

AN ORDINANCE TO AMEND CITY CODE ARTICLE 30 VARIOUS SECTIONS, TO DEFINE AND CLASSIFY BREWPUB, MICROBREWERY AND RELATED USES, INCLUDING USE-SPECIFIC STANDARDS AS APPROPRIATE, IN CERTAIN NON-RESIDENTIAL ZONING DISTRICTS

WHEREAS, the City of Fayetteville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the City's zoning regulations was adopted on December 13, 2010, and is codified in Chapter 30 of the Fayetteville City Code (herein "Unified Development Ordinance" or "UDO"), and maps dividing and classifying the property within the City's zoning jurisdiction were adopted on July 25, 2011, and are on file and maintained in the offices of the Fayetteville Development Services Department (herein "Official Zoning Maps"); and

WHEREAS, the Fayetteville City Council held a public hearing on _____, to consider amending certain provisions of the Unified Development Ordinance in Chapter 30; and

WHEREAS, following the public hearing, the Fayetteville City Council determined that the proposed amendment is in the interest of the public health, safety and welfare; it is supported by adopted plans; and it is consistent with state law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE THAT:

Section 1. Add (or modify) the following definitions in alphabetical order for Brewpub, Brewery, Distillery, Microbrewery, Micro-distillery, and Pub in Article 30-9 Definitions.

Brewpub. ~~See "Restaurant, brewpub".~~ An establishment selling beer or distilled spirits that are produced on the premises for onsite consumption or for carryout where between 25% and 50% of the floor area is devoted to the production of beer or distilled spirits; food service may be provided but is not required to be classified as a brewpub. Typically at least 25% of the beer produced is consumed on site; such a use is sometimes called a tap room. If more than 75% of the beer produced is distributed off-site, the use may be reclassified as a microbrewery. Any area used for manufacturing or storage for the purposes of producing beer shall be considered brewery use. Also see "Microbrewery."

Brewery [new]. A facility that produces at least 15,000 barrels (17,600 hectoliters) of beer per year with 75 percent or more of its beer sold off-site. Breweries may include retail and food service as an accessory use and a tasting room if permitted under State law. Also see “Brewpub” and “Microbrewery.”

Distillery [new]

An establishment primarily engaged in on-site distillation of more than 50,000 US gallons/year of spirits and may include retail and food service as an accessory use and a tasting room if permitted under State law. Also see “Microdistillery.”

Microbrewery [new]

A brewery that produces less than 15,000 barrels (17,600 hectoliters) of beer per year with 75 percent or more of its beer sold off-site. Microbreweries may sell to wholesalers or act as wholesaler and may sell directly to the consumer through carry-outs and/or on-site tasting-room or restaurant sales. Microbreweries may include tasting rooms if permitted under State law. Also see “Brewpub” and “Brewery.”

Microdistillery [new]

A distillery that produces no more than 50,000 US gallons per year. Other typical names include, but are not limited to, “craft distillery,” “micro-distillery,” “small batch distillery,” and “artisan distillery.” Also see “Distillery.”

Pub

An establishment where food and alcoholic beverages are served, where indoor and/or outdoor seating is provided for not less than 75% of the occupancy load for the space, and which contains not more than 1,000 square feet of gross floor area exclusive of kitchen, restroom, storage, and service preparation areas. For purposes of separation standards, a pub in a SACO district shall be treated as a restaurant.

~~Restaurant, brewpub~~

~~A restaurant, with microbrewing activities and with indoor and outdoor seating only, in which less than one-half of the building gross square footage is used for the brewing activity.~~

Section 2. Modify Article 30-4 to classify the newly defined uses in Section 30-4.A as shown below. Further, include “distillery” as an example of heavy industry uses in Section 30-4.B.6.c.

Section 2A. Classify the new uses “brewpub”, “microbrewery”, and “microdistillery” as shown below, in alphabetic order and renumbering as needed. NOTE: Breweries and distilleries are already encompassed in LI and HI districts as production facilities, but the addition of distilleries as an example in the Use Classification section of Article 4.B clarifies that.

Use Category	Use	Classification	Special Stds?
Retail Sales and Services	Brewpub	- Permitted in MU, DT, LC, CC, SACO - Special Use in NC - MP in PD-NC	- Yes in MU, DT, NC [30-4.C.4.i(2) new] - None in LC, CC, SACO
Manufacturing and Production	Microbrewery	- Permitted in DT, MU, CC, LI - MP in PD-R, PD-EC, PD-TN	- Yes in DT, MU, CC [30-4.C.5.c(2) new] - None in LI
	Microdistillery		

Section 2B. In Section 30-4.B.6.c(2)(a), add “distillery” as an example of heavy manufacturing.

