

CITY OF BATAVIA

MEMO TO: Community Development Committee
FROM: Joel Strassman, Planning and Zoning Officer
DATE: April 25, 2013
SUBJECT: Ordinance 13-19: Amending the City of Batavia Zoning Code, Title 10 of the City Code Chapter 2.4-Downtown Mixed Use District and Chapter 6-Use Definitions

Background

On April 3, 2013, the Batavia Plan Commission conducted a public hearing to take citizen input on proposed amendments to the text of the Zoning Code. The proposed amendments would affect particular uses in the [Downtown Mixed Use District](#) (DMU) zoning district and several [land use definitions](#).

Summary of Proposed Amendments

Tattoo Parlors. Recently Mayor Schielke inquired about the regulation of tattoo parlors in the downtown. With adoption of the 2010 [Zoning Code](#), tattoo parlors became a permitted use in the DMU District, having been allowed previously through conditional use approval. The City Council did not debate to any length on whether tattoo parlors should or should not become a permitted use in the DMU District when adopting the 2010 Zoning Code.

In 2006, under the previous Zoning Regulations, a conditional use was proposed in the 100 block of south Batavia Avenue for the operation of a tattoo parlor. Both the Plan Commission and Community Development Committee (CDC) had lengthy discussions before recommending approval (please see the October 18, 2006 Plan Commission [Minutes](#) and the November 21, 2006 CDC [Minutes](#)). The applicant withdrew the application thereafter and the City Council did not review or act on the proposal. Currently, Fallen Star Tattoo operates on South Batavia Avenue, having opened as a permitted use under the current Zoning Code. Twizted Images, the other tattoo parlor in Batavia, is located on South Washington Street, in a building that for several years has housed a tattoo parlor. Staff has confirmed that Twizted Images will relocate to east Wilson Street in the coming weeks, having already signed a lease.

Tattoo parlors are permitted elsewhere in the City, in both the Community Commercial (CC) and the Mixed Use (MU) zoning districts. Please see the City's [Zoning Map](#) for the locations for those districts.

Personal Services. The use definition for tattoo parlors includes piercing studios. This definition includes ear piercing. Proposed is an amendment to the definition of personal services to specify that body piercing is not covered in the personal services definition, except for ear piercing. This would allow retailers and salons to continue to offer ear piercing, and be unaffected by a change to the use definition of tattoo parlors/piercing studios.

Crematoriums. The DMU District allows crematoriums as a conditional use, with the limitation that it be incidental to the principal use of the property. The DMU also allows funeral and undertaking establishments as a conditional use. Cremation services are allowed in funeral homes as an ancillary use.

As currently regulated, a cremation services can be offered as an incidental use to *any* other principal use. While the likelihood of cremation services being offered in a retail store or office is remote, the Zoning Code cannot prohibit it. As a housekeeping measure, the line item that allows crematoriums in the DMU should be eliminated. Cremation services would continue to be allowed as an ancillary use to a funeral home.

Drive-through Facilities. Section 2.405.E regulates drive-through facilities in the DMU District. This only controls where one can be located proximate to residential uses. What businesses may and may not have a drive-through is controlled in Table 2.403 of the [Downtown Mixed Use District](#) Chapter. Currently, only a bank may have a drive-through. To cover all possible land uses that typically include drive-through facilities, staff

believes that Section 2.405.E should be amended to establish that drive-through facilities are allowed as a conditional use; please see Attachment A of Ordinance 13-19 for the new Section 2.405.E.1. References to drive-through facilities in Table 2.405 would be eliminated.

Duplex Residences. Batavia uses the 2006 International Residential Building Code that does not differentiate between duplex and 2-flat residences; both are two dwelling unit buildings. The Zoning Code does differentiate them, with definitions under “Residential, Permanent” in [Chapter 6: Use Definitions](#) (bottom of page 10) and “Residential Housing Types” in [Chapter 7: Glossary of General Terms](#) (middle of page 11).

