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May 17, 2016

**VIA EMAIL**

Portland Planning and Sustainability Commission  
City of Portland  
1900 SW 4th Avenue, Suite 7100  
Portland, OR 97201

**Re: MUZ Project - RTF/ICSC GR Committee Comments re CE Zoning**

Dear Chair Schultz and Commissioners:

This letter is submitted on behalf of the Retail Task Force (RTF) and the Oregon Government Relations Committee for the International Council of Shopping Centers (ICSC) regarding the proposed Mixed Use Zones Project. Please make this letter a part of your hearing record.

We wish to thank planning staff, especially Barry Manning and Bill Cunningham, for the for the hours they have spent with us since first meeting with our interest group on November 19, 2015. See the copy of my attached confirming message to Barry Manning outlining our group's goals for the MUZ project.

**AUTO-ACCOMMODATING ZONING NEEDED FOR MULTIMODAL SYSTEM**

The proposed Mixed Use Zones ("MUZs") effectively eliminate the remaining auto-accommodating elements of Portland's Zoning Code by converting all of the commercial zones to mixed use zones that are not auto-accommodating<sup>1</sup>. That is neither fair, equitable, nor legally sustainable for a multimodal system. Millions of dollars have been invested by Portland business owners in long-term auto-oriented developments, which have useful lives of twenty (20) to forty (40) years, in good-faith reliance on the City's auto-accommodating commercial zones. That zoning inequity can be avoided by not making existing auto-accommodating developments nonconforming by zoning them CE and making the CE zone more auto-accommodating. The proposed zoning often overlooks the built environment and proposes urban densities that will not have market support within the planning period and which then create

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<sup>1</sup> In the City's 1991 Zoning Code Rewrite Project, the City downzoned approximately 20% of its general commercial land inventory to pedestrian and transit-oriented zoning districts (the CS, CM, CO1/2 and CN1/2 zones).

nonconforming development sites that are not market-friendly and which will only impede and stifle redevelopment or upgrades. We have asked Suzannah Stanley of MacKenzie to prepare four case studies of built retail projects that are auto-oriented and superimpose the new mixed-use zoning standards to show how they are not feasible to redevelop under the new standards, and should therefore be zoned CE. See copies of the MacKenzie case studies attached.

As we testified to the City Council regarding the proposed 2035 Comprehensive Plan, we urge you to implement the portion of the Portland Plan calling for the eradication of Portland's food deserts, where great segments of the City are underserved by supermarkets offering affordable, healthy food choices. See copy of Portland Plan's Policy Conclusions and Key Findings attached, plus a copy of a map link to the areas of Portland's Food Deserts. The food desert issue, while recognized early in this legislative planning process, is now being virtually overlooked and disregarded. The problem can be addressed through a zoning solution, which is to provide an adequate inventory of commercial lands zoned for auto-accommodating supermarket development.

The only zone remotely suitable for that type of development under the Mixed Use Zones Project is the new CE zone, most similar to the old CG zone, both of which are auto-accommodating. However, the purpose statement for the new CE zone is for a mixed-use first, with auto-accommodation only a second thought. Accordingly, the MUZ project offers no purely auto-accommodating zone. We believe that the City should proceed in a two-step fashion to address that omission: 1) zone land CE that is now zoned CG or developed for auto-accommodation; and 2) make the CE zone more auto-accommodating. Unfortunately, approximately 40% of the land currently zoned CG and approximately 60% of the properties now zoned CG are being converted to zones other than the CE zone, thus dramatically reducing the City's inventory of auto-accommodating land zoned for grocery supermarket and other auto-accommodating development. See Figure VII-1 and Figure VII-2 attached.

The City should increase the amount of CE zoning where the property fits the locational criteria of the CE zone regarding existing auto-accommodating development, rather than decreasing it, for the above reasons. The City should do a bottom-up rather than a top-down zoning exercise, since the City is a built environment and not a blank planning slate. We have prepared and attached a proposed CE map to show existing commercial lands that need to be zoned CE in satisfaction of the locational standard of the CE zone paraphrased as: built as auto-oriented in an area not likely to urbanize soon.<sup>2</sup> It also appears that the areas for the new Comprehensive Plan designations allowing the CE zone as a corresponding zone should also be increased, an issue that we raised in our testimony to City Council, as well as our position that the City's Goal 9

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<sup>2</sup> See copy of email correspondence with Tom Armstrong of March 8, 2016 regarding the need for an adequate inventory to work from, ground up.

analysis for retail is legally flawed.<sup>3</sup> See new Council Policy 4.79 (#P44), 6.17 (#P50) and new Policy after 6.65 (#P60) adopted by Council on May 10, 2016.<sup>4</sup> Policy 4.79 and the new Policy

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<sup>3</sup> The City is required to include findings explaining how new proposed site development restrictions will not adversely impact its Goal 9 inventory. Such inventory must be preserved or expanded based on an Economic Opportunities Analysis (EOA) that identifies the characteristics and types of “other employment uses” (OAR 660-009-0015), which are defined to include “all non-industrial employment activities *including the widest range of retail* (emphasis added), wholesale, service, non-profit, business headquarters, administrative and governmental employment activities.” OAR 660-009-005(6). In addition, the EOA must identify sites that are expected to accommodate employment growth based on the site characteristics typical of expected uses. OAR 660-009-0015(2). The resulting plan must base its inventory of employment lands, in part, on the site characteristics of the various employment uses expected to generate employment growth. OAR 660-009-0025. Stated plainly, the EOA must analyze the need for, and inventory of, “other employment” uses based on their particular site characteristics, and must provide for such sites in the resulting plan.

Goal 9, subparagraph 3, requires that the City’s inventory of suitable commercial sites be adequate not just in terms of total acreage, but also with regard to size, type, location, and service levels, to provide for a “variety of industrial and commercial uses consistent with the plan policies.” When the City adopts site design and development regulations that limit the feasibility of commercial uses on such affected properties, the City is obligated to demonstrate how it remains in compliance with the Goal 9 requirement for an adequate inventory of commercial sites. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995). In the relatively recent case of *Gunderson, LLC v. City of Portland* (62 Or LUBA 403 (2011)), LUBA held that the City erred when adopting greenway regulations that, while they did not include express use restrictions, effectively converted industrial land to open space by imposing extremely restrictive site development requirements. LUBA also found fault with the City’s EOA because it categorized industrial uses by their geographical distribution rather than by site characteristics. *Id.* at 418.

The City’s current EOA and its proposed amendments appear to take the same approach that LUBA rejected in *Gunderson* (it should be noted that the 2012 EOA was developed prior to the proposed zoning code amendments and therefore would not reasonably have evaluated such impacts). Even if the City decides to restrict the development of a certain type of commercial use, such as large format retail, it must at least demonstrate that it considered the impact on such retail uses before enacting such restrictions, and must demonstrate that it retains a sufficient supply of Goal 9 land, considering site characteristics, notwithstanding such restrictions. *Home Depot v. City of Portland*, 37 Or LUBA 870 (2000). The City’s enactment of very stringent site development restrictions that would limit several commercial uses, including large format commercial and drive-throughs, was not critically evaluated in the of City’s draft EOA. Thus, the City has failed to demonstrate that such site development restrictions will not adversely impact its supply of Goal 9 land, based on the site characteristics of certain use categories.

<sup>4</sup> Policy 4.79. Requested by Saltzman (Council agenda #P44).

Grocery stores and markets in centers. Facilitate the retention and development of grocery stores, neighborhood-based markets, and farmers markets offering fresh produce in centers. Provide adequate land supply to accommodate a full spectrum of grocery stores catering to all socioeconomic groups and providing groceries at all levels of affordability.

Policy 6.17 – New Sub-Policy. Requested by Saltzman (Council agenda #P51).

Consider short-term market conditions and how area development patterns will transition over time when creating new development regulations.

New Policy after 6.65. Requested by Saltzman (Council agenda #P61).

after 6.65 both adopt policy statements requiring that more land be devoted to the full spectrum of grocery store development, which requires auto-accommodating zoning. See letters to City Council from Bob LeFeber/CRA regarding the lack of adequately zoned land for auto-accommodating grocery supermarkets.

The City still needs to have an auto mode that is accommodated. Even if the mode split shift goes down on the east side past 39th and on the west side past the ridge, over the next 20 years the mode split is likely to still be 60% to 70% autos at 2035. See Metro's "A snapshot of how the Portland region gets around." We need areas for auto accommodating uses that do not have the FAR and building orientation limitations of the Storefront zones. See the definition of "Auto-Accommodating Development" in the Code below. By contrast, see the purpose statement for the new CE zone also printed below, but marked to show revisions to make it more auto-accommodating, where the CE zone is intended to be pedestrian and transit friendly first, with auto-accommodation only as an after-thought. The City's multimodal system will lack adequate accommodation for the auto mode if the 2035 Plan and the MUZ Project are approved. Most households make 9 plus trips a day but only travel 4.4 miles from their home. Travel to downtown will continue to make great strides in mode split, but other trips will take more time and density to evolve because of lack of transit choices and service times available. Auto-accommodating uses need equitable zoning treatment under the MUZ project.

Currently there is no auto-accommodating zone proposed to address the short term market needs as new areas of the City continue to urbanize and become more dense over the planning period. New council policy 6.17 seeks to allow interim market-based development to avoid nonconformity. The City needs to implement the new Council policy in the MUZ project. We have requested phasing of the application of the CMSO overlay until there is a realization of 15-minute frequent transit service and a 50/50 mode split in the proposed CMSO areas. Converting more land to CE zoning is another way to phase in the mixed use zones during the next planning period, with CE being a short-term market placeholder. We can discuss other ideas with staff after the hearing.

## **MAKE CE ZONE AND DEVELOPMENT STANDARDS MORE AUTO-ACCOMMODATING**

We request amendments to the CE zone's purpose statement and standards to make them more auto-accommodating, as required for a multimodal system, and as described in the Zoning Code's definition of Auto-Accommodating Development:

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Retail Development. Provide for a competitive supply of retail sites that support the wide range of consumer needs for convenience, affordability, accessibility and diversity of goods and services, especially in underserved areas of Portland.



