



Lori Droste
Councilmember, District 8

CONSENT CALENDAR

June 25, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Droste, Mayor Arreguin, Councilmember Harrison, and Councilmember Wengraf

Item Description: Zoning Ordinance Modification for Elmwood Commercial District

RECOMMENDATION

Refer to the Planning Commission to amend Chapter 23E.44, C-E Elmwood Commercial District Provisions to allow for amusement device arcades with a Tier 2 Administrative Use Permit (for spaces >3,000 Sq. Ft.) and a Zoning Certificate (for spaces < 3,000 Sq. Ft.). Proposed ordinance language for changes to Table 23E.44.030 are attached.

FISCAL IMPACTS OF THE RECOMMENDATION

Potential tax revenue from newly permitted commercial uses.

CURRENT SITUATION AND ITS EFFECTS

This zoning modification is a Strategic Plan Priority Project, advancing our goal to foster a dynamic, sustainable, and locally-based economy. Currently, amusement device arcades” are prohibited uses in the Elmwood Commercial District.

BACKGROUND

Under current City codes, no amusement device arcades are permitted in the Elmwood Commercial Corridor. As the nature of retail and commercial uses changes and adapts to present day consumer habits and environments, so too should City code. Given recent commercial vacancies in the Elmwood Commercial District, now is an opportune time to re-examine commercial uses.

Recently, an established, local, family-owned business has expressed interest in opening a ‘vintage’ inspired arcade in the Elmwood. Upon review of our zoning code, the interested party saw that such use is currently prohibited. The proposed changes would allow for inventive businesses such as this one to open. The proposed changes take the size of the business storefront into consideration - arcades operating under 3,000 square feet would be allowed a

zoning certificate. Occupants of larger spaces (over 3,000 square feet) would need a Tier 2 Administrative Use Permit, which allows for public notice and feedback.

This ordinance change would only apply to the Elmwood Commercial District. C-1 and CDMU commercial districts, per Table 23E.36.030 and Table 23E.68.030 require a UP (PH) for an amusement device arcade (unless they are within 600 ft. of a primary or secondary school, in which case they are prohibited). For all other Commercial Districts, the use is, and will remain, prohibited.

ENVIRONMENTAL SUSTAINABILITY

RATIONALE FOR RECOMMENDATION

ALTERNATIVE ACTIONS CONSIDERED

CONTACT PERSON

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Chapter 23E.44

C-E Elmwood Commercial District Provisions

Sections:

23E.44.010	Applicability of Regulations
23E.44.020	Purposes
23E.44.030	Uses Permitted
23E.44.040	Special Provisions -- Numerical Limitations
23E.44.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
23E.44.060	Use Limitations*
23E.44.070	Development Standards
23E.44.080	Parking -- Number of Spaces
23E.44.090	Findings

23E.44.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-E Districts. In addition, general provisions in Sub-title [23C](#) shall apply. (Ord. 6478-NS § 4 (part), 1999)

23E.44.020 Purposes

The purposes of the Elmwood Commercial (C-E) Districts are to:

- A. Implement the Master Plan's designation for a community commercial district in this area.
- B. To maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods by:
 1. Providing locations for retail goods and service establishments to serve surrounding neighborhoods;
 2. Preventing development which exceeds the amount and intensity of use that is compatible with adjacent residential neighborhoods;
 3. Limiting the space occupied by businesses that generate high traffic and/or parking demands;

- 4. Controlling the proliferation of establishments which, if not limited, might expand to displace establishments needed to serve surrounding neighborhoods; and
- 5. Permitting other uses which serve this objective.