The Use Definition for duplexes, covered in the term “Single Family, Attached” does not apply to 2-flats; those are covered by the term “Multi-Family.” The Zoning Code should be amended to align with the Building Code. To accomplish this, the Glossary Term ([Chapter 7: Glossary of General Terms](#)) and definition for “Duplex or Two-Family” should be used to replace the existing Use Definition for “Single Family, Attached” in [Chapter 6: Use Definitions](#), but to omit “Duplex.” This would effectively allow duplex units or 2-flats wherever “Two-Family” is allowed. Also, the Use Definition for “Multi-Family” should be amended so that it applies only to buildings containing 3 or more units – a change from the current 2 or more units, and the definition should be changed further by removing the reference to “Single Family, Attached.” The new definition would be consistent with the Glossary term for “Multi-Family.” Finally, “Two-Family” should be added as a permitted use in the DMU by adding a line item in Table 2.403. Please see Section 3 in the attached draft Ordinance 13-19 for the definition changes.

Community Garden. Staff is proposing to add a Use Definition for community gardens. Creating development standards will be a significant undertaking, affecting several zoning districts. For now, adding the Use Definition would effectively prohibit them City-wide since no zoning district includes them as an allowable use. The existing community garden at the corner of Water and Main may remain subject to the rights and restrictions of Zoning Code [Chapter 4.6: Nonconforming Uses, Lots, Parcels, Structures and Signs](#). A future Zoning Amendment effort will propose development regulations and propose to add them as allowed uses in specific zoning districts.

Plan Commission Review and Recommendation

No citizens spoke at the public hearing. The Commission agreed that the Zoning Code should be amended to better regulate crematoriums and drive-through uses, align Building Code and Zoning Code definitions of two-family and multiple family dwellings, amend the personal services definition to accommodate ear piercing, and to add a definition for community gardens. By a vote of 6-0, the Commission recommended the CDC recommend amending the Zoning Code for these issues as reflected in attached draft Ordinance 13-19.

The Commission was divided on the regulation of tattoo parlors. Some Commissioners acknowledged a long-standing social stigma regarding persons with tattoos that has substantially eroded over time, suggesting their more mainstream acceptance. There was consensus that often getting a tattoo is an impulse decision, but the Commission was not in full agreement on whether municipal government should limit one’s opportunity to act on such an impulse. The Commission agreed that other business may not want to locate proximate to a tattoo parlor and may even relocate if one opens nearby. The City should consider this secondary effect that a tattoo parlor could cause. The Commission dismissed the option of allowing tattoo parlors with conditional use approval, since the City could only apply limitation to the use, not prohibit it from locating downtown. By a vote of 5-1, the Commission recommended that the CDC recommend removing tattoo parlors and piercing studios from the list of uses allowed in the DMU District.

Staff Analysis and Recommendation

Staff agrees with the Plan Commission’s recommendations. Regarding tattoo parlors, concern about secondary effects of businesses is legitimate. This issue was raised by a neighboring business in the 2006 conditional use proposal for the tattoo parlor on south Batavia Avenue. Courts have generally agreed that display of tattoos is a form of protected speech; however courts have been split on whether the act of applying a tattoo on another

person is protected speech. Staff notes that there is a difference between traditional tattoos and “cosmetic tattoos.” The former involves injecting ink below the third layer of skin, making it permanent. Cosmetic tattooing places ink below only the outer layer of skin; the resulting tattoo is not permanent and generally fades in a year or so. The Batavia use definition for tattoo parlor would not apply to cosmetic tattooing. Staff feels cosmetic tattooing should continue to be allowed and recommends no change in that regard.

The existing two (2) tattoo parlors, including the “Piercings by Sleazy” business ancillary to Twizted Images, can remain in their current locations as grandfathered nonconforming uses, subject to the rights and restrictions of Zoning Code [Chapter 4.6: Nonconforming Uses, Lots, Parcels, Structures and Signs](#). Twizted Images may relocate to east Wilson Street, having entered into a lease agreement while such use is permitted at that location, and then be subject to Zoning Code Chapter 4.6.

The other proposed text amendments are essentially housekeeping measures, including the Commission-recommended change to the personal services use definition. Again, staff will propose development regulations for community gardens in the near future.

Staff recommends the CDC recommend approval of draft Ordinance 13-19, as presented. This Ordinance can proceed to the City Council at its next meeting on May 6th, or the CDC can specify that it be placed on a future agenda, after swearing in of the new Council.