"Auto-Accommodating Development. Development which is designed with an emphasis on customers who use autos to travel to the site, rather than those which have an emphasis on pedestrian customers. This type of development usually has more than the minimum required number of parking spaces. The main entrance is oriented to the parking area. In many cases, the building will have parking between the street and the building. Other typical characteristics are blank walls along much of the facade, more than one driveway, and a low percentage of the site covered by buildings."

**1) Revise CE Zone Purpose statement to make more auto-accommodating (new language underscored):**

**D. Commercial Employment zone.** The Commercial Employment (CE) zone is a medium-scale zone intended for sites along corridors in areas between designated centers, especially along Civic Corridors that are also Major Truck Streets or Priority Truck Streets. The zone allows a mix of commercial uses, as well as some light manufacturing and distribution uses that have few off-site impacts. The emphasis of this zone is on auto-accommodating commercial and employment uses, but residential use is also allowed. Buildings in this zone will generally be up to four stories tall. Development is intended to be auto-accommodating, as well as pedestrian-oriented, ~~as well as auto-accommodating,~~ and complement the scale of surrounding areas.

**2) Provide development standards in CE zone for auto-accommodation (See marked copies of key standards attached, as summarized below):**

- Allowance for parking between buildings and streets.
  - Section 33.130.215.C.1. & Table 130-2. Exempt street frontages in a CE zone abutting major city traffic streets on district collector streets in Section 33.130.215.C.1 attached. Change the Max. Building Setbacks in CE from 10'/20' to "NA" for sites adjacent to a Major City Traffic Street or a District Collector; add an exemption from the vehicle area frontage limitations of Section 33.266.130.C.3.b., for sites adjacent to a Major City traffic Street or a District Collector. Note: the pedestrian standard of Section 33.130.240 provide a safe and convenient crossing of these areas.
- Transit street main entrance location oriented to parking.
  - Section 33.130.242.B.3. Applicability – Add new subsection “3. This section does not apply to street frontages in a CE zone abutting Major City Traffic or District Collector streets.”
- Allowance for blank walls.
  - Section 33.130.230.B.2.d. Ground Floor Window Standard Exemption

- Revise subsection 2. to add a new subsection “d exemption.” Retail store walls devoted to truck loading or external to interior areas used for storage, refrigeration or mechanical equipment, are exempt from this Section.”
- Alternative maximum building setback for large retailers in mixed-use zones other than CE.
  - Section 33.130.215.E.2
    - Change 60,000 sq. ft. to 40,000 sq. ft.
- See copies of above code sections (except 33.130.215.E.2) marked to show proposed changes by underlining the new language.

### **DO NOT MAKE EXISTING DEVELOPMENTS NONCONFORMING**

We are also concerned with the proposed prohibition of drive through facilities in many new locations. The Mayor’s new policy provides for prohibition of new drive throughs in the Central City and for limitations in Ring Districts and centers. The proposed application was dropped in corridors. Accordingly, existing drive-through prohibitions in corridors should be changed by zoning those properties CE, which does not prohibit drive-throughs. Regardless of the ultimate area of prohibition, drive through facilities should not be made nonconforming, but should instead be deemed conforming as preexisting development. New Plan Policy 6.17 supports this approach.

The CE zone is also the only zone which does not prohibit drive-through facilities. Grocery supermarkets utilize drive-through facilities in their operations for on-site fuel stations, pharmacy pick-up windows, and grocery pick-up lanes. Drive-through facilities should not be prohibited in centers, corridors and other areas along Major City Traffic Streets and District Collectors suitable for auto-accommodating grocery store development for equitable zoning reasons.

It is important to be in the proper zone as a nonconforming development. The nonconforming situation review criteria require that “the new use or development will not detract from the desired function and character of the zone.” See copy of Section 33.258.080.3. attached. Accordingly, auto-dependent development that is zoned anything but CE, the only auto-accommodating zone, will be found to be inconsistent with the purpose statements of any of the mixed-use zones, which would make the effort to obtain nonconforming situation review approval to modify an auto-oriented development in any new zone except CE unfeasible for that reason.

We propose the following pre-existing code language for commercial land:

*“At the time an area now zoned commercial is zoned for a CM, CM2 or CM3 base zone or a CMSO overlay, existing auto-oriented development which was allowed by a former*

*commercial zone covering the site and which would otherwise become non-conforming by the mixed use zoning, shall be allowed to continue as allowed developments.”*

**Limit Areas of Prohibition of Drive-Through Facilities.** Drive-through facilities are important adjuncts to grocery supermarket store development, both for their own drive-throughs (for pharmacy and grocery pick-up and for fuel stations) and for their pad users to help spread the cost of development. They do not generate traffic as a destination, as operate off pass-by traffic. They operate safely and do not have a history of unsafe operations in the City. Therefore, drive-throughs should not be prohibited broadly, but only in special areas such as the areas now proposed for CMSO zones west of 39th Avenue and the areas mapped to recognize the City’s Low-Rise “Trolley Car Era” Commercial Storefront areas. See attached map. The CE zone’s use limitations for drive throughs should be removed. In the small block areas of Portland, all CE sites will be within 50’ of an R zone. The buffer standards should be re-imposed as a flexible way to address the issue instead of a prohibition “overkill”.

We propose the following language to create preexisting development status for existing drive throughs, as follows:

**33.130.260 Drive-Through Facilities**

New drive-through facilities are allowed in the zones which are intended for auto-accommodating development. Existing, legally established facilities in all commercial/mixed use zones are allowed outright. The standards for drive-through facilities are stated in Chapter 33.224, Drive-Through Facilities.

- A. **CM1, CM2, CM3, CX, and CE zones.** In the CM1, CM2, CM3, CX, and CE zones, all legally established drive-through facilities in existence as of the effective date of the code, are allowed outright and are not subject to Chapter 33.258, Nonconforming Situations.
- B. **CM1, CM2, CM3, and CX zones.** Establishment of new drive-through facilities is prohibited in the CM1, CM2, CM3, and CX zones.
- C. **CE zone.** Establishment of new drive-through facilities is allowed in the CE zone, subject to the following:
  - 1. New drive-through facilities within 50 feet of a residential zone boundary must incorporate landscaping to the L2 standard between the drive-through facility and the residential zone.

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We very much appreciate the time that staff has taken to work with us to date. We offer to continue to work with staff through the hearing process on our proposed revisions to the code requested above and we request the formation of a PSC approved workshop for that purpose.

Respectfully submitted,

A handwritten signature in black ink that reads "Mark Whitlow". The signature is written in a cursive style with a long horizontal stroke at the end.

Mark D. Whitlow

MDW:sv  
Enclosures

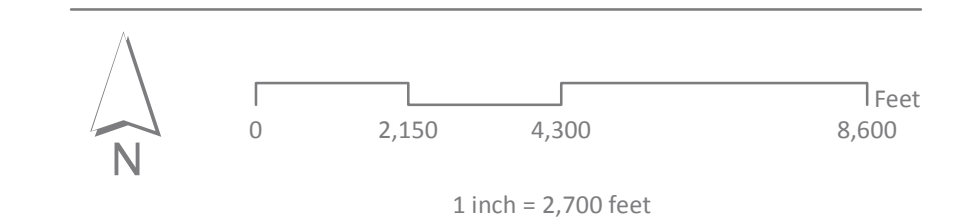


# CE ZONE & NON-CMSO RECOMMENDATIONS Portland, Oregon

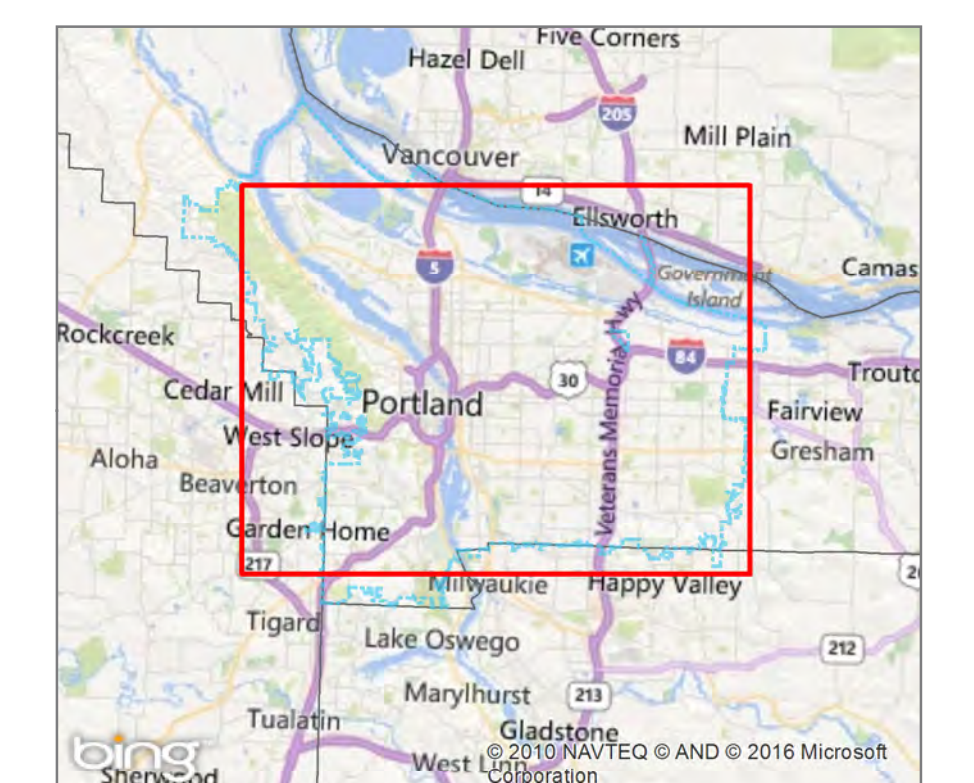
## LEGEND

- Recommended CE Areas
  - Recommended CMSO removals
  - Proposed CMSO
- Proposed Zones**
- CM1 - Mixed Commercial
  - CM2 - Commercial Mixed Use 2
  - CM3 - Commercial Mixed Use 3
  - CE - Commercial Employment
- Current Zones**
- CG (If no hatch, changing to other comp plan desig.)
- Traffic Classifications**
- Regional Trafficway
  - Regional Trafficway & Major City Traffic Street
  - Major City Traffic Street
  - Traffic Access Street
  - District Collector
  - Neighborhood Collector
- Freight Classifications**
- Major Truck Street
  - Priority Truck Street

