

Ordinance to Amend and Re-Enact the Zoning Ordinance of the City of Hampton, Virginia by Amending Sections 3-2 Entitled, “Table of Uses Permitted” and Section 3-3 Entitled, “Additional Standards on Uses,” to Modify Where and How Multifamily Dwellings and Upper-Floor Dwelling Units are Permitted.

Whereas, the public necessity, convenience, general welfare and good zoning practice so require;

BE IT ORDAINED by the Council of the City of Hampton, Virginia that Sections 3-2 and 3-3 of the Zoning Ordinance of the City of Hampton, Virginia, be amended to read as follows:

CHAPTER 3 – USES PERMITTED

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Sec. 3-2. Table of uses permitted.

(a) Table of Uses Permitted in Standard Zoning Districts.

[See attached use table for changes.]

(b) Table of Uses Permitted in Special Zoning Districts.

[See attached use table for changes.]

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Section 3-3. – Additional standards on uses.

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(5) Upper-floor dwelling units in the C-2, BB-3, BB-4, BB-5, DT-1, DT-2, PH-1, PH-2, and PH-3 districts shall comply with the following minimum conditions:

(a) In the C-2 district, upper-floor dwelling units, with an approved use permit, may be located above permitted C-2 uses when the following additional standards are met:

(i) Residential uses may not be combined with any other use on the same floor.

(ii) Residential uses may not be located on the pedestrian level and must have at least one (1) separate exterior entrance.

(iii) No non-residential uses shall be located on any floor above a residential use. Notwithstanding the foregoing, outdoor dining shall be permitted when associated with a ground floor restaurant in the same building, provided it is located on a rooftop and subject to securing an outdoor dining permit as applicable.

(iv) Development shall conform with development standards and setbacks for all uses other than townhouses and multiple dwellings within the C-2 district as listed within Sections 6-12 and 6-14, as amended.

(v) Each residential dwelling unit shall have adequate light by providing at least two exterior walls with at least one window in each exterior wall.

(b) In the BB-3, BB-4, BB-5, DT-1, DT-2, PH-1, PH-2, PH-3, FM-2, and FM-3 districts, structures with upper-floor dwelling units shall be permitted by-right with the following minimum standards:

(i) Residential uses may not be combined with any other use on the same floor.

(ii) Residential uses may not be located on the pedestrian level and must have at least one (1) separate exterior entrance.

(iii) No non-residential uses shall be located on any floor above a residential use. Notwithstanding the foregoing, outdoor dining shall be permitted when associated with a ground floor restaurant in the same building, provided it is located on a rooftop and subject to securing an outdoor dining permit as applicable

(iv) Each residential dwelling unit shall have adequate light by providing at least two exterior walls with at least one window in each exterior wall.

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(22) Restaurant, without a retail alcoholic beverage license, with live entertainment, in all districts shall comply with the following minimum conditions:

Live entertainment 1 venues are defined as venues providing live entertainment only within the building, without a dance floor or similar gathering area, and having performance space of 75 square feet or less. Any other live entertainment venue is considered a live entertainment 2 venue.

Live entertainment 1 is subject to a live entertainment zoning administrator permit with the following attached conditions:

(a) Live entertainment shall be conducted inside the building only;

(b) A floor plan shall be provided and approved showing the arrangement of tables, chairs, and performance area. The layout shall remain in place for live entertainment performances and no dance floor or similar open gathering space shall be permitted;

(c) The hours of operation for live entertainment shall not extend past 10:00 p.m.

Sunday through Thursday and 11:59 p.m. Friday and Saturday;

(d) The live entertainment shall comply with section 22-9 of the City Code, as amended, pertaining to noise.

- (e) Each ingress/egress point in the building shall be monitored by an attendant during the hours of operation, and additional attendants may be required to monitor vehicle parking areas that serve the building and maintain and control patron behavior upon exit of the building into the parking areas;
- (f) The restaurant shall meet the minimum requirements for parking as established in Chapter 11 herein;
- (g) The restaurant shall maintain compliance with all applicable federal and state laws and requirements of licensing agencies, including but not limited to ABC licensing;
- (h) The zoning administrator permit shall be valid for eighteen (18) months from the date of approval by the zoning administrator. After twelve (12) months of operation, prior to the expiration date, the zoning administrator permit will be scheduled for review by the zoning administrator to consider if the continuation of the zoning administrator permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the zoning administrator permit would not cause public inconvenience, annoyance, disturbance or have an undue impact on the community or be incompatible with other uses of land in the zoning district. The review will be based, in part, upon a physical site review, traffic flow and control, access to and circulation within the property, off-street parking and loading, hours and manner of operation, noise, light, neighborhood complaints, police service calls, and any violations of any federal, state or local law. If, after review, the zoning administrator determines that the zoning administrator permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the zoning administrator permit would not cause public inconvenience, annoyance, disturbance or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the zoning administrator may administratively extend the zoning administrator permit in five-year increments. Each such extension shall be subject to the same administrative review. If the zoning administrator determines that that the zoning administrator permit would be detrimental to the public health, safety and welfare and that to continue the activities under the zoning administrator permit would cause public inconvenience, annoyance, disturbance or have an undue impact on the community or be incompatible with other uses of land the zoning district, the zoning administrator will notify the permittee of a denial of the extension in writing in the same manner as required under chapter 1 of the zoning ordinance. A permittee aggrieved by the decision of the zoning administrator may appeal the decision of the zoning administrator to the board of zoning appeals in the manner set forth in chapter 13 of the zoning ordinance. Nothing contained herein shall limit the rights of a permittee to seek a new zoning administrator permit; and
- (i) The zoning administrator, or appointed designee, shall have the ability to revoke the zoning administrator permit upon violation of any of the above conditions.