Attachment: Draft Ordinance 13-19

c City Council
City Attorney
Department Heads
Media

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 13-19
AMENDING THE CITY OF BATAVIA ZONING CODE
TITLE 10 OF THE CITY CODE**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS 6TH DAY OF MAY, 2013**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 7th day of May, 2013

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

CITY OF BATAVIA, ILLINOIS
ORDINANCE 13-19
AMENDING THE CITY OF BATAVIA ZONING CODE
TITLE 10 OF THE CITY CODE

WHEREAS, the City of Batavia's Zoning Code (City Code Title 10) contains definitions and provisions relating to the use and development of land in the City of Batavia; and

WHEREAS, said provisions have been reviewed and it has been determined that certain definitions, existing provisions, and requirements should be amended in order to better regulate the use and development of land in the City of Batavia; and

WHEREAS, public notice of proposed amendments to Title 10 of the Batavia City Code was duly given and published as required by law; and

WHEREAS, the Plan Commission of the City of Batavia did, on April 3, 2013, conduct a public hearing with respect to proposed amendments that would accomplish the appropriate changes to Title 10, and voted to recommend approval of said amendments to Title 10 of the City Code to the Community Development Committee; and

WHEREAS, the City Council of the City of Batavia has received the recommendation of both the Batavia Plan Commission and Community Development Committee, and has considered same; and

WHEREAS, it is in the best interests of the City of Batavia and its residents that the proposed Ordinance be adopted by the City Council of the City of Batavia.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois:

SECTION 1: That the City of Batavia Zoning Code (Title 10 of the City Code) is hereby amended in conformance with the terms of this Ordinance.

SECTION 2: That the City of Batavia Zoning Code Chapter 2.4 be amended in its entirety as shown in Exhibit "A."

SECTION 3: That the City of Batavia Zoning Code Chapter 6 be amended as follows:

- Add new definition to read: ***Community Garden***. A public or private effort for the cultivation of land by more than one person or entity.
- Modify existing definition to read: ***Personal Services***. Provision of services of a personal nature. This classification includes barbershop, beauty salon, cosmetologist, electrolysis, massage therapy, tanning salon, day spa, and nail salon, but excludes tattoo parlors or body piercing, except for piercing of ears.

CITY OF BATAVIA, ILLINOIS ORDINANCE 13-19

- Delete existing definition: **Residential, Permanent - Single Family, Attached (Duplex)**
- Add new definition to read: **Residential, Permanent - Two-Family**. A building on 1 lot used and designed as residences for 2 families living independently of each other with individual cooking and sanitary facilities in each dwelling unit.
- Modify existing definition to read: **Multi-Family**. A building, group of buildings, or portion of a building that contains 3 or more dwelling units on 1 lot. Multi-family dwellings may include apartment buildings and residential condominiums. Multi-family housing may be in a mixed-use building with ground floor commercial space.

SECTION 4: That this Ordinance 13-19 shall be in full force and effect upon its presentation, passage and publication according to the law.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 6th day of May, 2013.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 6th day of May, 2013.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Sparks				
2	Dietz					Wolff				
3	Jungels					Chanzit				
4	Volk					Stark				
5	Frydendall					Atac				
6	Liva					Clark				
7	Tenuta					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstention(s)					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

Heidi Wetzel, City Clerk

Chapter 2.4: Downtown Mixed Use Zoning District

Sections:

- 2.401 Purposes
- 2.402 Applicability
- 2.403 Land Use Regulations
- 2.404 Site Development Regulations
- 2.405 Additional Use and Development Regulations

2.401 Purposes

The purposes of the Downtown Mixed Use Zoning District are to:

- A. Implement the policies and goals of the Comprehensive Plan and redevelopment plans of the City.
- B. Protect the historic character of the downtown area and promote continuity of that character in new development.
- C. Strengthen the pedestrian environment of the downtown area.
- D. Create an economically vital and diverse downtown.
- E. Expand housing opportunities in the downtown.
- F. Establish high quality architecture in new development and redevelopment.
- G. Create coherent and consistent street spaces.
- H. Insure that downtown off-street parking enhances and complements the historic character of the area.

2.402 Applicability

The provisions of this Chapter shall apply to existing development and new projects located wholly or partially within the Downtown Mixed Use Zoning District.

2.403 Land Use Regulations

- A. **Regulations.** Table 2.403: Land Use Regulations – Downtown Mixed Use District sets forth the land use regulations for the Downtown Mixed Use district. The regulations are established by letter designations as follows:

"P" designates permitted uses.

