

STAFF EVALUATION

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Case No.: Zoning Ordinance Amendment, ZOA22-00005

Planning Commission Date: April 21, 2022 **City Council Date:** May 25, 2022

General Information

Description of Proposal The amendment proposes three restaurant uses: restaurant 1, restaurant 2, and restaurant 3. Proposed additional standards within those new restaurant categories will clarify permitted hours of operation, live entertainment, outdoor dining, drive-throughs or drive-ins, and operation with a retail alcoholic beverage license (ABC license) as part of the restaurant operation. Similarly, a set of additional standards is proposed for micro-breweries/distilleries/wineries, and breweries/distilleries/wineries.

Relevant Existing Zoning Definitions *Live entertainment.* Any artistic, musical or theatrical performance, including but not limited to, karaoke, open-microphone, live vocal or instrumental music, recorded music with a disc jockey (DJ), play, stand-up comedy, dance act, magic, poetry reading, reenactment, cabaret, or any combination thereof, performed by one (1) or more persons, whether or not they are compensated for the performance, in a privately owned premises that is open to the public, whether or not admission is charged.

Micro-brewery/distillery/winery. A facility for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, on- or off-premises, with production capacity of not more than fifteen thousand (15,000) barrels per year for micro-breweries or twenty thousand (20,000) gallons per year for micro-distilleries and micro-wineries.

Retail Alcoholic Beverage License. License issued by the Virginia Alcoholic Beverage Control Authority (VA ABC) which allows for the service and sale of wine, beer, and mixed beverages at restaurants, hotels, convenience stores, grocery stores, gourmet shops, delicatessens and other establishments.

Current Regulations The current ordinance lists fifteen uses within the Use Table that are related to operations of dining and drinking establishments. They include "outdoor dining 1", "outdoor dining 2", "outdoor dining, downtown", "outdoor dining, Phoebus", "restaurant, without a drive-through or drive-in, without a retail alcoholic beverage license", "restaurant without a drive-through or drive-in, with a retail alcoholic beverage license", "restaurant, with a drive-through or drive-in, without a retail alcoholic beverage license", "restaurant, with a drive-through or drive-in, with a retail alcoholic beverage license", "restaurant, without a retail alcoholic beverage license, with live entertainment 1", "restaurant, with a retail alcoholic beverage license, with live entertainment 1", "restaurant, with or without a retail alcoholic beverage license, with live entertainment 2", "brewery/distillery/winery, micro", "micro-brewery/distillery/winery with live entertainment 1", "micro-brewery/distillery/winery with live entertainment 2", and "brewery/distillery". These uses are permitted in a variety of districts

with a variety of additional standards and requirements. Many require obtaining a zoning administrator permit or a use permit prior to operation.

Analysis

This amendment consolidates several uses included within the "Table of Uses Permitted" generally related to restaurants, such as those with drive-throughs, live entertainment, or outdoor dining. The amendment proposes three restaurant uses: restaurant 1, restaurant 2, and restaurant 3. Proposed additional standards within those new restaurant categories will clarify permitted hours of operation, live entertainment, outdoor dining, drive-throughs or drive-ins, and operation with a retail alcoholic beverage license (ABC license) as part of the restaurant operation. Similarly, a set of additional standards is proposed for micro-breweries/distilleries/wineries, and breweries/distilleries/wineries.

In July 2020, the City amended the zoning ordinance to adopt several new restaurant uses due to new state authority regarding operation with an ABC license. Since the adoption of those new uses and additional standards, there have been several instances of restaurants struggling to comply with the restrictions. There have been instances where the operators received conflicting information from City staff or did not understand the information received, and subsequently violated the restrictions of their zoning administrator permits. This amendment is proposed in order to simplify the ordinance and ease the restrictive hours of operation standard, which was identified as the area where relief was needed.

Due to the many characteristics of restaurants which are regulated by the zoning ordinance, one single set of regulations is not possible. Factors such as the particular restaurant location, how late they are open, whether they sell alcohol, whether they offer live entertainment, whether they offer outdoor dining, whether they operate with a drive-through are all variables to consider. For instance, it may be appropriate for a restaurant within our urban downtown zoning districts to have live entertainment and outdoor dining well into the evening hours. On the other hand, it may be inappropriate for a restaurant to operate with live entertainment and outdoor dining in our manufacturing districts. Staff is proposing 3 restaurant types which include additional standards that are organized based upon the variety of characteristics of the restaurant. Under those characteristics, such as outdoor dining and live entertainment, there are specific allowances depending on which zoning district in which the restaurant is located. Staff recommends this approach as an attempt to assist potential restaurant owners or operators in understanding more clearly what restrictions apply to them.

The proposed restaurant categories only apply to new restaurants or those wanting to extend beyond their current approvals. Existing restaurants already legally established would be able to continue under their current unrestricted hours of operation or under their existing permitted conditions as may be applicable.

The restaurant 1 category is proposed to be permitted by-right. Within the proposed restaurant 1 category, hours of operation are proposed as limited to between 5:00AM and 2:00AM. No live entertainment, outdoor dining, or operation with an ABC license is permitted to qualify as a restaurant 1. The requirement to close by 2:00AM am is a new proposal which would prohibit 24-hour operations of new restaurants. This requirement addresses safety concerns for restaurants which can operate unrestricted in the early morning hours where patrons may be unruly or unsafely congregating.

Within the proposed restaurant 2 category, hours of operation can remain between 5:00AM and 2:00AM, unless the restaurant operates with an ABC license, in which case their hours must decrease to 5AM to 12:00AM. This 12:00AM am time is more permissive than the current restrictions on restaurants with an ABC license, which requires they close by 10:00PM unless they have obtained a use permit. Restaurant 2s may have limited live entertainment area indoors only, and may have limited outdoor dining, as permitted by their zoning district. Similarly, some may have drive-throughs or drive-ins as permitted by their zoning district. All restaurant 2s must obtain a zoning administrator permit and comply with the proposed additional standards in order to operate.

For any restaurant wishing to deviate from those limitations within either restaurant 1 or restaurant 2, they may request a use permit, which, if obtained, would classify them as a restaurant 3. City Council could impose conditions on the use permit related to their requested operations as appropriate for the restaurant location and proposal. This use permit requirement without setting specific additional standards within the ordinance allows restaurants which may have a unique business model or may propose specific measures to address possible concerns to deviate from those considered within restaurant 1 and restaurant 2.

In regards to micro-breweries/distilleries/wineries, the ordinance currently includes three uses. The proposed amendment would reduce those uses into one. The proposed use requires a zoning administrator permit and includes additional standards that permit limited hours of operation of any on-site retail or dining components, limited indoor live entertainment, and limited outdoor dining. Businesses wishing to exceed those restrictions would be able to request a use permit, similar to the proposed restaurant 3 use.

The proposed amendment would also clarify that breweries/distilleries/wineries are also permitted to have limited hours of on-site consumption, live entertainment, and outdoor dining which could be exceeded by obtaining a use permit in a similar fashion.

In sum, staff recommends adoption of the proposed amendment in order to simplify and clarify how dining and drinking venues in the City of Hampton are permitted. The proposed amendments would allow for a more streamlined approach while updating desired restrictions to protect the health, safety, and welfare of the public.

Staff recommends approval of ZOA 22-00005.