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- (42) Multifamily dwellings in MD-2, MD-3, MD-4, R-M, C-2, RT-1, DT-1, DT-2, and DT-3 districts shall comply with the following:

(a) In the MD-2, MD-3, MD-4, R-M, C-2, RT-1 districts, the use permit requirement shall not apply to buildings and structures used as multifamily dwellings if they were legally established on October 13, 2021 or to those for which a significant affirmative governmental act, as defined by section 15.2-2307 of the Code of Virginia, as amended, has been obtained and remains in effect as of October 13, 2021, which allows development of the specific project, including but not limited to, having obtained an approved site plan for the building or structure. Such buildings and structures shall be grandfathered and considered permitted uses—as opposed to legal nonconforming uses—as long as the multifamily use continues and the buildings or structures remain in their then structural condition. The requirements of this section shall apply, however, to any alterations of such buildings or structures in a manner not approved prior to October 13, 2021, and upon the cessation of the multifamily use for a period longer than two (2) years.

(b) In the DT-1, DT-2, and DT-3 districts, the following additional standards shall be required. In the event of a mixed-use development proposal involving a multifamily dwelling use, the requirements for multifamily dwellings shall supersede any conflicting standards that apply more generally to the development.

- (i) The standards in this subsection (b) shall not apply to buildings and structures used as multifamily dwellings if they were legally established on October 13, 2021 or to those for which a significant affirmative governmental act, as defined by section 15.2-2307 of the Code of Virginia, as amended, has been obtained and remains in effect as of October 13, 2021, which allows development of the specific project, including but not limited to, having obtained an approved site plan for the building or structure. Such buildings and structures shall be grandfathered and considered permitted uses—as opposed to legal nonconforming uses—as long as the multifamily use continues and the buildings or structures remain in their then structural condition. The requirements of this section shall apply, however, to any alterations of such buildings or structures in a manner not approved prior to October 13, 2021, and upon the cessation of the multifamily use for a period longer than two (2) years.
- (ii) The minimum residential development density shall be thirty (30) units per buildable acre.
- (iii) The primary entrance for all multifamily dwelling buildings abutting any public street shall face a public street. The primary entrance is not permitted from the parking area or alley.
- (iv) Off-street parking shall be prohibited in the front yard.
- (v) There shall be a fifteen (15) foot deep façade zone along the front lot line. Ninety (90) percent of the length of the façade zone shall be occupied by the multifamily dwelling building, except that required drive aisle(s) with associated sidewalks to access required off-street parking areas shall not be counted toward this percentage.
- (vi) A minimum of twenty (20) percent of the first floor street-adjacent building façades shall be comprised of glass windows and/or glass doors.
- (vii) There shall be at least one first floor window on all façades of all buildings containing residential dwelling units.
- (viii) All buildings containing residential dwelling units shall be a minimum of two (2) stories.

- (ix) The minimum ceiling height of the first floor of a building containing residential dwelling units shall be ten (10) feet.
- (x) For any building with residential dwelling area on the ground floor and which faces a public right-of-way, the first finished floor of the dwellings shall be a minimum of thirty six (36) inches above the grade of the public sidewalk at the primary entrance to the building.
- (xi) Sixty (60) percent of all residential dwelling units part of the development shall have access to an open space amenity either in the form of individual space for the unit's use, or shared common space which is sized in such a way to accommodate all of the required units as further described below. In the event that the requirement causes a fraction of a unit, the requirement shall be rounded up to the nearest whole number.

(aa) Individual open space amenities shall have a minimum dimension of four (4) feet by six (6) feet.

(bb) Shared common space may only be used as an open space amenity when accommodating more than four (4) units. Such shared common space must be sized to provide at least sixteen (16) square feet per each unit. The shared common space shall have a minimum dimension of eight (8) by eight (8) feet.

- (xii) When the development has fifty (50) or more residential dwelling units, at least one (1) of the following active recreation amenities shall be provided on the same lot: swimming pool, clubhouse or similar common room, lighted tennis court, lighted basketball court, shuffleboard area, dock, pier, boat ramp, dog park, or other similar active recreation amenity as approved by the Zoning Administrator. The amenity required by this subsection shall not be counted towards the requirement of Section 3-3(42)(b)(xi).

- (c) Multifamily dwellings which do not meet the by-right optional incentive standards set forth under subsection (b) are subject to obtaining a use permit. When considering a use permit, the city will follow the criteria for use permit review set forth in chapter 14, as amended, in order to determine suitability of the development for the proposed location.

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- (55) Restaurant, with a retail alcoholic beverage license, with live entertainment 1 or micro-brewery/distillery/winery with live entertainment 1 in all districts shall comply with the following minimum conditions:

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- (56) Restaurant, with or without a retail alcoholic beverage license, with live entertainment 2 or a micro-brewery/distillery/winery with live entertainment 2 in all districts shall comply with the following minimum conditions:

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