



## Legislation Text

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File #: 22-0169, Version: 1

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Ordinance to Amend and Re-Enact the Zoning Ordinance of the City of Hampton, Virginia by Amending Section 3-2 Entitled, "Table of Uses Permitted" and Section 3-3 Entitled, "Additional Standards on Uses," to Modify Regulations Pertaining to Restaurants, Micro-breweries, Distilleries, and Wineries, and Breweries, Distilleries, and Wineries with Retail Alcoholic Beverage Licenses or Live Entertainment or Outdoor Dining

### **Background Statement:**

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 has been the largest point of difficulty.

Within the proposed restaurant 1 category, hours of operation are proposed as limited to between 5 am and 2 am. No live entertainment, outdoor dining, or operation with an ABC license is permitted to qualify as a restaurant 1 which is proposed as a by-right use in the districts proposed. Within the proposed restaurant 2 category, hours of operation can remain between 5 am and 2 am, unless the restaurant operates with an ABC license, in which case their hours must decrease to 5 am to 12 am. 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 be classified as restaurant 3 by obtaining a use permit. City Council could impose conditions on the use permit related to their requested operations as appropriate for the restaurant location and proposal.

This amendment was heard by Planning Commission at the April 21, 2022 public meeting, where Planning Commission voted to recommend approval. The amendment was brought to the May 25, 2022 City Council meeting where it was deferred until July 13, 2022 in order to permit staff to

coordinate with businesses in Hampton on the proposed changes. No citizens spoke for or against the amendment at either public hearing. Staff communicated with businesses within the Downtown Hampton Development Partnership, Coliseum Central Improvement District, and Phoebus Partnership. All three groups have indicated their support for the proposed changes. There was agreement that the existing limitation on hours is too restrictive for businesses to operate profitably, and the proposed extended hours under the restaurant 2 category is an improvement.

**Recommendations:**

Staff Recommendation:

Approval

Planning Commission Recommendation:

Approval

**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:

**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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(12) Restaurant 1 in the C-1, C-2, C-3, M-1, M-2, LFA-2, RT-1, BB-3, BB-4, BB-5, HRC-1, HRC-2, HRC-3, LBP, DT-1, DT-2, PH-1, PH-2, PH-3, FM-1, FM-2, FM-3, and FM-4 zoning districts shall comply with the following additional standards:

- (a) The hours of operation of the restaurant shall be between 5:00 a.m. and 2:00 a.m.;
- (b) The restaurant shall maintain compliance with all applicable federal and state laws and requirements of licensing agencies;
- (c) The restaurant shall be subject to the provisions of the Hampton Zoning Ordinance and Hampton City Code, to include, but not be limited to, noise, setbacks, and building code requirements;
- (d) No operation with a retail alcoholic beverage license is permitted;
- (e) No live entertainment is permitted;
- (f) No outdoor dining is permitted; and
- (g) Restaurants with drive-throughs or drive-ins are not permitted within the M-1, M-2, LFA-2, HRC-1, HRC-2, HRC-3, DT-1, DT-2, PH-1, PH-2, PH-3, FM-1, FM-2, FM-3, and FM-4 zoning districts.

(13) Restaurant 2 in the C-1, C-2, C-3, M-1, M-2, LFA-2, RT-1, BB-3, BB-4, BB-5, HRC-1, HRC-2, HRC-3, LBP, DT-1, DT-2, PH-1, PH-2, PH-3, FM-1, FM-2, FM-3, and FM-4 districts shall obtain a Zoning Administrator

Permit and comply with the following additional standards:

- (a) The hours of operation of the restaurant shall be between 5:00 a.m. and 2:00 a.m. when the restaurant does not have a retail alcoholic beverage license ("ABC"). For restaurants with a retail alcoholic beverage license, the hours of operations of the restaurant shall be between 5:00 a.m. and 12:00 a.m.;
- (b) The restaurant shall maintain compliance with all applicable federal and state laws and requirements of licensing agencies, including but not limited to ABC licensing;
- (c) The restaurant shall be subject to the provisions of the Hampton Zoning Ordinance and Hampton City Code, to include, but not be limited to, noise, setbacks, and building code requirements;
- (d) A floor plan shall be provided showing the arrangement of all tables, chairs, and performance area, if any, which once approved by the City, shall becoming binding;
- (e) Any live entertainment shall comply with the following conditions:
  - (i) Live entertainment shall not be permitted in the M-1, M-2, LFA-2, HRC-1, HRC-2, and HRC-3 zoning districts;
  - (ii) Live entertainment shall be conducted inside the building only;
  - (iii) The performance space shall be 75 square feet or less;
  - (iv) The layout approved in the submitted floor plan shall remain in place for live entertainment performances and no dance floor or similar open gathering space shall be permitted;
  - (v) The hours of live entertainment shall not extend beyond the hours of operation of the restaurant; and
  - (vi) Each ingress/egress point in the establishment shall be monitored by an attendant during the hours of live entertainment. The establishment shall provide an additional attendant(s), as may be determined necessary by the Zoning Administrator, to monitor vehicle parking areas that serve the establishment in order to control patron behavior upon exit of the building into the parking areas and maintain compliance with these conditions and other City Code requirements.
- (f) Any outdoor dining shall comply with the following conditions:
  - (i) Outdoor dining shall not be permitted within the M-1, M-2, LFA-2, HRC-1, HRC-2, and HRC-3 zoning districts;
  - (ii) Within the DT-1, DT-2, PH-1, PH-2, PH-3, FM-1, FM-2, FM-3, and FM-4 districts, the hours of operation of the outdoor dining area shall not extend beyond the hours of operation of the restaurant.
  - (iii) Within the C-1, C-2, C-3, RT-1, BB-3, BB-4, BB-5, and LBP districts, the hours of operation of the outdoor dining area shall be between 5:00 a.m. and 10:00 p.m.;
  - (iv) The proposed outdoor dining operation and location will not significantly interfere with the pedestrian traffic or otherwise constitute a health and safety risk, as determined by the Zoning Administrator;
  - (v) The outdoor dining area shall be clearly delineated through use of barriers, landscaping, surface materials, or other similar means as determined by the Zoning Administrator;
  - (vi) Tables, chairs and other furniture placed outdoors shall be readily available for use during

