2.030 Uses Allowed by Zoning District*

**Uses are abridged to include only applicable provisions*

Uses	Residential Zones				Commercial Zones and Industrial Zones				Public Use	Special Use Standards
	R-1	R-2	R-3	R-5	C-1	C-2	M-1	M-2	PSP	
Bars and Taverns (those established after 2010 shall not be located within 500 feet of another bar or tavern)	N	N	N	N	CU	CU	CU	N	N	
Commercial Retail Sales and Services	N	N	N	N	P	P	N	N	N	

EXHIBIT 2 – FINDINGS OF FACT

MMC 17-4.6.020 Procedure. Except for corrections, amendments to Development Code Text are Legislative (Type IV).

Staff Response: The proposed ordinance is an amendment to Development Code Text and as such follows a Legislative Type IV planning process.

MMC 17-4.1.050(C) Type IV (Legislative Decisions) Procedure.

Proposed Finding: The proposed ordinance was properly and timely noticed in accordance with all applicable laws and regulations as follows:

1. *The planning official shall notify in writing the Oregon Department of Land Conservation and Development (DLCDC) of legislative amendments at least 35 days before the first public hearing.*

Staff Response: DLCDC notice was provided on November 21, 2023, exceeding the 35-day requirement

2. *At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for any zone change, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - a. *Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one Comprehensive Plan land use designation to another), see ORS 227.186 for instructions;*
 - b. *Any affected governmental agency;*
 - c. *Any person who requests notice in writing; and*
 - d. *For a zone change affecting a manufactured dwelling park, all mailing addresses within the park, in accordance with ORS 227.175.**

Staff Response: Measure 56 notice was mailed to all property owners in M-1, light industrial zoned property and a list of interested parties on November 17, 2023 and again on December 19, 2023 which meets the 20-40 day requirement.

3. *At least 10 days before the scheduled City Council public hearing date, public notice shall be published in a newspaper of general circulation in the city and the City's website.*

Staff Response: This proposed ordinance was appropriately and timely noticed in the paper and online on 11/29/23, and 11/17/22 respectively; more than 10 days prior to the City Council Public Hearing date of 1/10/24.

MMC 17-4.6.030 Amendments to Code; Criteria

Planning Commission review and recommendation, and City Council approval, of an ordinance amending the Zoning Map, Development Code, or Comprehensive Plan shall be based on all of the following criteria:

- A. If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;***

Proposed Finding: The proposal does not involve an amendment to the Comprehensive Plan.

This criterion is not applicable.

- B. The proposal must be consistent with the Comprehensive Plan (the Comprehensive Plan may be amended concurrently with proposed changes in zoning);***

Proposed Finding: Based on the Comprehensive Plan Sections below, this proposal is consistent with the Comprehensive Plan's intent to brand the city as a "recreational community," referenced multiple times in Goals 5, 8, and 9, by removing regulatory hurdles from the establishment of bars and taverns within commercial zones. Within the Central Business District & Community Planning Areas (downtown) district, Goal 9 states "The CBD can accommodate uses such as office, theatres, restaurants, bicycle sales and repair, sports related activities and stores, fly tying shops, gun shops, boat sales, and repair activities. These shops should enhance the City's concept as a "Recreational Community." To that end, Policy 5 of Goal 9's Downtown Development and Policies encourages "Grouping of retail opportunities conducive to pedestrian shopping movement." The existing prohibition on new bars and taverns being established within 500 ft of each other runs in contrast to this principle.

By merging the "Bars and Taverns" use with "Commercial Retail Sales and Services" bars and taverns are thus no longer allowed per any permitting process within the M-1 Light Industrial Zone. The Comprehensive Plan offers limited guidance with regards to establishing whether mixed industrial and commercial development is encouraged on light industrial lands. Economic Development Policies 4 and 9 established under Goal 9 of the Comprehensive Plan do account for the need to account for industrial land as follows:

4. *Ensure Molalla's planning area contains adequate amounts of industrial and commercial lands for projected growth.*
13. *The city shall establish and maintain an inventory of industrial and commercial land of a quantity and quality to attract industry to the City of Molalla. The City of Molalla shall maintain a five year supply of vacant and serviced industrial land to comply with the Goal 9 Administrative Rule.*

Thus, the Comprehensive Plan does place a value on preserving industrial land supply for industrial uses to properly ascertain remaining land supply. By removing Bars and Taverns from M-1 industrial zones, land supply for industrial uses is easier to ascertain as it restricts a commercial use from industrial lands.

This criterion is met.

C. *The City Council must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or code;*

Finding: This proposal corrects an inconsistency in the code in that bars and taverns were subject to different standard from other commercial retail sales and services but a definition for bars and taverns was never established. Without a definition it was impossible to fairly apply a determination that a proposed establishment was a bar or tavern and not another commercial use such as a restaurant or event space that serves alcoholic beverages. Oregon law eliminated the traditional Bar and Tavern use (OAR 845-006-0460) in 2000 by requiring that all establishments that serve alcohol provide food service when alcohol is being sold so it's unclear if any establishments would even apply anymore if a definition did exist. Administration of the "500 foot" rule was likewise discretionary in that the point of beginning for the measurements were never established. Last, the general attitude of the Planning Commission, Council, and community has leaned toward the value of building out the downtown as a "recreational community" as defined in the Comprehensive Plan and away from temperance measures. Both voting bodies unanimously requested that Staff revisit this provision and treat these establishments as "Commercial Retail Sales and Services." The proposal has received no public opposition.

This criterion is met.

D. *The amendment must conform to Section 17-4.6.050 Transportation Planning Rule Compliance*

Finding: This proposal does not significantly affect the Transportation Planning Rule in OAR 660-012-0060 based on Paragraph 9 of the Rule:

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was

exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

No zone change is proposed by the proposed ordinance and bars and taverns are an appropriate commercial use that is accounted for by the Molalla TSP.

This criterion is met.