**33.130.030.D:**  
*The Commercial Employment (CE) zone is a medium-scale zone intended for sites along corridors with a Neighborhood Collector or higher traffic classification, especially along civic corridors that are also Major Truck Streets or Priority Truck Streets. This zone is generally not appropriate in designated centers, except on a site that is currently developed in an auto-oriented manner and urban scale development is not economically feasible...*



SOURCE DATA: Metro RLS Lite Base Data, Aug 2014  
 GEOGRAPHIC PROJECTION: NAD 83 HARN, Oregon North Lambert Conformal Conic  
 Date: 5/17/2016 Map Created By: SHS  
 File: CE Area Recommendations Project No: 2160034.00

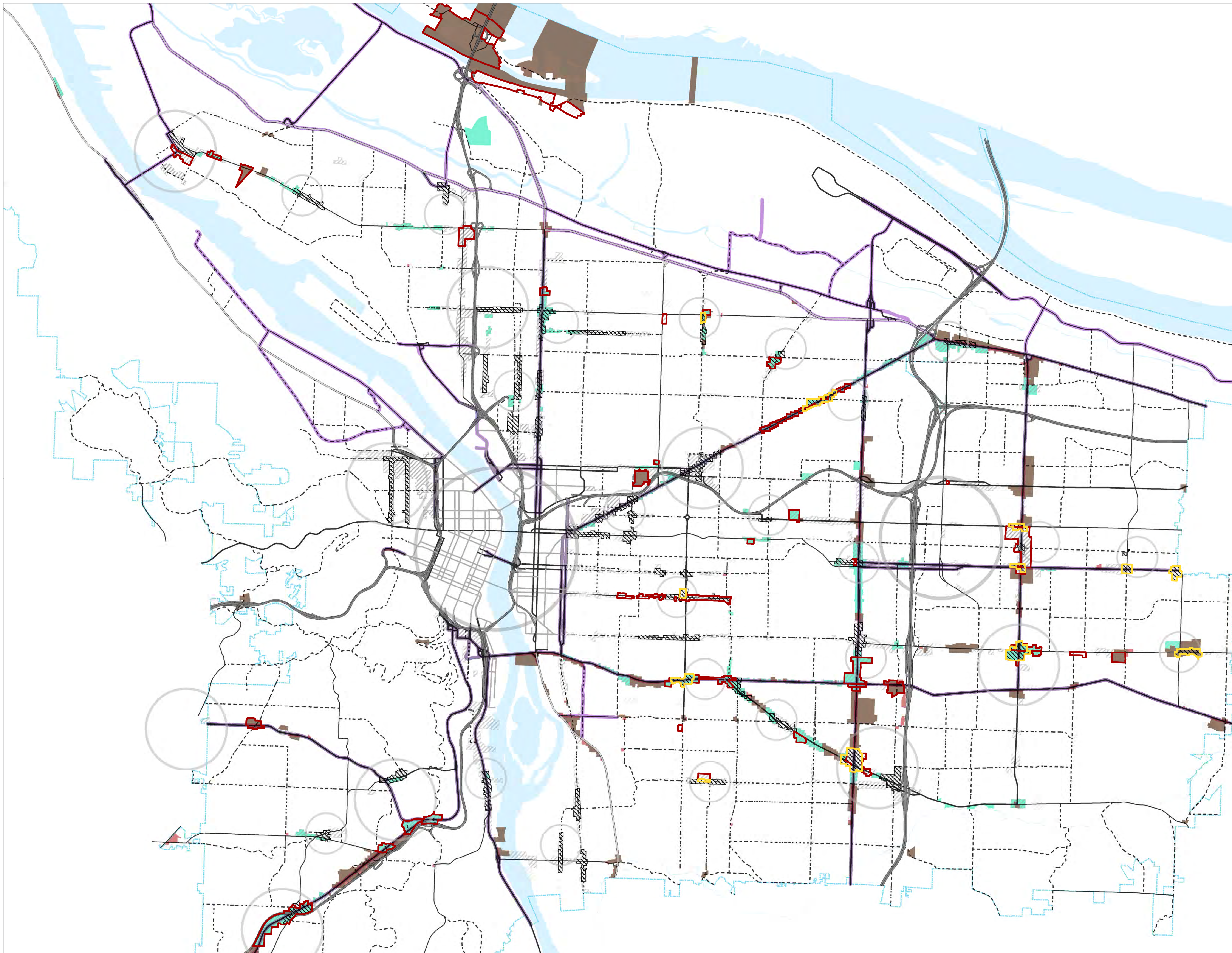


# MACKENZIE.

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## Whitlow, Mark (Perkins Coie)

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**From:** Whitlow, Mark (Perkins Coie)  
**Sent:** Thursday, December 24, 2015 10:36 AM  
**To:** Manning, Barry (Barry.Manning@portlandoregon.gov)  
**Cc:** 'RTF Participants'; Vogel, Stephanie (Perkins Coie)  
**Subject:** Portland Mixed Use Zones Project - RTF/ICSC GR Committee Preliminary Comments II

Barry,

This message continues to follow-up from our meeting with you and your staff on November 18th and provides additional preliminary comments from the first set provided in my email to you on November 19th. Since then we have hired consultants and are preparing a detailed set of industry comments and market analyses to send to you as soon as possible. In the interim on December 1st, I provided you with the packet of prior RTF communications with the Planning Director, Portland Planning Commission and Portland City Council circa 1989-1991, with the comment that the issues of concern then are essentially the same as the ones the retail segment of the industry has now:

- rampant down-zoning of general commercial land;
- over-application of building orientation standards for pedestrian and transit-oriented development in areas not suitable for that type of use or development
- resulting nonconformity of existing commercial uses and developments based on the above, which impedes economic growth and development; and
- general lack of any city-wide economic commercial retail policy to ensure an adequate inventory of commercial land to serve the City's wide spectrum of retail shopping needs, especially grocery, at all economic levels of the community.

You have asked me to provide as much detail as I can as soon as I can regarding what we are concerned about and what we need to see changed. We will take the basic position that:

- the new overlay should be applied when the subject area is served with 15 minute transit service with a demonstrated 50/50 mode split, with the overlay standards being revised to prevent non-conformity when applied
- CG land should only be converted to CE land (general commercial to commercial employment)
- CE purpose statement and standards should be revised to be more auto-oriented
- In all commercial zones, building orientation standards should only be applied to areas having 15 minute transit service, so we request a roll-back of the areas that are subject to building orientation, consistent with our testimony 20 years ago.
- we will offer specific case studies of why the proposed zoning doesn't work, including the existing Safeway store development at 221 NE 122nd & and the existing Albertsons store development at 5850 NE Prescott

We will provide more detail as soon as we can. In the interim, I would appreciate your early feedback. Thank you again for your time.

Best, Mark

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# MIXED USE ZONES PROJECT CASE STUDIES



February 16, 2016

Mark Whitlow, Perkins Coie  
Eric Hovee, E.D. Hovee  
Suzannah Stanley, Mackenzie

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# Introduction

## FOUR CASE STUDIES

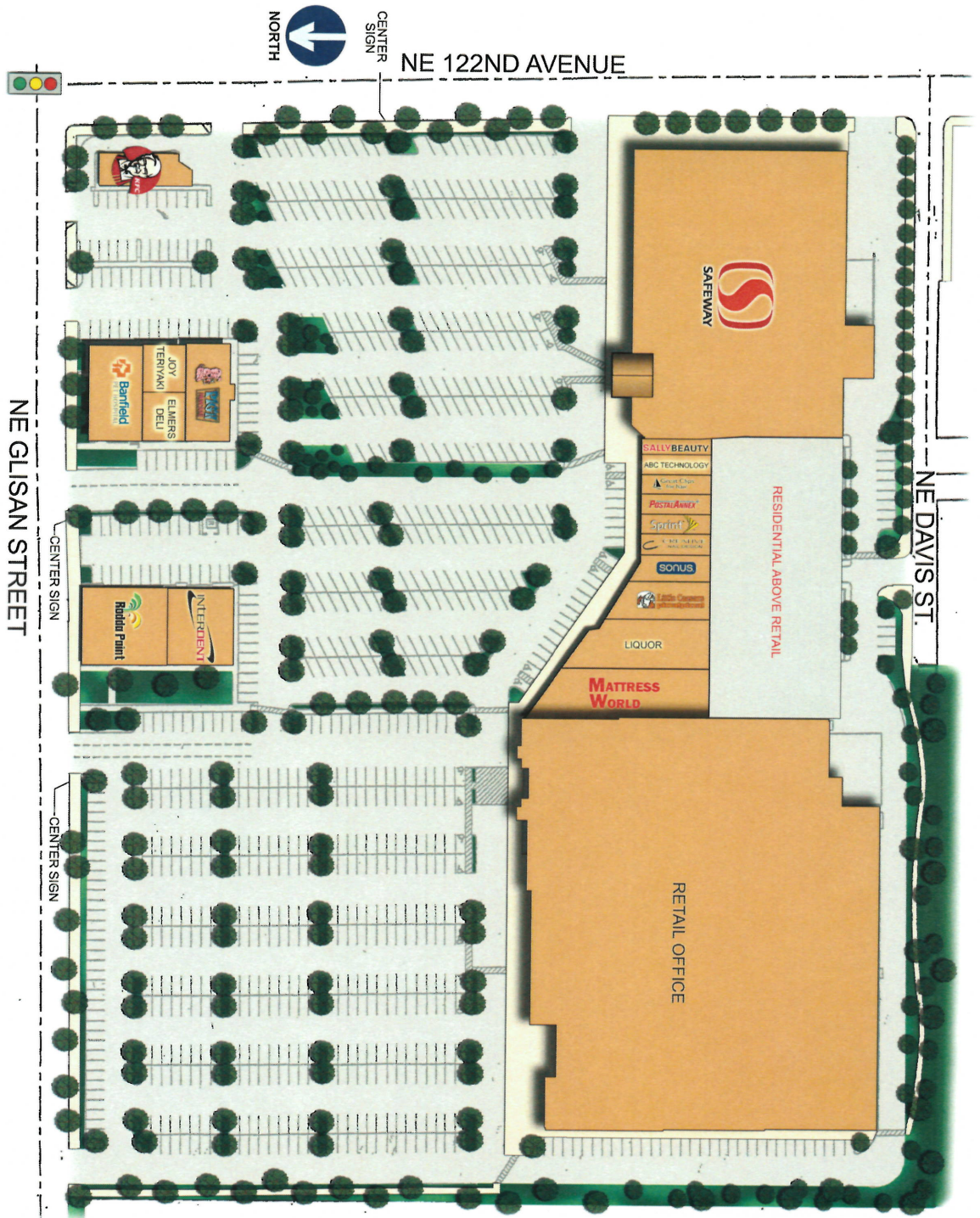
The following document presents four existing or recently permitted retail sites providing affordable and/or value-based grocery in northeast and southeast Portland. The sites were analyzed for their compliance with the proposed zoning language of the Mixed Use Zones project.

