



101 SW Main Street, Suite 1100  
Portland, Oregon 97204

balljanik.com

t 503.228.2525  
f 503.295.1058

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Damien R. Hall  
Also Admitted in California and Washington  
503.944.6138  
dhall@balljanik.com

Portland Planning and Sustainability Commission  
City of Portland  
1900 SW 4<sup>th</sup> Ave, Suite 1700  
Portland, OR 97201

Re: Rezoning of 3830 SE 82<sup>nd</sup> Avenue  
Mixed Use Zones Project

Dear Commissioners:

This firm represents Mr. Joseph Angel, owner of the real property at 3830 SE 82<sup>nd</sup> Avenue ("Site"), which currently houses a restaurant with a drive-through facility. The current draft of the Mixed Use Zones Project proposes to rezone the Site from CG to CE.

As you are aware, the CE zone is the sole mixed use zone in which drive-through facilities are not prohibited outright. However, the CE zone prohibits drive-through facilities that are within 50 feet of a lot line abutting a residential zone or a local service street adjacent to a residential zone. See 33.130.260.B, Drive-Through Standards for the CE zone. This provision would prohibit the existing drive-through on the Site.

Address	Current Zone	MUZP Draft Zone	Requested Zone
3830 SE 82 <sup>nd</sup> Ave	CG	CE	CE - with safe harbor amendment

Since CE is the only zone in which drive-through facilities are allowed under any circumstance, we request to retain the CE designation on the Site, but also request that the PSC adopt a policy that all existing drive-through facilities not be rendered nonconforming by the adoption of the mixed-use zones.

This policy would create a safe harbor for existing drive-through facilities by safeguarding the continued viability of existing businesses that are reliant on drive-through facilities, and providing the certainty needed to enable future investment in the remodeling and modernization of properties with existing drive-through facilities. Without such a safe harbor, the MUZP would cause any number of drive-through facilities to become nonconforming, thereby creating a disincentive to invest in these commercial properties and calling into question the future viability of these businesses.

A proposed text amendment is included as Attachment 1 to this letter. Adoption of this text amendment would achieve the following:



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- Create a safe harbor for existing drive-through facilities in all mixed-use zones to retain their conforming status;
- Continue the prohibition on new drive-through facilities in all mixed-use zones other than CE; and
- Ensure that new drive-through facilities in the CE zone be adequately screened from any nearby residential use.

We request that the PSC consider this safe harbor approach as the optimal manner in which to balance the City's policy objectives of promoting and preserving existing auto-accommodating commercial uses, while retaining the limitation on establishment of new auto-accommodating uses to only the CE zone. Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hall", written over a horizontal line.

Damien R. Hall

DRH:DRH  
encs  
cc: Client

## ATTACHMENT 1

### I. PROPOSED DRIVE-THRU FACILITIES STANDARDS:

This is the language proposed by the City in the 3/16/16 draft of the Mixed Use Zoning Project.

#### **33.130.260 Drive-Through Facilities**

Drive-through facilities are allowed in the zones which are intended for auto accommodating development. Existing facilities in other commercial/mixed use zones may be rebuilt when certain conditions are met or when they are part of a redevelopment that includes a significant amount of new floor area. The standards for drive-through facilities are stated in Chapter 33.224, Drive-Through Facilities.

**A. CM1, CM2, CM3, and CX zones.** Drive-through facilities are prohibited in the CM1, CM2, CM3, and CX zones. In the CM2 and CM3 zones, a nonconforming drive-through facility can be demolished and rebuilt when all of the following are met:

1. The nonconforming drive-through facility operations have not been interrupted for more than a 2 year period;
2. The site is adjacent to a Major City Traffic Street or District Collector as designated by the Transportation Element of the Comprehensive Plan; and
3. In the CM3 zone, the rebuilt drive-through will be part of a development on the site that has a minimum FAR of 1 to 1.

**B. CE zone.** Drive-through facilities are allowed in the CE zone, except as follows:

1. Drive-through facilities are prohibited within 50 feet of a lot line that abuts a residential zone; and
2. Drive-through facilities are prohibited within 50 feet of a lot line that is across a local service street from a residential zone.

### II. PROPOSED EDITS:

Removed language is in ~~strikethrough~~, new language is in **RED**.

#### **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 ~~other~~ all commercial/mixed use zones are allowed outright. ~~may be rebuilt when certain conditions are met or when they are part of a redevelopment that includes a significant amount of new floor area.~~ 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 **INSERT**

EFFECTIVE DATE OF 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 are is prohibited in the CM1, CM2, CM3, and CX zones. ~~In the CM2 and CM3 zones, a nonconforming drive-through facility can be demolished and rebuilt when all of the following are met:~~

- ~~1. The nonconforming drive-through facility operations have not been interrupted for more than a 2-year period;~~
- ~~2. The site is adjacent to a Major City Traffic Street or District Collector as designated by the Transportation Element of the Comprehensive Plan; and~~
- ~~3. In the CM3 zone, the rebuilt drive-through will be part of a development on the site that has a minimum FAR of 1 to 1.~~

**C. CE zone.** Establishment of new drive-through facilities are is allowed in the CE zone, ~~except as follows~~ subject to the following:

- ~~1. New drive-through facilities are prohibited within 50 feet of a lot line that abuts a residential zone boundary must incorporate landscaping to the L2 standard between the drive-through facility and the residential zone.;~~ and
- ~~2. Drive-through facilities are prohibited within 50 feet of a lot line that is across a local service street from a residential zone.~~

### III. PROPOSED EDITS (CLEAN VERSION):

#### **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 **[INSERT EFFECTIVE DATE OF 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.