C. To ensure that new buildings, alterations and additions to existing buildings harmonize with their surroundings. (Ord. 6478-NS § 4 (part), 1999)

23E.44.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	ZC*	
Over 3,000 s.f.	Prohibited	

Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal/Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage).
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Video Tape/Disk Rental Stores	AUP	
Offices		

Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners	Prohibited	Including Holistic Health and Mental Health Practitioners
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities	AUP	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service	UP(PH)	Service of alcoholic beverages allowed only as incidental to food service in Food Service Establishments
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Amusement Device Arcades <u>Under 3,000 s.f.</u> <u>Over 3,000 s.f.</u>	Prohibited <u>ZC</u> <u>AUP - tier</u> <u>2</u>	

Commercial Recreation Center		Outdoor use requires UP(PH)
Under 3,000 s.f.	AUP	
Over 3,000 s.f.	UP(PH)	
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments, including Nightclubs	Prohibited	
Food Service Establishments	AUP	Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	AUP	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	

Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Motorcycle Stores, including Sales and/or Service	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Automatic Teller Machines (exterior and when part of a Retail Financial Service)	UP(PH)	
Drive-in Uses	Prohibited	Providing service to customers in their cars. See definition in Sub-title F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	

Outdoor Cafe Seating		
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Section 23E.44.070.E
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	Treated as Food Service Establishment and subject to numerical limitations in Table 23E.44.040 . Incidental Food and Beverage for Immediate Consumption off the premises is permitted as an Accessory Use of a Food Product Store.
Live Entertainment		
Unamplified	ZC	
Amplified	Prohibited	
Manufacturing Uses	UP(PH)	

Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	UP(PH)	
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F

Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements under Section 23E.44.080
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23E.44.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	Prohibited	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	

Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10 .
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		

Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 2,000 sq. ft. shall require an AUP.	

B. Any Use not listed that is compatible with the purposes of the C-E District shall be permitted subject to securing an Administrative Use Permit. Any Use that is not compatible with the purposes of the C-E District shall be prohibited.

C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the following permit requirements as listed in the legend of Table [23E.44.030](#). (Ord. 7635-NS § 7, 2019; Ord. 7620-NS § 13, 2018; Ord. 7599-NS § 22, 2018; Ord. 7513-NS § 1, 2016; Ord. 7425-NS § 8, 2015; Ord. 7354-NS § 4, 2014; Ord. 7322-NS § 7, 2013; Ord. 7204-NS § 5, 2011; Ord. 7191-NS § 5, 2011; Ord. 7155-NS § 11, 2010; Ord. 7129-NS § 11, 2010; Ord. 6671-NS § 7, 2002; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

23E.44.040 Special Provisions -- Numerical Limitations

A. Uses subject to numerical limitations as set forth in Table [23E.44.040](#) shall also be subject to the requirements of Section [23E.44.030](#). No such limitation may be exceeded unless the Board issues an Administrative Use Permit and makes the findings under Section [23E.44.090.C](#).

Table 23E.44.040			
Numerical Limitations			
Use	Number Limit	Size (sq. ft.)	Type of Permit
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500	Zoning Certificate
Bookstores, Periodical Stands	No limit	2,000	Zoning Certificate
Food Service Establishments:	25		
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000	Zoning Certificate

(Ord. 7635-NS § 8, 2019; Ord. 7513-NS § 2, 2016; Ord. 7191-NS § 6, 2011; Ord. 6478-NS § 4 (part), 1999)

23E.44.050 Construction of New Floor Area, Conversions of Existing Buildings --

Requirements for Use Permits

A. No new gross floor area shall be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.

B. Existing buildings used for commercial activities shall not be converted, unless an Administrative Use Permit is obtained. (Ord. 6478-NS § 4 (part), 1999)

23E.44.060 Use Limitations*

A. No Commercial Use shall operate except between the hours of 7:00 a.m. and 11:00 p.m., unless a Use Permit is obtained and is in accordance with Section [23E.16.010](#).

B. Any Use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading, in Table [23E.44.030](#), except as below:

1. Any food service use shall be subject to the limitations in Table [23E.44.040](#) and shall not be considered as an Incidental Use for this District except when an accessory use to a Food Product Store.