Applicable code sections with changes proposed are addressed. Code sections with which each site would not comply as built or recently permitted are shown in red.



# POWELL DEVELOPMENT

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## GLISAN STREET STATION



# 1: Safeway: 221 NE 122nd (Glisian Street Station)

## Existing retail development

**Current Zone:** CX (Central Commercial)  
**Proposed Zone:** CM3m (Commercial Mixed Use - 3), Centers Main Street Overlay zone (CMSO)  
**Site Area:** 768,629 SF (seven tax lots in development)  
**Building Area:** 330,949 SF (all buildings)

## SUMMARY

The existing development does not meet several of the proposed standards for the new base zone or CMSO. From the proposed base zone standards, maximum setbacks of 20' are allowed and setbacks must be improved for pedestrian use. Additionally, transit street main entrances are required for all buildings, at no more than 200' apart (none are currently provided). To meet CMSO standards, development at this site would have to have 70% of building facades to be within 20' of streets, with no more than 40% of the site's frontages for vehicle areas. At least 60% of facades must be windows. Additionally, a minimum FAR of 0.5 is required (currently there is 0.43 across the buildings and lots).

Also per the CMSO, vehicle access would be prohibited from transit streets (both 122nd and Glisan), meaning the site would be required to be accessed from NE Davis St, an approximately 30'-45' wide local street south of the Safeway building which currently only provides access to the private parking for the apartment development on the site.

## ANALYSIS

### Proposed base zone CM3:

- 33.130.205 Maximum FAR changing from 4:1 to 3:1 or 5:1 with bonuses
- 33.130.210 Maximum height decreasing from 75' to 65' before bonuses
- 33.130.215.C. Maximum Building Setbacks: 10' for zone but 20' for both 122nd and Glisan ("Civic Corridors" per Map 130-1). At least 50% of street-facing facades at ground level must meet max setback. (These must be met on two out of the three streets the site fronts—122nd and Glisan, since they are the highest classifications.) Existing buildings are within 20' of both streets at some locations, but less than 50% of all street-facing facades are within 20' (particularly western large building).
- 33.130.215.C. at least 50% of complying maximum setback areas must be improved for pedestrian use. Existing site does not meet this. Small plaza area at northeast corner of Safeway building on 122nd, two walkways to buildings on Glisan. New buildings would be required to be closer to frontages and setbacks improved for pedestrians.
- 33.130.222.B. Maximum building length: 110' per building (multiple buildings within 20' of street must be at least 20' apart when on same site). Existing Safeway building within 10' of 122nd is approx. 194' (not met). Street-facing facade on Glisan is approximately 374' long and set back approximately 428'. Smaller buildings at northeast corner are approximately 82' and 98' long within maximum setback.
- 33.130.222.C. Facade articulation: Applies to buildings 45'+ high—at least 25% of each facade within 20' of street must be divided into facade planes that are offset by at least 2'. (Assumed does not apply to subject site building, likely less than 45' high).
- 33.130.230.B. Ground floor window standard: 40% of street-facing facade within 20' of street must be windows (2-10' above-grade area). (Formerly this was 25% of the area between 2-9' above grade.) Less than 40% of 122nd facade or Glisan-facing facade of large building contain windows.
- 33.130.242.C. Transit Street Main Entrance location—no changes to commercial buildings standards. No main entrances provided on either Transit Street frontage, for any buildings (including smaller buildings on Glisan).
- 33.130.242.D. Transit Street Main Entrance distance between entrances—one entrance required for every 200' of building length within the maximum setback. Existing buildings do not meet setback or transit street main entrance locations, so cannot meet this standard.
- 33.130.260 Drive-Through Facilities: Prohibited in CM1, CM2, and CM3 zones. There is an A&W/KFC on corner of 122nd and Glisan.

### Proposed Centers Main Street Overlay:

- 33.415.100 Quick-vehicle servicing (fuel stations) would be prohibited. (Note: these are currently permitted by way of a specific exception in the existing East Corridor Plan District).
- 33.415.200 Active ground floor uses are required within 100' of a transit street (Glisan and 122nd) and must consist of 50% of the ground floor area. Met with retail uses.
- 33.415.300 Drive-through windows are prohibited. There is an A&W/KFC on corner of 122nd and Glisan.
- 33.415.310 A minimum FAR of 0.5:1 is required for all new development. (Existing: 0.43)
- 33.415.320 Maximum Building Setbacks: At least 70% of street-facing facade at ground level must meet max setback of the base zone. (On two out of the three streets the site fronts—122nd and Glisan, since they are the highest classifications.) Neither this nor the base zone standard of 50% is met.
- 33.415.330.B. Frontage limitation: No more than 40% of frontage of transit street can be used for vehicle areas or exterior display. Subject site has approx. 857' of drive or parking area on approx. 1,719' of frontage (50%). Not met.
- 33.415.330.C. Access to "on-site parking" or "vehicle areas" prohibited on 122nd and Glisan, which are transit streets. The site currently takes access from those two streets and Davis (to the apartments only).
- 33.415.340 Ground Floor Windows: On transit streets, 60% of street-facing facade must be windows. Less than 60% of 122nd facade or Glisan-facing facade of large building contain windows.
- 33.415.350.B. Transit street entrance frequency: 1 entrance per 100' of building length. No existing buildings have transit street entrances.

- 33.130.260 would allow drive-through facilities to be rebuilt, if demolished under the following circumstances:
  - The new drive-through must be part of a development with an FAR of at least 1:1.
  - Only one drive-through would be permitted.
  - The replacement drive-through must be built on the same lot.
  - A replacement drive through is not permissible if the original has been disused for 2 years or more.



## Mixed Use Zones Project Case Studies







## 2: Albertsons: 5850 NE Prescott

### Existing retail development

**Current Zone:** CGH (General Commercial w/ Aircraft Landing overlay)  
**Proposed Zone:** CM2m (Commercial Mixed Use – 2), CMSO  
**Site Area:** 160,675 SF (Albertson's lot only, 1N2E19DA 11500)  
**Building Area:** 47,600 SF

### SUMMARY

The existing 47,600 Albertson's store does not comply with several of the proposed base zone and overlay standards. Per the proposed base zone, the building would be required to be within 10' of both Prescott and Cully with building design (articulation, windows, transit street main entrances, building length) and site design standards (setbacks, improved for pedestrian use). Per the CMSO, the minimum FAR would be 0.5 (currently the lot has 0.3) and no vehicle access would be allowed from either Prescott or Cully. On those streets, no more than 40% of the frontages could be for parking/vehicle areas. Additional ground floor window and transit street entrance standards would apply.

### ANALYSIS

#### Proposed base zone CM2:

- No significant changes to height or maximum FAR (went from 3:1 to 2.5:1)
- 33.130.215.C. Maximum Building Setbacks: 10'. At least 50% of street-facing facade at ground level must meet max setback. (These must be met on two out of the three streets the site fronts—Prescott and Cully, since they are the highest classifications.) Existing building is within 10' from Cully at corner, but less than 50% of Cully street-facing facade is within 10' and none of facade facing Prescott is within 10'.
- 33.130.215.C. at least 50% of complying maximum setback areas must be improved for pedestrian use. Existing site does not meet this—only landscape area is provided.
- 33.130.222.B. Maximum building length: 10' per building (multiple buildings within 20' of street must be at least 20' apart when on same site). Existing building is approx. 176' long along Cully.
- 33.130.222.C. Facade articulation: Applies to buildings 35'+ high—at least 25% of each facade within 20' of street must be divided into facade planes that are off-set by at least 2'. (Assumed does not apply to subject site building, likely less than 35' high.)
- 33.130.230.B. Ground floor window standard: 40% of street-facing facade within 20' of street must be windows (2-10' above-grade area). (Formerly this was 25% of the area between 2-9' above grade.) Existing building has no windows on either street-facing facade and minimal windows on the northern facade that is required to face Prescott.
- 33.130.242.C. Transit Street Main Entrance location—no changes to commercial building standards. The building does not have a main entrance on either transit street (Cully or Prescott).
- 33.130.242.D. Transit Street Main Entrance distance between entrances—one entrance required for every 200' of building length within the maximum setback. Existing building does not meet setback or transit street main entrance locations, so cannot meet this standard.
- 33.130.260 Drive-Through Facilities: Prohibited in CM1, CM2, and CM3 zones. None exist.

#### Proposed Centers Main Street Overlay:

- 33.415.100 Quick-vehicle servicing (i.e. fuel stations) would be prohibited. (These are currently permitted outright.) Existing development on site includes a Mobil fuel center.
- 33.415.200 Required Ground Floor Active Use: If building is within 100' of a transit street (Prescott and Cully), 50% of ground floor area must be an active use such as retail. Existing building meets this with Retail use.
- 33.415.300 Drive-through windows, including replacement drive-throughs, are prohibited.
- 33.415.310 A minimum FAR of 0.5:1 is required for all new development. (Current is 0.3.)
- 33.415.320 Maximum Building Setbacks: At least 70% of street-facing facade at ground level must meet max setback of the base zone. (On two out of the three streets the site fronts—Prescott and Cully, since they are the highest classifications.) Neither this nor the base zone standard of 50% is met.
- 33.415.330.B. Frontage limitation: No more than 40% of frontage of transit street can be used for vehicle areas or exterior display. Subject site has approx. 167' of parking area on approx. 364' of frontage (45%). Not met.
- 33.415.330.C. Access to "on-site parking" or "vehicle areas" prohibited on Prescott and Cully, which are transit streets. The site currently takes access from those two streets and Skidmore.
- 33.415.340 Ground Floor Windows: On transit streets, 60% of street-facing facade must be windows. No windows exist on Cully facade.
- 33.415.350.B. Transit street entrance frequency: 1 entrance per 100' of building length. Existing building has no transit street entrances.