Section 3. Modify the opening paragraph in Article 30-4.C.4 Use-Specific Standards (which is repeated at the opening of each subsection) to note that facilities meeting the definition of Brewpub shall not be subject to separation standards. Further, modify Section 30-4.C.4.i Commercial Uses-Retail Sales and Services to add Brewpubs and specific standards, as shown below. Finally, Modify Section 30-4.C.5.c.new #2 to add standards for Microbrewery and Microdistillery uses in the CC, MU and DT zoning districts.

Section 3A. Modify Item 2 to clearly include nightclubs and cocktail lounges with bars in the standards for the DT Downtown district in Section 30-4.C.4 opening paragraph, and note that Brewpubs are not subject to separation standards, as shown below:

30-4.C.4 Use-Specific Standards – Commercial Uses

. . . Uses which cannot use the special use process to seek reduction in separation standards are:

- adult entertainment
- bar, nightclub, cocktail lounge except that a bar /nightclub/cocktail lounge in the DT Downtown or MU Mixed Use district can request a reduced separation standard from any child care center, religious institution, or educational facility through the special use process. A brewpub is exempted from the separation requirements although issues of concentration of such uses may be considered during any associated special use or conditional zoning review.

Section 3B. Insert the new brewpub use in Section 30-4.C.4.i Retail Sales and Services, as a new item, in alphabetical order,

and add the use-specific standards as shown below, renumbering items as needed.

30-4.C.4 Use-Specific Standards: Commercial Uses

i. Retail Sales and Services

2. Brewpubs [new]

In the DT Downtown and MU Mixed Use zoning districts, the following standards shall be met. If the use or any aspect is subject to a special approval process, additional conditions or standards may be applied to mitigate site-specific considerations:

- a. There shall be no outdoor entertainment except through a special event permit or as explicitly authorized in Section “b” below.
- b. Live entertainment shall not be permitted unless approved as a special event or through the special use permit process.

1. For the purposes of this section, live entertainment is referred to as “Entertainment, urban center” and is defined below:

Entertainment, urban center

Any activity conducted for the primary purpose of diverting or entertaining a clientele. Such activity shall include, but shall not be limited to, dancing (whether by performers or by patrons of the establishment); live musical performances, instrumental or vocal, whether or not amplified; musical entertainment provided by a disc jockey or as karaoke, or any similar entertainment activity involving amplified, reproduced music.

Specifically exempted from this definition are: outdoor background music for sidewalk cafes and other businesses that is not audible from a distance of 20 feet or more from the cafe or storefront; video or arcade type games, pool, darts, bowling, and similar game-based entertainment; as well as musical instrument sales demonstrations and dance and musical education (voice and instrument), provided that such demonstration and education activities do not occur between the hours of 10:00 p.m. and 7:00 a.m.; otherwise they shall be classified as an entertainment use.

2. The review and decision shall meet the criteria of Art. 30-2.C.7 Special Use Permit. Applications must include floor plans and details indicating ingress/egress, seating and dance area, maximum occupancy(ies), and plans to manage trash/litter, loitering and security. An acoustical study may be required. Conditions to mitigate impacts on surrounding properties and public spaces or resources may include but are not limited to specifying days or hours of operation, sound levels, sound-proofing, management of queuing or parking, and other activities associated with the entertainment.

- c. Outdoor seating areas will be closed by 11:00 p.m.

- d. Trash and recycling pickup or disposal in outdoor dumpsters or containers is limited to between 7 a.m. and 7 p.m.
- e. No outside storage is permitted.

Section 3C. Modify Section 30-4.C.5.c.new #2 to add standards for Microbrewery and Microdistillery uses in the CC, MU and DT zoning districts, as shown below:

c. Manufacturing and Production

1. *Manufacturing, High Impact/Hazardous*

2. [new] Microbrewery; Microdistillery

In the CC Community Commercial, DT Downtown and MU Mixed Use zoning districts, the following use-specific standards shall be met:

- a. No outdoor storage is permitted in the DT or MU districts;
- b. Any outdoor storage in the CC district shall not present any odor or health nuisance.
- c. Outdoor seating areas will be closed by 11:00 p.m.
- ~~e.d.~~ Any sale of alcoholic beverages for on-site consumption after 11:00 must meet the standards of a brewpub or of a bar/nightclub if such use is permitted in the base zoning district.
- e. Separation standards do not apply when classified as a microbrewery or micro-distillery.
- ~~d.f.~~ In the DT and MU districts, live entertainment shall not be permitted except in accordance with the same standards and special use permit procedures provided for Brewpubs in Art. 30-4.C.4.i Use-Specific Standards – Retail Sales and Services.
- ~~e.g.~~ In the DT and MU districts, trash and recycling pickup or disposal in outdoor dumpsters or containers is limited to between 7 a.m. and 7 p.m.

Section 4. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. The City Clerk and/or City Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the material terms of this Development Ordinance.

Section 7. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and become effectively immediately.

Adopted this the __ day of _____, 2017.

City of Fayetteville, NC

Nat Robertson, Mayor

ATTEST:

Pamela J. Megill, City Clerk