"L" designates uses that are permitted subject to certain limitations. Number designations refer to the limitations listed at the bottom of Table 2.403: Land Use Regulations – Downtown Mixed Use District.

"T" designates uses that are permitted to be conducted for a temporary period of time. Time limitations are listed in Table 4.509: Temporary Uses.

"A" designates uses that require an Administrative Use Permit pursuant to Chapter 5.4: Use Permits.

"C" designates uses that require a Conditional Use Permit pursuant to Chapter 5.4: Use Permits.

- B. **Unlisted Uses.** Uses are defined in Chapter 6: Use Definitions. If a proposed use is not listed in the Use Definitions, the Planning and Zoning Officer shall determine if the proposed use is substantially similar to a permitted use; in that event, the Planning and Zoning Officer shall assign the proposed use to a permitted use definition.
- C. **Prohibited Uses.** Uses not listed in Table 2.403: Land Use Regulations – Downtown Mixed Use District below or not assigned to a Use Definition pursuant to Section 2.403.B: Unlisted Uses, are prohibited.
- D. **Additional Use and Development Regulations.** Additional use and development regulations for the Downtown Mixed Use District are set forth in Section 2.405: Additional Use and Development Regulations.

Use Classification	DMU	Additional Regulations
Animal Services Animal Grooming Small Animal Clinics	P P	
Automated Teller Machine (ATM)	P	
Banks and Other Financial Institutions Without Drive Through Facilities With Drive Through Facilities	P C	
Banquet Facility	C	
Bed and Breakfast Home	P	
Building Material and Home Improvement Sales and Service, Retail	P, L1	
Business Services	P	
Carnival	T	See Section: 4.509
Child Care Facility	P	
Conference Center	C	
Congregate Living Facility	P	
Clubs and Lodges	C, L2	
Crematorium	C, L3	

<i>Table 2.403 Land Use Regulations – Downtown Mixed Use</i>		
Use Classification	DMU	Additional Regulations
Cultural Institutions	P	
Dry Cleaning and Laundry Outlet	P	
Eating and Drinking Establishments <i>Bars/Taverns/Nightclubs/Lounges</i> <i>Restaurants, Full Service</i> <i>Restaurants, Limited Service</i>	P P P, L4	
Entertainment and Recreation, Indoor <i>Small-Scale</i> <i>Large-Scale</i>	P C	
Entertainment and Recreation, Outdoor	P, L5	
Farmers' Market	T	See Section 4.509
Food Preparation <i>Small-Scale</i>	P, L7	
Funeral and Undertaking Services	C	
Garden Supply Stores and Plant Nurseries	P, L7	
Government Offices and Facilities	P	
Group Home	P	
Haunted House	T	See Section 4.509
Health Care Facilities <i>Urgent Care Facility</i> <i>Medical Offices and Clinics</i>	P P	
Hospice	P	
Hotels and Commercial Lodging	C	
Instructional Services, Specialized	P	
Laboratories, Commercial	P	
Laundry Services	P	
Maintenance and Repair Services	C	
Manufacturing and Assembly <i>Artisan</i>	P, L6	
Media Studio	P	
Offices, General	P	
Over-The-Air Reception Device	P	See Section 4.8
Parking Facilities	P	
Pawn Shops	P	See Title 3-5-C
Personal Services	P	
Public Safety Facilities	P	
Religious Assembly	C, L2	
Residential, Permanent <i>Loft Unit</i> <i>Multi-Family</i>	P P	
Retail Sales, Convenience	C	
Retail Sales, Furniture	P	
Retail Sales, General	P	
Satellite Dish Antenna, Large	P, L3	See Chapter 4.8
Schools, Public Or Private	P	
Seasonal Sales	T	See Section 4.509
Senior Housing	P	

<i>Table 2.403 Land Use Regulations – Downtown Mixed Use</i>		
Use Classification	DMU	Additional Regulations
Shelter Care Facility	C	
Shelter Care Facility, Homeless	C	
Swap Meet, Flea Market and Auction, Indoor	C	
Swap Meet and Auction, Outdoor	T	
Tattoo Parlor / Piercing Studio	P	
Teen Nightclub	C	
Utilities Facilities Well Site	A A	
Vehicle and Equipment Sales, Leasing and Services Car Wash Fueling Facility Fueling Facility, Alternative Non-Commercial Vehicle Rental Tent Sale, Vehicle Vehicle and Equipment Services, Light	C C A C T C	See Section 4.512 See Section 4.509
Wireless Communication Facilities	C	
L1: Permitted less than 5,000 square feet; Conditional Use over 5,000 square feet L2: Conditional Use. Use is not permitted in existing commercial structures L3: Only as a use incidental to the principal use of the property L4: Drive-through restaurants require a Conditional Use Permit L5: Outdoor motorized recreation facilities are prohibited. L6: Permitted in conjunction with retail sales of products produced on the premises L7: Less than 2,500 square feet		