- 33.130.260 would allow drive-through facilities to be rebuilt, if demolished under the following circumstances:
  - The new drive-through must be part of a development with an FAR of at least 1:1.
  - Only one drive-through would be permitted.
  - The replacement drive-through must be built on the same lot.
  - A replacement drive-through is not permissible if the original has been disused for 2 years or more.







### 3: Grocery Outlet/Dollar Tree: 10721 NE Sandy (Parkrose)

*Shell recently permitted*

**Current Zone:** CGhx (General Commercial), (Aircraft Landing Zone, PDX Noise Impact Zone overlays)

**Proposed Zone:** CM2hxm (Aircraft Landing Zone, PDX Noise Impact Zone, CM50 overlays)

**Site Area:** 54,336 SF

**Building Area:** 22,860 SF

#### SUMMARY

The recently approved site plan does not comply with several of the proposed code changes—specifically, improving areas within the maximum setback for pedestrian use, maximum building length, ground floor window standards (of the base zone or overlay), minimum FAR in overlay, or vehicle frontage limitation in overlay.

#### ANALYSIS

##### Proposed base zone CM2:

- No significant changes to height or maximum FAR (went from 3:1 to 2.5:1)
- 33.130.215.C. Maximum Building Setbacks: 10' for zone but 20' for this portion of Sandy Blvd ("Civic Corridor" per Map 130-1). At least 50% of street-facing facade at ground level must meet max setback.
- 33.130.215.C. at least 50% of complying maximum setback areas must be improved for pedestrian use. Current site plan does not meet this. (410' landscape area is provided)
- 33.130.222.B. Maximum building length: 110' per building (multiple buildings within 20' of street must be at least 20' apart when on same site). Current site plan building is approx. 130' long within 20' of Sandy.
- 33.130.222.C. Facade articulation: Applies to buildings 35'+ high—at least 25% of each facade within 20' of street must be divided into facade planes that are off-set by at least 2'. (Assumed does not apply to subject site building, likely less than 35' high.)
- 33.130.230.B. Ground floor window standard: 40% of street-facing facade within 20' of street must be windows (2-10' above-grade area). (Formerly this was 25% of the area between 2-9' above grade.) Elevations not provided for Dollar Tree/Grocery Outlet building but may not meet this standard.
- 33.130.242.C. Transit Street Main Entrance location—no changes to commercial building standards
- 33.130.242.D. Transit Street Main Entrance distance between entrances—one entrance required for every 200' of building length within the maximum setback. Current site plan meets this with one entrance and approx. 130' of building length on the transit street
- 33.130.260 Drive-Through Facilities: Prohibited in CM1, CM2, and CM3 zones.

##### Proposed Centers Main Street Overlay:

- 33.415.200 Required Ground Floor Active Use: If building is within 100' of a transit street, 50% of ground floor area must be an active use such as retail. Site plan meet this.
- 33.415.310 Minimum FAR: 0.5:1. For 54,336 SF site, that's 27,168 SF of building. Approved building is only 22,860 SF or 0.42:1. Not met.
- 33.415.320 Maximum Building Setbacks: At least 70% of street-facing facade at ground level must meet max setback of the base zone.
- 33.415.330.B. Frontage limitation: No more than 40% of frontage of transit street can be used for vehicle areas or exterior display. Subject site has approx. 130' of parking area on approx. 260' of frontage (50%). Not met.
- 33.415.340 Ground Floor Windows: On transit streets, 60% of street-facing facade must be windows. Elevations not provided for Dollar Tree/Grocery Outlet building but may not meet this standard.)
- 33.415.350.B. Transit street entrance frequency: 1 entrance per 100' of building length. Subject site plan has 1 entrance per 130' of building (met).



## 4: Winco: 7901 SE Powell Blvd (Powell Street Station)

*Tenant improvement for Winco recently permitted; permit for site upgrades recently permitted*

**Current Zone:** CG (General Commercial)  
**Proposed Zone:** CM2 (Commercial Mixed Use - 2)  
**Site Area:** 393,899 SF  
**Building Area:** 117,766 SF

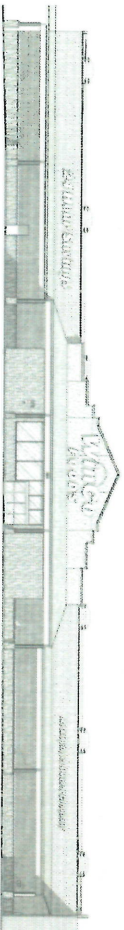
### SUMMARY

The existing building does not meet maximum setback standards of new base zone, due to site configuration in L-shape around another site, these would be difficult to meet even for new development. Additionally, the existing building does not meet the new pedestrian improvement area standards, building length, or transit street main entrance standards.

### ANALYSIS

#### Proposed base zone CM2:

- No significant changes to height or maximum FAR (went from 3:1 to 2.5:1)
- 33.130.215.C, Maximum Building Setbacks: 10' for zone but 20' for both 82nd and Powell ("Civic Corridors" per Map 130-1). At least 50% of street-facing facade at ground level must meet max setback. (These must be met on two out of the three streets the site fronts—82nd and Powell since they are the highest classifications.) Existing building is within 20' of both streets at corners, but less than 50% of either street-facing facade is within 20'.
- 33.130.215.C, at least 50% of complying maximum setback areas must be improved for pedestrian use. Existing site does not meet this—no walkways or pedestrian plazas between street and building (and no complying setback areas).
- 33.130.222.B, Maximum building length: 110' per building (multiple buildings within 20' of street must be at least 20' apart when on same site). Existing building within setback is approx. 90' maximum, but building does not meet maximum setback requirements. Street-facing facade on Powell is approximately 580' long.
- 33.130.222.C, Facade articulation: Applies to buildings 35'+ high—at least 25% of each facade within 20' of street must be divided into facade planes that are off-set by at least 2'. (Assumed does not apply to subject site building, likely less than 35' high.)
- 33.130.230.B, Ground floor window standard: 40% of street-facing facade within 20' of street must be windows (2-10' above-grade area). (Formerly this was 25% of the area between 2-9' above grade.) Both facades along streets are close to 100% windows, but the building does not meet the street-facing facade requirement.
- 33.130.242.C, Transit Street Main Entrance location—no changes to commercial building standards. Entrance on SE Powell is at a 45 degree angle (meets standard), but no entrance provided on 82nd.
- 33.130.242.D, Transit Street Main Entrance distance between entrances—one entrance required for every 200' of building length within the maximum setback. Existing building does not meet setback or transit street main entrance locations, so cannot meet this standard.
- 33.130.260 Drive-Through Facilities: Prohibited in CM1, CM2, and CM3 zones. None exist on subject site but there is an A&W/KFC on corner of Powell and 82nd.



- 33.130.260 would allow drive-through facilities to be rebuilt if demolished under the following circumstances:
  - The new drive-through must be part of a development with an FAR of at least 11.
  - Only one drive-through would be permitted.
  - The replacement drive-through must be built on the same lot.
  - A replacement drive-through is not permissible if the original has been disused for 2 years or more.



# POLICY CONCLUSIONS

## Key Findings

*The City of Portland currently lacks a Comprehensive Plan goal regarding food systems.*

The City of Portland can influence food systems through the consideration of food issues during the planning process and through support of policies, programs, and investment priorities conducive to expanding food access, urban agriculture and encouraging healthy behavior choices.

The Bureau of Planning and Sustainability can focus efforts for the Portland Plan to direct urban development in a manner supportive of providing opportunities to access healthful food and grow food locally. A planning goal describing our commitment to food access and urban agriculture would support community values around this issue and bring food into the City's comprehensive planning framework.

Without food systems as a consideration within planning, future decisions made through the Portland Plan may cause unintended consequences that work counter to our community's physical health. Food is related to many issues of importance that the Portland Plan is undertaking: climate change, affordability, human health, neighborhood health, urban form and more, and decisions made in these areas will impact the food environment.

*The City's current Comprehensive Plan does not include policies related to healthful food access.*

Access to healthful food is one of the most significant health-related policy gaps in the City's current Comprehensive Plan.

Potential policy areas to promote greater access to healthful foods should center on improving walkability and access to healthy food outlets; removing zoning and land use barriers that restrict the siting of healthful food outlets; removing obstacles to the growing and sale of food in urban areas; providing land for growing food in appropriate locations; encouraging the planting of fruit and nut trees in appropriate locations; and utilizing incentives, economic development tools, and education to support the expansion of local producers, processors, distributors, and retailers.

*Food comes up as a major component to several issues under exploration in the Portland Plan.*


- **20-minute neighborhoods:** Grocery access has already been identified as a key feature of the 20-minute neighborhood. In early outreach, the public has suggested community gardens as being important. Programming urban plazas, or community gathering places, with events like farmers markets, can also contribute to walkable, vibrant communities.
- **Growth:** In many U.S. cities, urban agriculture (UA) is thriving where cities are in decline and there is much vacant land available. We have an opportunity with the Portland Plan to define UA for a growing, largely land-locked city. There are many creative ideas for providing more of our food without expanding the urban growth boundary or losing growth potential within the boundary.
- **Affordability:** As housing costs rise, less money is available for other basic needs like food. While transportation is certainly key and accounts for a larger proportion of the household budget, food costs are significant and are often the expenditure that gets reduced when other costs rise. Key to the affordability discussion is the ability to meet all basic needs, including healthful food.
- **Community resiliency:** There is growing interest in preparing communities to face unexpected turmoil or deep changes due to climate change, peak oil, and a changing economy. As we seek to address these challenges and prepare for an uncertain future, food is a key issue in the discussion.

