

Review by P&Z Commission: 10/25/17

Sponsor: Mayor Embert

First Reading: 11/20/17

Ord. No.: 008-17

AN ORDINANCE TO AMEND APPENDIX A (“ZONING”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO ESTABLISH REQUIREMENTS FOR CRAFT DISTILLERIES AND MICROBREWERIES TO OPERATE RESTAURANTS IN THE CENTRAL COMMERCIAL (CC) AND INDUSTRIAL/OFFICE/RESEARCH PARK (IORP) DISTRICTS

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

WHEREAS, craft distilleries and microbreweries are authorized uses in the central commercial (CC) and the industrial/office/research park (IORP) districts; and

WHEREAS, in the opinion of the Town Council, it is necessary to establish requirements to operate restaurants, cafes, and full-service restaurants on the same premises as the craft distilleries and microbreweries.

NOW THEREFORE, 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 making insertions as shown by underlining and deletions as shown by ~~strike through~~ as follows:

(12) Craft Distillery and microbrewery establishments, as defined at 4 *Del. C.* Sections 512C and 512E, provided that:

- (a) All permits and approvals required by the Delaware Alcoholic Beverage Control 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) On-site consumption or tasting associated with a craft distillery or microbrewery establishment shall be permitted. Any area associated with on-site consumption or tasting shall not operate as a stand-alone bar or tavern, shall be located on the premises of the craft distillery or microbrewery

establishment, and shall be ancillary to the primary use. "Ancillary" for purposes of this section means subordinate, auxiliary, smaller and less intensive than the primary use. On-site consumption or tasting of alcohol shall be limited to those products brewed or distilled on the premises, except as otherwise permitted by 4 *Del. C.* §§ 512C or 512E, as the same may be amended, or any other corresponding provision of Delaware law.

(e) All food sales shall be limited to prepackaged snack items or those food items prepared by a food establishment licensed by the State of Delaware. If a craft distillery or microbrewery intends to operate on its premises a food establishment that is otherwise a permitted use in this district (i.e. restaurant, café, or full-service restaurant), the Town may require the property owner to provide the Town with a letter of no objection from the Delaware Alcoholic Beverage Control Commissioner regarding the operation of a food establishment on the premises of a craft distillery or microbrewery.

Section 2. Amend Appendix A – Zoning, section 5 (“District regulations”), subsection 14 (“Industrial/office/research park district”), by making insertions as shown by underlining and deletions as shown by ~~strike through~~ as follows:

(10) Craft distillery and microbrewery establishments, as defined at 4 *Del. C.* Sections 512C and 512E, provided that:

- a. All permits and approvals required by the Delaware Alcoholic Beverage Control Commissioner to operate a craft distillery or microbrewery are obtained and remain in full force and effect.
- b. On-site consumption or tasting of alcohol shall be limited to those products brewed or distilled on the premises, except as otherwise permitted by 4 *Del. C.* §§ 512C or 512E, as the same may be amended, or any other corresponding provision of Delaware law. All facilities licensed by the Delaware Alcoholic Beverage Control Commissioner for tastings pursuant to 4 *Del. C.* § 525 or for on-site consumption of alcohol in accordance with a license issue pursuant to 4 *Del. C.* §§ 512C or 512E shall only operate as follows: (a) between the hours of 11:00 a.m. and 11:00 p.m. Monday through Saturday; (b) between the hours of 1:00 p.m. and 9:00 p.m. on Sundays; and (c) at such other times specifically authorized by the town council for special events (e.g. new product release or promotional events).
- c. All aspects of the distilling or brewing process are completely confined within a building, including storage of all materials and finished products.
- d. Such establishment offers the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, which activities are limited to the following: 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 and other retail items identified in 4 *Del. C.* § 512E(c)(5).
- e. All food sales shall be limited to prepackaged snack items or those food items prepared by a food establishment licensed by the State of Delaware. On the same premises as a craft distillery or microbrewery, a restaurant or café may be

operated as an ancillary use. If at any time the craft distillery or microbrewery ceases production, the restaurant or café shall be required to close. The Town may require the property owner to provide the Town with a letter of no objection from the Delaware Alcoholic Beverage Control Commissioner regarding the operation of a restaurant or café on the premises of a craft distillery or microbrewery.

Section 3. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council’s intent.

SYNOPSIS

This ordinance clarifies that if food establishments permitted in the central commercial district, such as restaurants, cafes, and full-service restaurants, are proposed to be located on the same premises as a craft distillery or microbrewery, the Town may require a letter of no objection from the Delaware Alcoholic Beverage Control Commissioner. Restaurants and cafes may be located on the same premises as craft distilleries and microbreweries in the industrial/office/research park district as ancillary uses, subject to the same letter of no objection requirement. A restaurant or café will be required to close if the associated craft distillery or microbrewery ceases production.

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 _____, 2017.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the “Smyrna/Clayton Sun Times” on _____, 2017 and posted at the Town Hall on _____, 2017.

So Certifies:

Town Clerk