2.404 Site Development Regulations

Table 2.404: Site Development Regulations – Downtown Mixed Use District sets forth the site development regulations for the Downtown Mixed Use district, which are in addition to the development regulations set forth in Section 2.405: Additional Use and Development Regulations and Chapter 4. Letter designations in the *Additional Regulations* column refer to regulations that follow Table 2.404: Site Development Regulations – Downtown Mixed Use District.

Table 2.404 Site Development Regulations – Downtown Mixed Use District		
Standards	DMU	Additional Regulations
Minimum Lot Area	None	
Maximum Building Height (ft.)	50	See Chapter 3.4
Minimum Building Height (ft.)	20	
Maximum Building Setback (ft.) Front Side (Corner)	10 10	
Minimum Building Setback (ft.) Side (Interior) Rear	0 0	
Minimum Parking Setback from Streets (ft.)	10	
Separation between Buildings	0 / 5	

Standards	DMU	Additional Regulations
(ft.)		
Building Setback to Parking (ft.)	10	See Section 4.203.N
Exterior Lighting Standards, Maximum Height (ft.)	15	See Chapter 4.211.B.3

2.405 Additional Use and Development Regulations

- A. **Transparency.** All principal structures, other than religious institutions, adjacent to public streets shall have a minimum percentage of their length comprised of vision glass, from at least 24 inches above grade to 7 feet above grade, including both window and door openings. The following transparency requirements shall apply:
1. *Non-Residential*
 - a. First Floor Front Elevation. Front elevations shall have a minimum of 60 percent transparency.
 - b. First Floor Street Side Elevations. Street side elevations shall have a minimum of 40 percent transparency.
 - c. Elevations Above the First Floor. Street elevations above the first floor shall have a minimum of 25 percent transparency, measured by length.
 2. *Residential*
 - a. First Floor Front Elevation. Front elevations shall have a minimum of 50 percent transparency.
 - b. First Floor Street Side Elevations. Street side elevations shall have a minimum of 25 percent transparency.
 - c. Elevations above the First Floor. Street elevations above the first floor shall have a minimum of 40 percent transparency, measured by length.
- B. **Penetrations.** Principal structures shall have a minimum of one pedestrian entry every 75 feet on elevations facing public streets. Non-residential entries shall be functional and remain unlocked during regular business hours.
- C. **Historic Structures.** Notwithstanding the above provisions, landmarked buildings or buildings classified as Significant or Contributing in the *City of Batavia Historic Preservation Listing* shall continue, and where possible restore, the historic pattern and form of window and door openings.
- D. **Accessory Structures.** Accessory structures shall comply with the following regulations:

1. *Establishment.* An accessory structure shall not be constructed prior to construction of a principal structure except when associated with a Community Garden that was established prior to May 17, 2010.
2. *Location.* Accessory structures may be located:
 - a. Within the building envelope.
 - b. Within a required interior side or rear setback, but not within a required front or street side setback area.
3. *Maximum Height.* The maximum height of accessory structures shall be 15 feet.
4. *Separation.* Accessory structures shall be separated from principal structures and other accessory structures by a minimum of 10 feet, measured from the exterior walls.

E. ***Drive-Through Facilities.***

1. All drive-through facilities shall be allowed as a conditional use associated with a related principal use on the same zoning lot.

~~E.~~ 2. Drive-through facilities shall be a minimum of 50 feet from property designated for residential use in the Comprehensive Plan.

F. ***Outdoor Storage.*** Outdoor storage is prohibited.

G. ***Outdoor Dining Areas.*** Uncovered outdoor dining areas are permitted in building setback areas. Permanent installations shall require Administrative Design Review approval. Adjacent public property may be used for outdoor dining after the business owner seeking to use the adjacent public property enters into a license agreement with the City for that purpose.