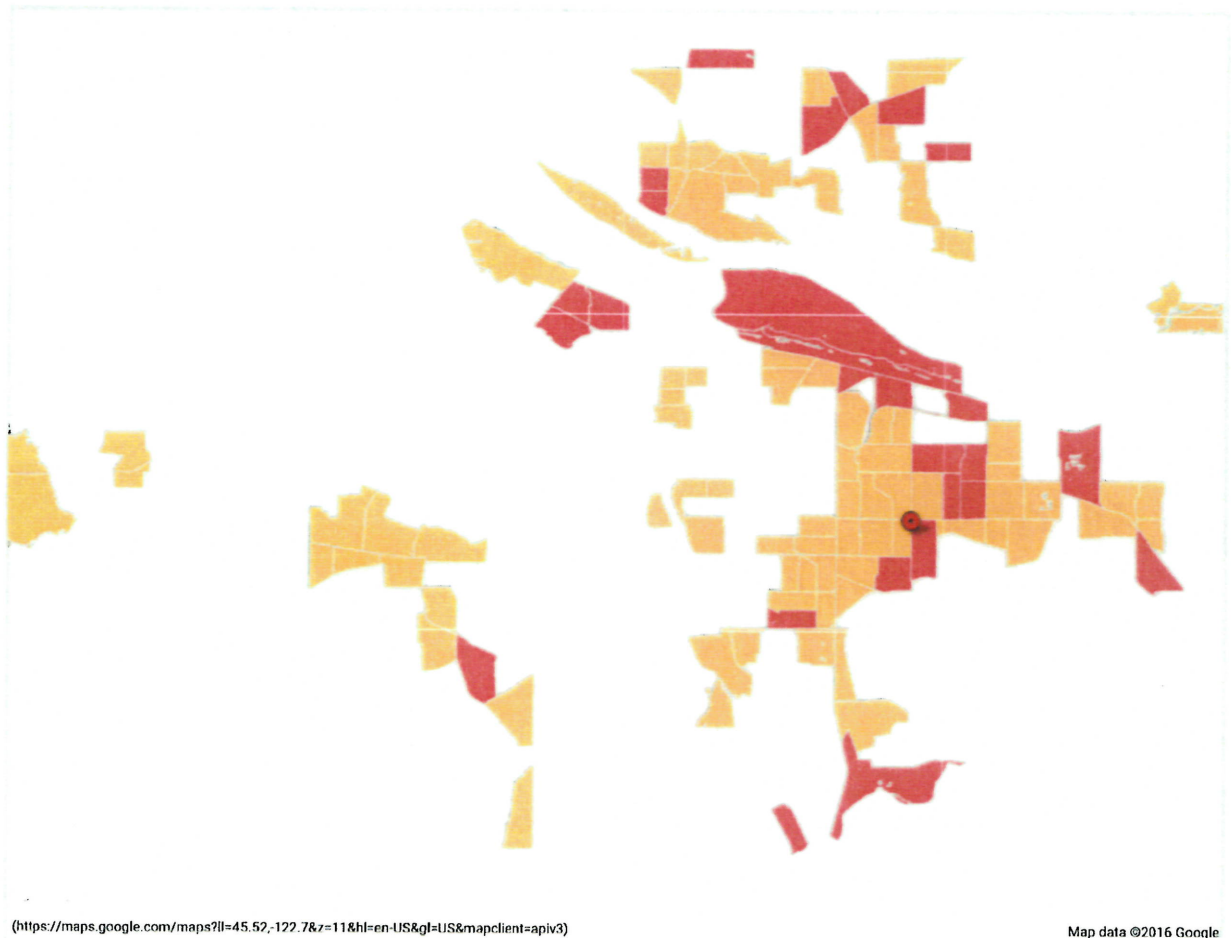


(<http://www.oregonlive.com/>)

## Portland-area food deserts

Below is a map of low-income census tracts in the Portland metro area where the U.S. Department of Agriculture has determined that a significant number or share of residents is more than **a half-mile** or **a mile** from the nearest supermarket in urban areas or more than 10 miles from the nearest supermarket in rural areas. For a nationwide map, **see the USDA site. (<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx>)** Read more: **Grocery Outlet's opening in east Portland brings promise to an area lacking supermarkets ([http://www.oregonlive.com/portland/index.ssf/2013/03/grocery\\_outlets\\_opening\\_in\\_eas.html](http://www.oregonlive.com/portland/index.ssf/2013/03/grocery_outlets_opening_in_eas.html))**

 New Grocery Outlet store

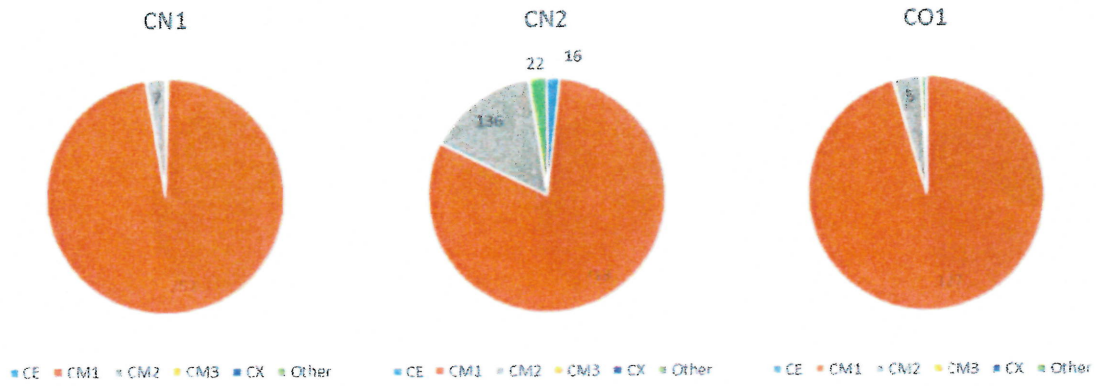


Sources: U.S. Department of Agriculture, U.S. Census Bureau; Map: Mark Friesen/The Oregonian

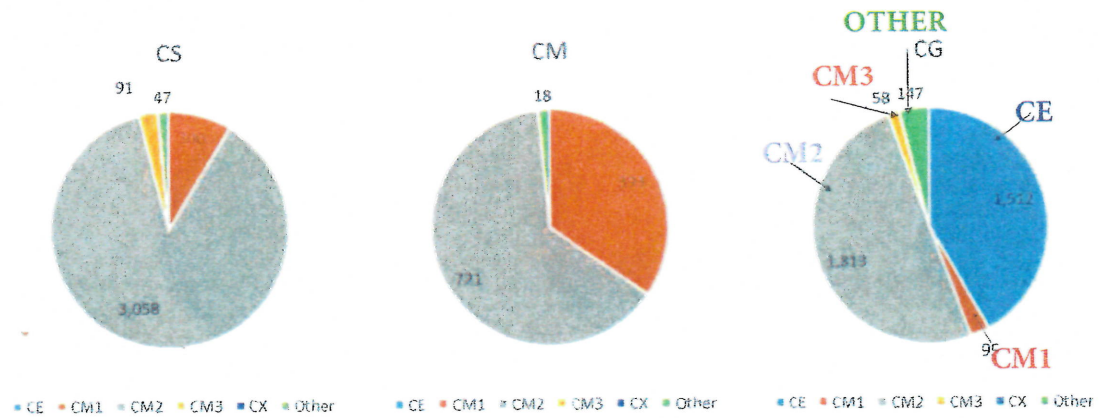
**Figure VII-1: Commercial/Mixed Use Rezoning Summary**

Number of properties assigned to each new zone, by old zones. Other = non Commercial/Mixed Use (EG1, EG2, R1, etc.)

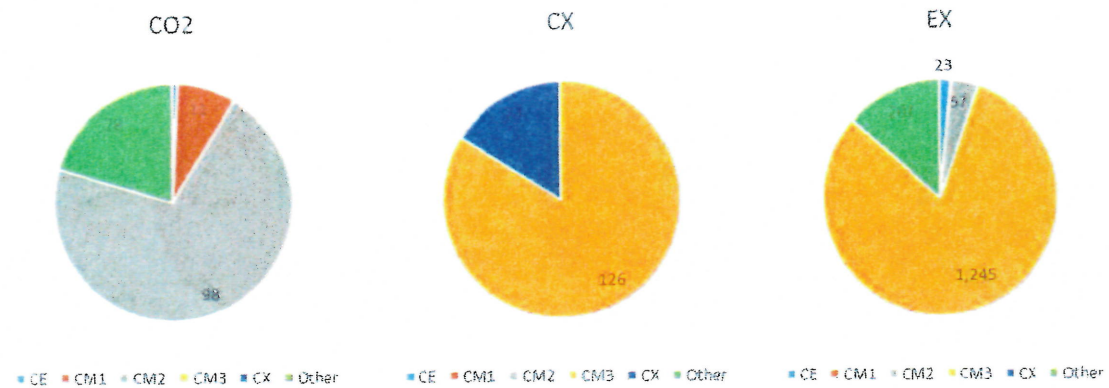
**Small scale commercial zones**



**Medium scale commercial zones**



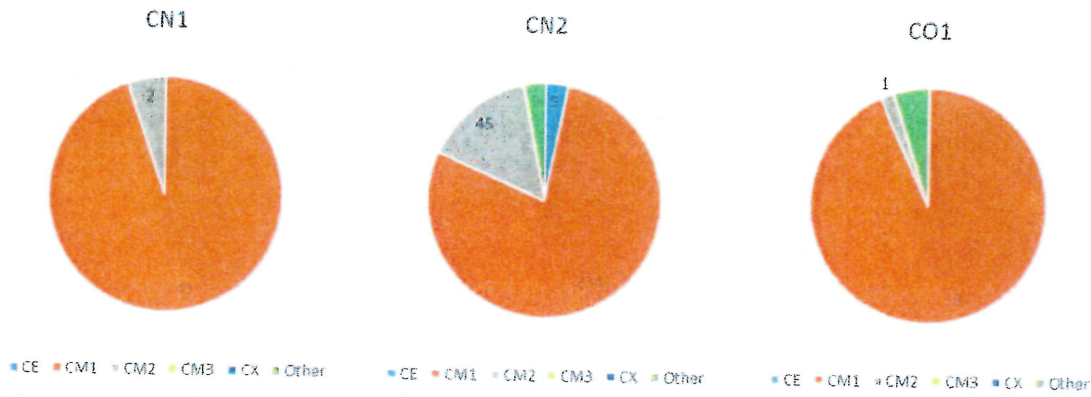
**Medium and large scale commercial zones**



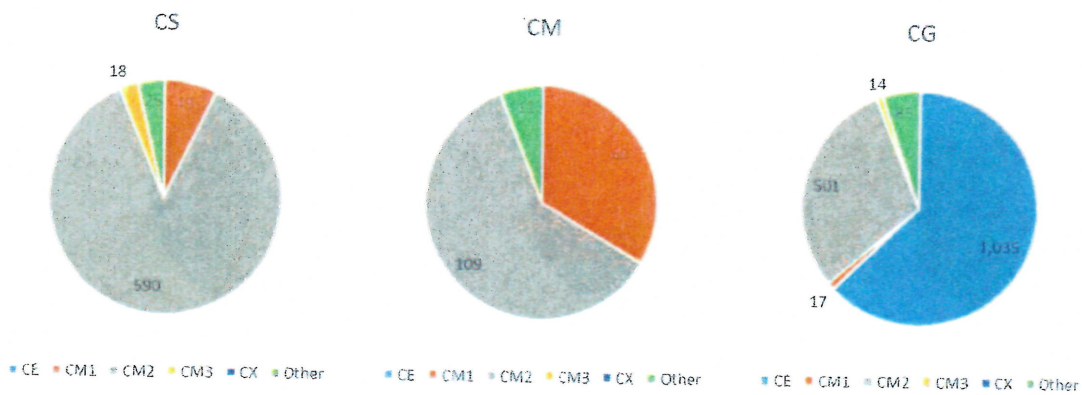
**Figure VII-2: Commercial/Mixed Use Rezoning Summary**

Number of acres assigned to each new zone, by old zones. Other = non Commercial/Mixed Use (EG1, EG2, R1, etc.)

