



MEMORANDUM

TO: Planning Commission Members
Honorable Mayor Tumlin and City Council Members

THROUGH: William F. Bruton, City Manager

FROM: Brian Binzer, AICP, Development Services Director
Rusty Roth, AICP, Planning & Zoning Manager

SUBJECT: Proposed Zoning Code Amendments to allow for distilleries, breweries,
microbreweries, brew pubs and wineries in certain commercial & industrial
zoning districts

DATE: June 14, 2013

ISSUE: Councilman Sinclair initiated a request that City Council consider revising the Zoning Ordinance to allow for the brewing of beer and distilling of spirituous liquors in the Central Business District, as well as other commercial and industrial districts. The Judicial Legislative committee discussed this item at their meeting on May 29, 2013, and City Council approved advertising of the proposed amendment at their meeting on June 12, 2013.

BACKGROUND: Current zoning regulations do not specifically designate where breweries, distilleries or other manufacturing of alcoholic beverages can be located. In recent years, the craft brewing and distilling operations have become increasingly popular throughout the United States. These operations have become popular because they are not simply manufacturing operations, but include tours, tastings and limited entertainment. Many communities, such as Boulder, Colorado, have made breweries and distilleries part of their tourist efforts to attract travelers. Because there is a production component of this type of business, many local ordinances strictly require the uses to be located in industrial districts. Because the City Marietta Zoning Code does not specify where these uses are allowed approval for businesses such as Red Hare Brewery have only been given in the LI and HI districts.

One issue that was discussed was a proposal to prevent oversized operations from impacting neighboring businesses by limiting the overall square footage to 20,000 square feet in the commercial districts. Industrial districts in the proposed ordinance would have no limitation beyond the zoning district standards and other relevant codes and laws. Staff research found that neither the State nor Federal agencies have specified limitations on the amount of production for breweries and distilleries (and generally none for wineries), however their rate of taxes increases when they pass certain thresholds. For instance, Federal law taxes production at a higher rate for anything over 60,000 barrels a year if a manufacturer produces less than 2 million barrels a year. This is what generally distinguishes a craft brewer such as Sweetwater out of Atlanta, which

produces a little over 100,000 barrels of product from Budweiser or MillerCoors which produce several million barrels of product annually. The State on the other hand does not distinguish a large brewery from a small brewery and issues a license and excises a tax on a per-unit basis.

The State does have limitations, however on brewpub production, because brewpubs are an exception to the State's three tier system (manufacturer-distributor-retailer). Brewpubs are defined under State law as follows:

"Brewpub" means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in Code Section 3-5-36 for retail consumption on the premises and solely in draft form. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, beer, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; provided, however, that barrels of beer sold to licensed wholesale dealers for distribution to retailers and retail consumption dealers, as authorized pursuant to subparagraph (C) of paragraph (2) of Code Section 3-5-36, shall not be used when determining the total annual gross food and beverage sales.

State law allows for up to 10,000 barrels of beer annually to be sold to diners on-site and up to 5,000 barrels to be sold to distributors for retail sale.

Because there are no limits on production of breweries and distilleries by the State and Federal governments, it appears the most practical way to address the potential concerns of neighboring businesses in the commercial districts would be by limiting square footage. However in the case of brewpubs the City Code should be consistent with State Code. In researching other communities, it may also be advisable to reduce the originally proposed maximum for distilleries, wineries and breweries in the CBD, CRC and RRC districts from 20,000 to 15,000 and eliminate them (by-right) in the NRC. Brewpubs would be allowed in all of the commercial districts including the NRC, subject to State law. These proposed changes would better protect neighboring businesses and residents and be more consistent with practices in other communities and still meet the needs of most craft breweries, wineries, distilleries and similar businesses.

Based on this information, staff has revised the draft ordinances to reduce the maximum square footage allowance in the NRC, CRC, RRC and CBD districts for these uses. Also, the following definitions to the code are proposed to better distinguish the uses:

Brew pub: Any eating establishment which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals and food and in which beer or malt beverages are manufactured or brewed subject to the barrel production limits and regulations under state law.

Brewery: Any establishment where malt liquors are manufactured, except brew pubs licensed under this article, subject to the square footage limitations in the area district standards.

Distillery: Any establishment where spirituous liquors are manufactured, subject to the square footage limitations in the area district standards.



Tasting room means a use associated with and on the same premises as a brewery, winery, or distillery, at which guests may sample the manufacturer's products and consume other nonalcoholic beverages.

Winery means any establishment where vinous liquors are manufactured, subject to the square footage limitations in the area district standards.

COST: N/A

RECOMMENDATION: Staff requests approval of the proposed amendment to the zoning ordinance regarding distilleries, breweries, microbreweries, brewpubs and wineries.