PROPOSED DAIRY QUEEN REDEVELOPMENT
Relevant City Zoning Code Sections—Drive Through

NOTE: The property is zoned CM2 (Mixed Use Commercial 2)

Included below:

- **33.130.260 Drive-Through Facilities**
- **33.258.075 Determination of Legal Nonconforming Status Review**
- **33.258.038 Documenting A Nonconforming Situation**
- **33.224 Drive Through Facilities**

33.130.260 Drive-Through Facilities

A. Purpose. The drive-through facility regulations support the desired character of the commercial/mixed use zones that are intended to be pedestrian-oriented, while allowing the continuation and improvement of existing drive-through facilities in some of these zones. In zones intended for auto-accommodating development, these regulations allow for drive-through facilities, while limiting the impacts from drive-through facilities on adjacent residential zones, such as noise and air pollution from idling cars.

B. CR and CX zones. Drive-through facilities are prohibited in the CR and CX zones.

C. CM1, CM2, and CM3 zones. The following regulations apply to drive-through facilities in the CM1, CM2 and CM3 zones:

1. New drive-through facilities are prohibited; and

2. Existing drive-through facilities are allowed. Existing facilities can be rebuilt, expanded, or relocated on the site. The standards for drive-through facilities are stated in Chapter 33.224, Drive-Through Facilities. If the use with the drive-through facility is discontinued for 3 continuous years, reestablishment of the drive-through facility is prohibited. If the use ceases operation, even if the structure or materials related to the use remain, the use has been discontinued. A list of the standard evidence that can be provided to prove that the use has been maintained over time can be found in Subsection 33.258.038.B. If the applicant provides standard evidence from the list, the Director of BDS will determine if the evidence is satisfactory. If the applicant provides evidence other than the standard evidence listed, a Determination of Legal Nonconforming Status is required.

https://www.portland.gov/sites/default/files/code/33.130-commercial-mixed-use-zones.pdf

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.

https://www.portland.gov/sites/default/files/code/258-ncu_0.pdf

33.258.038 Documenting A Nonconforming Situation

The applicant must provide evidence to show that the situation was allowed when established and was maintained over time. If the applicant provides standard evidence from the list below, the Director of BDS will determine if the evidence is satisfactory. The Director of BDS will also 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. If the applicant provides evidence other than the standard evidence listed below, a Determination of Legal Nonconforming Status is required. (See 33.258.075.)

A. Situation allowed when established. Standard evidence that the situation was allowed when established is:

1. Building, land use, or development permits; or
2. Zoning codes or maps;

B. Situation maintained over time. Standard evidence that the use has been maintained over time is:

1. Utility bills;
2. Income tax records;
3. Business licenses;
4. Listings in telephone, business, or Polk directories;
5. Advertisements in dated publications;
6. Building, land use, or development permits;
7. Insurance policies;
8. Leases;
9. Dated aerial photos;
10. Insurance maps that identify use or development, such as the Sanborn Maps; or
11. Land use and development inventories prepared by a government agency.

https://www.portland.gov/sites/default/files/code/33.258-nonconforming-situations.pdf

33.224 Drive-Through Facilities

224

Sections:

33.224.010 Purpose

The regulations of this chapter are intended to allow for drive-through facilities by reducing the negative impacts they may create. Of special concern are noise from idling cars and voice amplification equipment, lighting, and queued traffic interfering with on-site and off-site traffic and pedestrian flow. The specific purposes of this chapter are to:

- Reduce noise, lighting, and visual impacts on abutting uses, particularly residential uses;
- Promote safer and more efficient on-site vehicular and pedestrian circulation;
- Reduce conflicts between queued vehicles and traffic on adjacent streets.

33.224.020 When These Regulations Apply

A. Uses. The regulations of this chapter apply to all uses that have drive-through facilities.

B. Site development.

1. Except as specified in Paragraph B.2, below, the regulations of this chapter apply only to the portions of the site development that comprise the drive-through facility. The regulations apply to new developments, the addition of drive-through facilities to existing developments, and the relocation of an existing drive-through facility. Drive-through facilities are not a right; the size of the site or the size and location of existing structures may make it impossible to meet the regulations of this chapter. Chapter 33.266 contains additional requirements regarding vehicle areas.

2. The site development standards of Sections 33.224.030 through 33.224.050 do not apply to drive-through facilities that do not involve any interactive service or communication with the customer.

C. Parts of a drive-through facility. A drive-through facility is composed of two parts – the **stacking lanes** and the **service area**. The stacking lanes are the space occupied by vehicles queueing for the service to be provided. The service area is where the service occurs. In uses with service windows, the service area starts at the service window. In uses where the service occurs indoors, the service area is the area within the building where the service occurs. For other development, such as gas pumps, air compressors, vacuum cleaning stations, the service area is the area where the vehicles are parked during the service.

33.224.030 Setbacks and Landscaping

All drive-through facilities must provide the setbacks and landscaping stated below.

A. **Abutting an R, IR, or CI1 zone.** Service areas and stacking lanes must be set back 5 feet from all lot lines that abut an R, IR, or CI1 zone. The 5 foot setback must be landscaped to at least the
L3 standard.

B. **Abutting a C, E, I, or CI2 zone.** Service areas and stacking lanes must be set back 5 feet from all lot lines that abut an C, E, I, or CI2 zone. The 5 foot setback must be landscaped to at least the L2 standard.

C. **Abutting a street.** Where allowed by Chapter 33.266, Parking and Loading, service areas and stacking lanes must be setback 5 feet from all street lot lines. The 5 foot setback must be landscaped to at least the L2 standard.

33.224.040 Vehicular Access

All driveway entrances, including stacking lane entrances, must be at least 50 feet from an intersection. The distance is measured along the property line from the junction of the two street lot lines to the nearest edge of the entrance.

33.224.050 Stacking Lane Standards

These regulations ensure that there is adequate on-site maneuvering and circulation areas, ensure that stacking vehicles do not impede traffic on abutting streets, and that stacking lanes will not have nuisance impacts on abutting residential lands.

A. **Gasoline pumps and electric vehicle chargers.** A minimum of 30 feet of stacking lane is required between the stacking lane entrance and the nearest gasoline pump or electric vehicle charger.

B. **Other drive-through facilities.**

1. Primary facilities. A minimum of 150 feet for a single stacking lane or 80 feet per lane when there is more than one stacking lane, is required for all other drive-through facilities. A stacking lane is measured between the stacking lane entrance and the service area.

2. Accessory facilities. A stacking lane is not required for accessory facilities where vehicles do not routinely stack up while waiting for the service. Examples are window washing, air compressor, and vacuum cleaning stations.

C. **Stacking lane design and layout.** Stacking lanes must be designed so that they do not interfere with parking and vehicle circulation. No part of a required stacking lane may encroach into the right-of-way. Stacking lanes may be curvilinear. See Subsection 33.930.030.C. for measurement information.

D. **Stacking lanes identified.** All stacking lanes must be clearly identified, through the use of means such as striping, landscaping, and signs.

33.224.070 Multi-Modal Access

When a drive-through facility is open and other pedestrian-oriented customer entrances to the business are unavailable or locked, the drive-through facility must serve customers using modes other than a vehicle such as pedestrians and bicyclists.

https://www.portland.gov/sites/default/files/code/224-drive-thrus.pdf