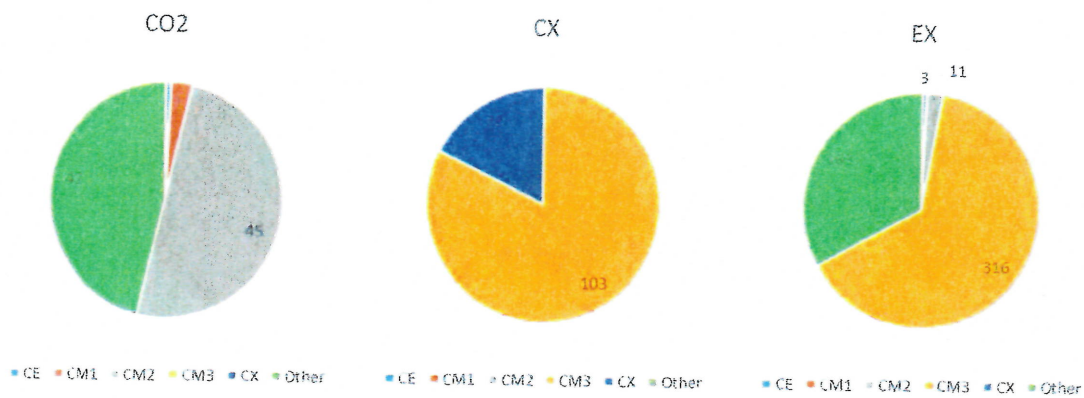
**Small scale commercial zones**



**Medium scale commercial zones**



**Medium and large scale commercial zones**



## Whitlow, Mark (Perkins Coie)

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**From:** Whitlow, Mark (Perkins Coie)  
**Sent:** Tuesday, March 08, 2016 2:20 PM  
**To:** 'Armstrong, Tom'  
**Cc:** Engstrom, Eric; Kountz, Steve; Manning, Barry; Cunningham, Bill; Buono, Shannon; Dunphy, Jamie; Grumm, Matt; Eric Hovee (eric@edhovee.com); Suzannah Stanley (SStanley@mcknze.com); 'Gary Oxley'; 'Bob LeFeber'; 'Joseph Angel'; Vogel, Stephanie (Perkins Coie)  
**Subject:** RE: Retail policies in Comp Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom,

We wish to thank you and your BPS colleagues for being generous with your time to work with us since late last year. BPS has made some helpful changes based on our comments, for which we also thank you.

Our goal is to reestablish the commercial zoning and commercial development standards needed for the continued viability of the automobile mode of Portland's multimodal system, consistent with the Portland Zoning Code's definition of "auto-accommodating":

*Auto-Accommodating Development. Development which is designed with an emphasis on customers who use autos to travel to the site, rather than those which have an emphasis on pedestrian customers. This type of development usually has more than the minimum required number of parking spaces. The main entrance is oriented to the parking area. In many cases, the building will have parking between the street and the building. Other typical characteristics are blank walls along much of the facade, more than one driveway, and a low percentage of the site covered by buildings.*

We look forward to the next draft, and we will take you up on the offer to work with BPS in the following months to seek an accord wherever possible.

Mapping is as important to us as the text, so we will urge owners of commercial land to make their mapping requests to the PSC in May. We do believe that the CE zone should be made more auto-accommodating along Major City Traffic Streets and District Collectors and that more land should be zoned CE, especially land heavily populated with existing drive-through developments.

Regarding our EOA concerns, the state's administrative rule to Goal 9 includes "the full spectrum of retail" as "other employment". We think that the term "full spectrum" has meaning and creates an obligation to conduct a layered analysis of at least the different basic types of land inventories needed for auto-accommodating versus transit & pedestrian-oriented retail development opportunities. Providing an adequate inventory of buildable commercial land zoned for "retail" does not satisfy the Goal 9 requirement to provide an adequate inventory of land zoned for the "full spectrum of retail". We look forward to your response on this issue.

Thank you, again, for your time and constructive comments.

Best, Mark

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Portland, OR 97209-4128  
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E. MWhitlow@perkinscoie.com





Mayor Charles Hales  
Portland City Council  
c/o Council Clerk  
1221 SW 4th Avenue, Room 130  
Portland, OR 972014

January 4, 2016

VIA EMAIL

**Re: 2035 Comprehensive Plan Testimony**

Dear Mayor Hales and Council Members:

I have been a retail broker active in the Portland region for almost 20 years. I have been fortunate to represent some great retailers over these years, including large-format operators selling affordable groceries. These grocery operators need properly zoned commercial sites with access in the close-in urban area to allow their loyal customers to shop local and not have to drive out to their stores in the suburbs to save on their shopping. Appropriate zoning for these grocery operators would allow traditional horizontal development with ample off-street parking and convenient access. There are few, if any, sites in Portland that are large enough with appropriate zoning to accommodate traditional grocery stores.

It would be great if in this round of amendments to the Comprehensive Plan a concise retail policy could also be adopted to provide better direction in the zoning code implementation, especially now that the Zoning Code is also being amended without that needed guidance. With appropriate retail zones that allow market-based development, land within existing centers and commercial strips might be assembled into sites large enough to accommodate grocers providing affordable food to customers using all modes of transportation, including the auto. The City needs to create some retail zones with safe harbors for auto-oriented grocery store and related pad development in the city's commercial zoning regulations that make development or redevelopment within those zones affordable for these grocery operators.

For the above reasons, I urge you to adopt the retail policy proposed by the RTF and ICSC into the City's Comprehensive Plan to give better guidance to the City in adopting new amendments to the city's Zoning Code. Thank you for the opportunity to comment.

Sincerely,

Robert L. LeFeber  
Principal Broker

cc: Tom Anderson, Eric Engstrom, and Susan Anderson. BPS  
RTF/ICSC GR Committee

COMMERCIAL  
REALTY  
ADVISORS



NORTHWEST, LLC

Mayor Charles Hales  
Portland City Council  
c/o Council Clerk  
1221 SW 4th Avenue, Room 130  
Portland, OR 972014

April 22, 2016

VIA EMAIL

**Re: 2035 Comprehensive Plan Testimony**

Dear Mayor Hales and Council Members:

This letter supplements my January 4<sup>th</sup> letter and verbal testimony on April 14<sup>th</sup>. As stated at the hearing, I urge you to: oppose P32 the proposed policy on drive-thrus; support P44 on grocery stores; support P51 the proposed policy to consider the market when proposing new development regulations; and support P60 the proposed policy to provide an adequate supply of land for all types of retail.

CRA represents great retailers including higher end grocers and larger format grocers selling more affordable goods. Grocery operators need auto-accommodating commercial sites of sufficient size in convenient locations with good auto and transit access to satisfy "the widest range of retail" from upper end to value-based grocery. People need a wide range of goods to truly make Portland a complete community. If they can not get what they want in Portland evidence shows they will travel to the suburbs or outer regions of Portland to get what they need. This adds unnecessary trips and disadvantages those without cars or direct transit access who then resort to unhealthy food choices.

Appropriate zoning for grocery stores would allow traditional horizontal development, drive-thrus, ample off-street parking and convenient access. There are few, if any, undeveloped sites in Portland that are large enough with appropriate zoning to accommodate traditional grocery stores. The problem is particularly acute with larger format affordable grocers. Larger format discount grocery customers typically travel from a greater distance and stay longer thus requiring more parking. Preferred parking ratios are at least 4 spaces per 1,000 sf of building and preferable 5 spaces per 1,000 sf. They have lower profit margins in order to offer lower prices. They can not afford higher land values, expensive design requirements and especially structured parking. A 50,000 sf store needs around 5 acres for parking, circulation, pedestrian connections and landscaping. Hopefully these new comprehensive plan policies will lead to more appropriate sites. Thank you again for the opportunity to comment.