C. Any activity or Use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table [23E.44.030](#).

D. Adult-oriented Businesses, Amusement Device Arcades, and Non-Chartered Financial Institutions are not permitted in this District. Alcoholic Beverage Sales or Service Uses and Live/Work Uses shall be subject to the requirements of Chapters [23E.16](#) and [23E.20](#), in addition to the requirements of this District and below:

1. On-premises service or consumption of alcoholic beverages shall be permitted only as incidental consumption with meals in food service establishments. (Ord. 7513-NS § 3, 2016; Ord. 7425-NS § 9, 2015; Ord. 7191-NS § 7, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

23E.44.070 Development Standards

A. The FAR shall not exceed eight-tenths (.8) for an Interior or Through Lot and the FAR shall not exceed one for a Corner Lot.

B. The height for a Main Building shall not exceed the following limits and shall satisfy the following requirements:

Use Type	Height (ft.)	Stories (number)
All	28	2*

*Except that basement level devoted exclusively to parking shall not be counted as a story

C. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:

1. Subject to obtaining a revocable encroachment permit from the City Council, bay windows and balconies 11 feet or more above the sidewalk grade may extend three feet into a street right-of-way, provided, that, not more than 60% of the length of a building elevation shall extend beyond the property line.

D. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section [23E.04.050](#) and [23E.04.060](#) shall apply, for additional yard and building feature requirements, respectively and as below:

1. No food service establishment shall have any openings other than fixed windows and required fire exits within 50 feet of a residential zone. In addition, no food service establishments shall have any live entertainment other than unamplified background music.

E. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the off-street parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements; provided, however, that the Board in its discretion may issue a Use Permit to modify the off-street parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section [23E.44.090.B](#).

F. Exclusive Residential Uses shall be subject to the building site area, yard, coverage and parking requirements of the R-3 District standards and the height limit set forth in Section [23D.36.070.B](#). Other requirements are set forth below:

1. Each Dwelling Unit shall have Usable Open Space of at least 40 square feet with no dimension less than six feet;

2. No Residential Use shall be located on the ground floor within 20 feet of a property line along College or Ashby Avenue. (Ord. 6478-NS § 4 (part), 1999)

23E.44.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of this section and Chapter [23E.28](#), except as set forth in this section.

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. This standard shall not apply to spaces less than 6,000 square feet, where no parking standard exists.

C. Construction which results in the creation of 6,000 or more square feet of commercial gross floor space shall be required to provide Off-street Parking Spaces at the minimum ratio of two spaces per 1,000 square feet of gross floor area of commercial space and in accordance with the requirements of Chapter [23E.28](#).

D. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter [23E.32](#). (Ord. 6856-NS § 13 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

23E.44.090 Findings

A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section [23B.32.040](#). The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

B. A proposed use or structure must do all of the following:

1. Encourage and maintain the present street frontage and pedestrian orientation of the District;
2. Be compatible in design and character with the commercial District and the adjacent residential neighborhoods;
3. Be compatible with the purposes set forth in Section [23E.44.020](#) and the existing character of the District.

In addition, a finding also shall be made that such action and its effects will not:

4. Interfere with the continuity of retail or compatible service facilities at the ground level;
5. Interrupt a continuous wall of building facades;
6. Generate traffic and parking demand beyond the capacity of the commercial District or significantly increase impacts on adjacent residential neighborhoods;
7. Result in domination of this District by one type of use;
8. Generate objectionable odors nor excessive levels of noise.

C. In order for a Use Permit under Section [23E.44.040](#).A, for an exception to exceed a numerical limitation for a use, to be granted the following finding must be made: The exception shall result in the positive enhancement

of the purposes of the District, as evidenced by neighborhood resident and merchant support and marketing surveys or other information indicating probable substantial patronage by surrounding residents. (Ord. 6478-NS § 4 (part), 1999)