

P&Z Review: 11/28/12  
Public Notice: 11/14/12  
Public Hearing: 12/03/12  
Ord. No.: 012-12

**AN ORDINANCE TO AMEND APPENDIX A (“ZONING”) OF THE TOWN CODE OF THE TOWN OF SMYRNA BY AMENDING SECTION 5 (“DISTRICT REGULATIONS”), SUBSECTION 9 (“CENTRAL COMMERCIAL DISTRICT CC”), TO INCLUDE CRAFT DISTILLERY AND MICROBREWERY ESTABLISHMENTS AND ANCILLARY ACTIVITIES AS A PERMITTED USE**

WHEREAS, the Town Council of the Town of Smyrna is authorized by 22 Del. C. Chapter 3 and Section 4.2.37 of the Town Charter to enact zoning regulations in the town;

WHEREAS, the Town Council of the Town of Smyrna has enacted zoning regulations in the Town of Smyrna;

WHEREAS, in the opinion of the Town Council of the Town of Smyrna, the use of property within the Central Commercial (“CC”) District for craft distillery and microbrewery establishments and ancillary activities is consistent with the intent of the CC District; and

WHEREAS, in the opinion of the Town Council of the Town of Smyrna, it is necessary to amend Appendix A, section 5, subsection 9 to allow craft distillery and microbrewery establishments and ancillary activities as a permitted use within the CC District.

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Town Code of the Town of Smyrna be and hereby is amended as follows:

**Section 1.** Amend Appendix A (“Zoning”), section 5 (“District Regulations”), subsection 9 (“Central commercial district CC”) by renumbering subsections 9(a)(15), 9(a)(16) and 9(a)(17) as subsections 9(a)(16), 9(a)(17), and 9(a)(18), respectively.

**Section 2.** Amend Appendix A (“Zoning”), section 5 (“District Regulations”), subsection 9 (“Central commercial district CC”) by inserting a new subsection (a)(15) as follows:

- (15) Craft Distillery and microbrewery establishments, as defined at 4 Del. C. Sections 512(c) and 512(e), provided that:
  - a. All permits and approvals required by the Delaware Alcoholic Beverage Commissioner are obtained and remain in full force and effect,
  - b. All aspects of the distilling or brewing process are completely confined within a building, including storage of all materials and finished products.
  - c. Such establishment offers the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including

by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).

- d. No such establishment shall sell alcoholic beverages for consumption on-premises unless it also meets the same requirements as a “restaurant” as set out in sub-section e(3)(i) of this section.

**Section 3.** Amend Appendix A (“Zoning”), section 5 (“District Regulations”), subsection 9 (“Central commercial district CC”) by deleting subsection (e)(3) through (e)(7) in their entirety and inserting in their place thereof the following:

(3) Permitted facilities.

- i. Facilities licensed by the Delaware Alcoholic Beverage Control Commission as a restaurant shall be permitted if such facility provides full restaurant service with lunch, dinner and dessert menus. "Full restaurant service" shall be defined as serving complete meals on any day the facility is open for business and during all hours of operation; except that limited late service may be substituted for full restaurant service beginning 90 minutes before the time alcoholic beverages are no longer served. The limited service of such foods as sandwiches, salads, pizza, and similar items normally provided by taverns, luncheonettes, coffee shops or snack shops shall not be deemed full restaurant service, but shall be deemed to be limited late service as permitted by this section. The facility's primary purpose shall be the sale of food and shall meet the following criteria:
  - a. Permanent seating in dining area. The permanent seating in the dining area (i.e. "permanent seated dining") shall be no less than 35 seats in the facility; or, if such number of seats is not possible, as reasonably determined by the town manager, 80 percent of the patron area must be permanently committed to seated dining. "Permanent seated dining/seated dining" is defined as that portion of the patron area permanently designated and used primarily for the service and consumption of food while seated at tables and chairs or booths. "Patron area" is defined as that area of the facility open to the public; exclusive of the kitchen and storage area.
  - b. Patron bar in permitted facilities. Patron bar in permitted facilities shall be limited to 15 percent of the total number of permanent seats in the dining area of the facility (i.e., "permanent seated dining"), not including outdoor seating in patio/sidewalk cafe area; provided that, any permitted facility regardless of its permanent seated dining area may have a bar area of 350 square feet. No bar area shall exceed a maximum of 1,000 square feet. A "patron bar" is a counter in which alcoholic beverages may be stored, displayed, prepared, and served at which patrons sit and consume alcoholic beverages.

- c. Sale, consumption and closing. There shall be no alcoholic beverages sold on the premises after 1:00 a.m. There shall be no alcoholic beverages consumed on the premises after 2:00 a.m. All facilities which sell alcohol for on-premise consumption must close to the public by 2:00 a.m.
  - ii. Facilities licensed by the Delaware Alcoholic Beverage Control Commission for the sale of alcoholic liquors not for consumption on the premises where sold, but licensed for spirits, wine, and beer tastings pursuant to 4 Del. C. Section 525, may offer tastings: (a) between the hours of 11:00 a.m. and 9:00 p.m. Mondays through Saturdays; (b) between the hours of 1:00 p.m. and 6:00 p.m. on Sundays; and (3) at such other times specifically authorized by the Town Council for special events (e.g. new product release, promotional event).
- (4) Violations and penalties. Any person and/or entity violating any provision of this Section or other town code related to the facility, upon conviction thereof, in addition to any other penalties imposed by the town code, shall be fined \$100.00 for the first offense, \$250.00 for the second and or subsequent offense, plus court costs, and victim's compensation fund assessment. For the purpose of this section, a separate offense shall be deemed to be committed each day during or on which a violation occurs or continues after receipt of notice of violation; or each container of alcoholic liquor sold, dispensed, and/or consumed (in whole or part) in violation of this section. Provided, however, that if any court of competent jurisdiction shall determine that such monetary penalty shall be direct conflict with that established by any governing state law, the monetary penalty for violation of this Section shall be as established by state law.

### SYNOPSIS

This ordinance amends the Zoning Code regulations for the Central Commercial District to allow, as a permitted use, craft distillery and microbrewery establishments. The establishments must obtain all approvals and permits required of the Delaware Alcoholic Beverage Commission, must keep the brewing and distilling process (including storage of materials) confined to the inside of a building, and must offer ancillary activities such as tours, retail sales, educational classes, demonstrations, and tastings. Any such establishment selling alcohol for consumption on-premises must meet the requirements of a restaurant under the code. This ordinance requires establishments offering tastings (and not the sale of alcohol for on-premises consumption) to offer such tastings during certain hours of the day and at other times as prescribed by Council. This ordinance does not make substantive changes to the text of subsection 3(i) or subsection 4, but this ordinance changes the numbering scheme of those subsections.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
Council Secretary

\_\_\_\_\_  
Mayor

This shall certify that the title and synopsis of this Ordinance was published in “The Smyrna /Clayton Sun Times” on \_\_\_\_\_, 2012 and posted at the Town Hall on \_\_\_\_\_, 2012.

So Certifies:

\_\_\_\_\_  
Town Clerk

This shall certify that the title, effective date and synopsis of this Ordinance was published in “The Smyrna/Clayton Sun Times” on \_\_\_\_\_, 2012 and posted at the Town Hall on \_\_\_\_\_, 2012.

So Certifies:

\_\_\_\_\_  
Town Manager