Sincerely,

Robert L. LeFeber, Principal Broker

cc: Tom Anderson, Eric Engstrom, and Susan Anderson. BPS  
RTF/ICSC GR Committee



- C. Maximum building setbacks.** Except as stated in Subsection E., the maximum building setback standards are stated below.
1. Maximum setback standards. Unless otherwise specified, the maximum a building can be set back from a street lot line is 10 feet, except on Civic Corridors shown on Map 130-1, where the maximum set back is 20 feet, and street frontages in a CE zone abutting Major City Traffic or District Collector streets, where there is no maximum setback. At least 50 percent of the length of the ground level street-facing facade of the building must meet the maximum setback standard.
  2. Applying the standard.
    - a. Where an existing building is being altered, the standards apply to the ground level, street-facing facade of the entire building. See Figures 130-4 and 130-5.
    - b. Where there is more than one building on the site, the standards of this paragraph apply to the combined ground level, street-facing facades of all of the buildings. See Figures 130-6 and 130-7.
    - c. In the CM1, CM2, CM3, and CX zones, and in the CE zone within a Pedestrian District, if the site has street lot lines on three or more streets, the maximum setback standard only applies to two of the streets. When this occurs, the standard must be applied to the streets with the highest transit street classifications. If the site is a through lot, the maximum setback standard only applies to the street with the highest transit street classification. If multiple streets have the same highest transit street classification, the applicant may choose which street or streets to apply the standard.
    - d. In the CE zone outside of pedestrian districts, the maximum setback standard only applies to transit streets unless the site does not have a street lot line on a transit street. If the site does not have a street lot line on a transit street, then the maximum setback standard applies to one street, and if there is more than one street, the applicant may choose which street to apply the standard. If the site has street lot lines on three or more transit streets, the maximum setback standard applies only to two of the streets. When this occurs, the standard must be applied to the streets with the highest transit classification. If multiple transit streets have the same highest street classification, the applicant may choose which streets to apply the standard.
    - e. For buildings where all of the floor area is in residential use, the street-facing facade of an open porch that meets the following standards is included as part of the ground level, street-facing facade of the building:
      - (1) For houses, attached houses, manufactured homes and duplexes, the porch must be at least 25 square feet in area. For multi-dwelling structures, the porch must be at least 9 feet wide and 7 feet deep;
      - (2) The porch must have at least one entrance facing the street; and

**Table 130-2  
Summary of Development Standards in Commercial/Mixed Use Zones**

<b>Standards</b>	<b>CM1</b>	<b>CM2</b>	<b>CM3</b>	<b>Cx</b>	<b>CE</b>
Maximum FAR (see 33.130.205, and 33.130.212 [bonus FAR])	1.5 to 1	2.5 to 1	3 to 1	4 to 1	2.5 to 1
Base Height (see 33.130.210.B.1)	35 ft.	45 ft.	65 ft.	75 ft.	45 ft.
Step-down Height (see 33.130.210.B.2)					
- Within 10 ft. of street lot line adjacent to street < 70 ft. wide	NA	NA	55 ft.	NA	NA
- Within 25 ft. of lot line abutting RF - R2.5 Zones	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
- Within 25 ft. of lot line abutting R3, R2, R1 Zones	NA	45 ft.	45 ft.	45 ft.	45 ft.
- Within 15 ft. of lot line across a local service street from RF - R2.5 Zones	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
- Within 15 ft. of lot line across a local service street from R3, R2, R1 Zones	NA	45 ft.	45 ft.	45 ft.	45 ft.
Bonus Height (see 33.130.212)	See Table 130-3	See Table 130-3	See Table 130-3	See Table 130-3	See Table 130-3
Min. Building Setbacks					
- Street Lot Line	none	none	none	none	none
- Street Lot Line abutting selected Civic Corridors	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.
- Street Lot Line across a local street from an RF - R1 Zone	none	5 or 15 ft.	5 or 15 ft.	5 or 15 ft.	5 or 15 ft.
- (see 33.130.215.B)					
Min. Building Setbacks					
- Lot Line Abutting OS, RX, C, E, or I Zoned Lot	none	none	none	none	none
- Lot Line Abutting RF - RH Zoned Lot (see 33.130.215.B)	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.
Max. Building Setbacks					
- Street Lot Line	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.
- Street Lot Line Abutting Selected Civic Corridors	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.
- <u>Lots Abutting Major City Traffic or District Collector Streets</u> (see 33.130.215.C)	NA	NA	NA	NA	none
Max. Building Coverage (% of site area)					
- Inner Pattern Area	85%	100%	100%	100%	85%
- Eastern, Western, and River Pattern Areas (see 33.130.220)	75%	85%	85%	100%	75%
Min. Landscaped Area (% of site area) (see 33.130.225)	15%	15%	15%	none	15%
Landscape Buffer Abutting an RF - RH Zoned Lot (see 33.130.215.B)	10 ft. @ L3	10 ft. @ L3	10 ft. @ L3	10 ft. @ L3	10 ft. @ L3
Required Residential Outdoor Area (see 33.130.228)	Yes	Yes	Yes	No	Yes
Ground Floor Window Standards (see 33.130.230)	Yes	Yes	Yes	Yes	Yes

**C. On-site locations of vehicle areas.**

1. Location of vehicle areas. The allowed on-site location of all vehicle areas is stated in Table 266-3.
2. Building setbacks for structures that contain vehicle areas.
  - a. Structures that contain vehicle areas are subject to the building setbacks of the base zone, where exiting in a forward motion is provided.
  - b. Structured parking that does not allow exiting in a forward motion in R Zones is subject to the garage entrance setback standard of the base zone.
  - c. Structured parking that does not allow exiting in a forward motion in C, E, or I Zones must be set back 18 feet from the street lot line.
3. Frontage limitation.
  - a. The standard of this subparagraph applies outside the Central City plan district in the R3, R2 and R1 zones. No more than 50 percent of the frontage on a street may be used for vehicle areas. On sites with more than one street frontage, this standard applies to the street with the highest transit designation. If two streets have the same highest transit classification, the applicant may choose on which street to meet the standard. Sites where there is less than 100 square feet of net building area are exempt from this standard.
  - b. The standard of this paragraph applies outside the Central City plan district in the RH, RX, IR, CM1, CM2, CM3, CE, CN, CO, CG, CX, EG1, and EX zones. Where vehicle areas are adjacent to a transit street or a street in a Pedestrian District, no more than 50 percent of the frontage on the transit street or street in a Pedestrian District may be used for vehicle areas. Sites where there is less than 100 square feet of net building area and street frontages in a CE zone abutting Major City Traffic or District Collector streets are exempt from this standard.

**33.130.242 Transit Street Main Entrance**

- A. Purpose.** Locating the main entrance to a use on a transit street provides convenient pedestrian access between the use and public sidewalks and transit facilities, and so promotes walking and the use of transit.
- B. Applicability.**
1. Generally. All sites with at least one frontage on a transit street, and where any of the floor area on the site is in nonresidential uses, or residential use in a multi-dwelling structure, must meet the following standards. If the site has frontage on more than one transit street, the standards of Subsection C, below, must be met on at least one of the transit streets;
  2. Houses, attached houses, manufactured homes, and duplexes. Houses, attached houses, manufactured homes, and duplexes must meet the standards of 33.130.250.C, Residential Main Entrance, instead of the requirements of this section.
  3. This section does not apply to street frontages in a CE zone abutting Major City Traffic or District Collector streets.
- C. Location.** For portions of a building within the maximum building setback, at least one main entrance for each nonresidential tenant space on the ground floor, and one main entrance to a multi-dwelling structure must meet the standards of this section. The ground floor is the lowest floor of the building that is within four feet of the adjacent transit street grade. The main entrance must:
1. Be within 25 feet of the transit street;
  2. Allow pedestrians to both enter and exit the building; and
  3. Meet one of the following:
    - a. Face the transit street;
    - b. Be at an angle of up to 45 degrees from the transit street, measured from the street property line, as shown in Figure 130-13; or
    - c. If it is an entrance to a multi-dwelling structure:
      - (1) Face a courtyard that is adjacent to the transit street and that is landscaped to at least the L1 level, or hard-surfaced for use by pedestrians; and
      - (2) Be within 50 feet of the transit street.
- D. Distance between entrances.** For portions of a building with any nonresidential uses within the maximum building setback, a minimum of one entrance is required for every 200 feet of building length.



### 33.130.230 Ground Floor Windows

**A. Purpose.** In the commercial/mixed use zones, blank walls on the ground level of buildings are limited in order to:

- Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring within a structure to adjacent sidewalk areas, or allowing public art at the ground level;
- Encourage continuity of retail and service uses;
- Encourage surveillance opportunities by restricting fortress-like facades at street level; and
- Avoid a monotonous pedestrian environment.

**B. Ground floor window standard.**

1. General standard.

- a. Windows must cover at least 40 percent of the ground level wall area of street-facing facades that are 20 feet or closer to a street lot line or a publicly-accessible plaza. For the purposes of this standard, ground level wall areas include all exterior wall areas from 2 feet to 10 feet above the finished grade. See Figure 130-11.
- b. If the lot has more than one street frontage, then the ground floor window standard in Subparagraph B.1.a. applies to the facade that faces the highest transit street classification. All other ground level street-facing facades that are 20 feet or closer to the street lot line must have windows that cover 25 percent of the ground level wall area. If two or more streets have the same highest transit street classification, then the applicant may choose on which of those street to meet the higher standard. Transit street classifications are identified in the Transportation Element of the Comprehensive Plan.

2. Exemptions:

- a. Houses, attached houses, manufactured homes, and duplexes are exempt from this Section;
- b. Ground floor street-facing walls of dwelling units are exempt from Paragraph B.1., but the walls must meet one of the standards in Subsection D.; and
- c. The walls of structured parking that face a secondary street frontage are exempt from the 25 percent standard in Subparagraph B.1.b. if the facade is set back at least 5 feet and landscaped to the L2 standard.
- d. Retail store walls devoted to truck loading or external to interior areas used for storage, refrigeration or mechanical equipment, are exempt from this Section.

**33.258.075 Determination of Legal Nonconforming Status Review**

- A. Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.
- B. When this review is required.** Determination of Legal Nonconforming Status Review is required where a land use review or building permit is requested, and the applicant does not provide standard evidence or the Director of BDS does not find the evidence to be satisfactory. (See 33.258.038). This review also may be requested by an applicant when it is not required.
- C. Procedure.** Determination of Legal Nonconforming Status Reviews are processed through a Type II procedure.
- D. Approval criteria.**
  - 1. The legal status of the nonconforming situation will be certified if the review body finds that:
    - a. The nonconforming situation would have been allowed when established; and
    - b. The nonconforming situation has been maintained over time.
  - 2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

**33.258.080 Nonconforming Situation Review**

- A. Procedure.** A nonconforming situation review is processed through a Type II procedure.
- B. Approval criteria.** The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:
  - 1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
    - a. The hours of operation;
    - b. Vehicle trips to the site and impact on surrounding on-street parking;
    - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
    - d. Potential for increased litter; and
    - e. The amount, location, and nature of any outside displays, storage, or activities; and
  - 2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:

- a. Building scale, placement, and facade;
  - b. Parking area placement;
  - c. Buffering and the potential loss of privacy to abutting residential uses;  
and
  - d. Lighting and signs; and
3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.