outdoor dining operation. Any furniture which is not readily accessible must be stored where not visible from the right-of-way; and

(vii) All outdoor lighting shall be focused downward and inward in a way that prevents spillover onto adjacent properties;

(g) Restaurants with drive-throughs or drive-ins are not permitted in the M-1, M-2, LFA-2, HRC-1, HRC-2, HRC-3, DT-1, DT-2, PH-1, PH-2, PH-3, FM-1, FM-2, FM-3, and FM-4 zoning districts.

(h) The Zoning Administrator, or their designee, shall have the ability to revoke the zoning administrator permit upon violation of any of the above conditions.

(14) Restaurant 3 in the C-1, C-2, C-3, M-1, M-2, LFA-2, RT-1, BB-3, BB-4, BB-5, HRC-1, HRC-2, HRC-3, LBP, DT-1, DT-2, PH-1, PH-2, PH-3, FM-1, FM-2, FM-3, and FM-4 districts requesting to operate outside of the conditions required for Restaurant 1 or Restaurant 2, whichever is applicable, shall first obtain a use permit. The City will evaluate each application on a site-by-site basis with regard to the surrounding land use patterns and city council may impose conditions that are more restrictive as set forth in Article I, Chapter 14 of the zoning ordinance. Conditions may include, but are not limited to, the following:

(a) Hours of operation;

(b) Sound or noise; and

(c) Expiration of the use permit upon change in: ownership of the property; possession; or the operation or management of the facility.

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(22) Reserved.

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(47) Micro-brewery/distillery/winery in the M-1, M-2, M-3, HRC-1, HRC-2, LBP, DT-1, DT-2, PH-1, PH-2, PH-3, LFA-2, LFA-3, LFA-4, LFA-6, FM-2, FM-3, and FM-4 shall comply with the following minimum conditions:

(a) Micro-brewery/distillery/winery in the DT-1, DT-2, PH-1, PH-2, PH-3, FM-3 and FM-4 districts shall include a retail component which is open to the general public;

(b) The hours of operation of any dining or retail component shall be between 5:00 a.m. and 12:00 a.m. Production operations may occur at all hours of the day;

(c) The micro-brewery/distillery/winery shall maintain compliance with all applicable federal and state laws and requirements of licensing agencies, including but not limited to ABC licensing;

(d) The micro-brewery/distillery/winery shall be subject to the provisions of the Hampton Zoning Ordinance and Hampton City Code, to include, but not be limited to, noise, setbacks, and building code requirements;

(e) A floor plan shall be provided showing the arrangement of all tables, chairs, and performance area, if any, which once approved by the City, shall become binding;

(f) Any live entertainment shall comply with the following conditions:

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

- (ii) The performance space shall be 75 square feet or less;
  - (iii) The layout approved in the submitted floor plan shall remain in place for live entertainment performances and no dance floor or similar open gathering space shall be permitted;
  - (iv) The hours of operation for live entertainment shall not extend beyond the hours of operation of the micro-brewery/distillery/winery; and
  - (v) Each ingress/egress point in the establishment shall be monitored by an attendant during the hours of live entertainment. The establishment shall provide an additional attendant(s), as may be determined necessary by the Zoning Administrator, to monitor vehicle parking areas that serve the establishment in order to control patron behavior upon exit of the building into the parking areas and maintain compliance with these conditions and other City Code requirements.
- (g) Any outdoor dining shall comply with the following conditions:
- (i) Outdoor dining shall not be permitted within the M-1, M-2, M-3, HRC-1, and HRC-2 zoning districts;
  - (ii) Within the DT-1, DT-2, PH-1, PH-2, PH-3, FM-3, and FM-4 districts, the hours of operation of the outdoor dining area shall not extend beyond the hours of operation of the micro-brewery/distillery/winery.
  - (iii) Within the LBP district, the hours of operation of the outdoor dining area shall be between 5:00 a.m. and 10:00 p.m.;
  - (iv) Proposed dining operation and location will not significantly interfere with the pedestrian traffic or otherwise constitute a health and safety risk, as determined by the Zoning Administrator;
  - (v) The outdoor dining area shall be clearly delineated through use of barriers, landscaping, surface materials, or other similar means as determined by the Zoning Administrator;
  - (vi) Tables, chairs and other furniture placed outdoors shall be readily available for use during outdoor dining operation. Any furniture which is not readily accessible must be stored where not visible from the right-of-way; and
  - (vii) All outdoor lighting shall be focused downward and inward in a way that prevents spillover onto adjacent properties;
- (h) The zoning administrator, or appointed designee, shall have the ability to revoke the zoning administrator permit upon violations of any of the above conditions.
- (i) All micro-breweries/distilleries/wineries in the M-1, M-2, M-3, HRC-1, HRC-2, LBP, DT-1, DT-2, PH-1, PH-2, PH-3, FM-3, and FM-4 districts requesting to operate outside the conditions set forth under the provisions of Section 3-3(47)(a-h), and those in districts LFA-2, LFA-3, LFA-4, LFA-6, and FM-2 shall first obtain a use permit. The City will evaluate each application on a site-by-site basis with regard to the surrounding land use patterns and city council may impose conditions that are more restrictive as set forth in Article I of Chapter 14 of the zoning ordinance. Conditions shall

include, but are not limited to, the following:

- (i) Hours of operation;
- (ii) Sound or noise; and
- (iii) Expiration of the use permit upon change in: ownership of the property; possession; or the operation or management of the facility.

(48) Brewery/distillery/winery in the M-3, LFA-2, LFA-3, LFA-4, LFA-6 HRC-1, HRC-2, LBP, and FM-3 shall comply with the following minimum conditions:

- (a) Brewery/distillery/winery in the M-3, HRC-1, HRC-2, LBP, and FM-3 districts shall obtain a Zoning Administrator Permit and comply with the following additional standards:
  - (i) The hours of operation of any dining or retail component shall be between 5:00 a.m. and 12:00 a.m. Production operations may occur at all hours of the day;
  - (ii) The brewery/distillery/winery shall maintain compliance with all applicable federal and state laws and requirements of licensing agencies, including but not limited to ABC licensing;
  - (iii) The brewery/distillery/winery shall be subject to the provisions of the Hampton Zoning Ordinance and Hampton City Code, to include, but not be limited to, noise, setbacks, and building code requirements;
  - (iv) A floor plan shall be provided and approved showing the arrangement of all tables, chairs, and performance area, if any;
  - (v) Any live entertainment shall comply with the following conditions:
    - a. Live entertainment shall be conducted inside the building only;
    - b. The performance space shall be 75 square feet or less;
    - c. The layout approved in the submitted floor plan shall remain in place for live entertainment performances and no dance floor or similar open gathering space shall be permitted;
    - d. The hours of operation for live entertainment shall not extend beyond the hours of operation of the brewery/distillery/winery; and
    - e. Each ingress/egress point in the building shall be monitored by an attendant during the hours of live entertainment, 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;
  - (vi) Any outdoor dining shall comply with the following conditions:
    - a. Outdoor dining shall not be permitted within the M-3, HRC-1, and HRC-2 zoning districts;

- b. Within the FM-3 zoning districts, the hours of operation of the outdoor dining area shall not extend beyond the hours of operation of the brewery/distillery/winery.
- c. Within the LBP zoning district, the hours of operation of the outdoor dining area shall be between 5:00 a.m. and 10:00 p.m.;
- d. Proposed dining operation and location will not significantly interfere with the pedestrian traffic or otherwise constitute a health and safety risk;
- e. The outdoor dining area shall be clearly delineated through use of barriers, landscaping, surface materials, or other similar means as determined by the Zoning Administrator;
- f. Tables, chairs and other furniture placed outdoors shall be readily available for use during outdoor dining operation. Any furniture which is not readily accessible must be stored where not visible from the right-of-way; and
- g. All outdoor lighting shall be focused downward and inward in a way that prevents spillover onto adjacent properties; and

(vii) The zoning administrator, or appointed designee, shall have the ability to revoke the zoning administrator permit upon violations of any of the above conditions.

(b) All breweries/distilleries/wineries in the M-3, HRC-1, HRC-2, LBP, and FM-3 districts requesting to operate outside the conditions set forth under the provisions of Section 3-3(48)(a) and breweries/distilleries/wineries in the LFA-2, LFA-3, LFA-4, and LFA-6 districts shall first obtain a use permit. The City will evaluate each application on a site-by-site basis with regard to the surrounding land use patterns and may impose conditions that are more restrictive as set forth in Article I of Chapter 14 of the Zoning Ordinance. Conditions shall include, but are not limited to, the following:

- (i) Hours of operation;
- (ii) Sound or noise; and
- (iii) Expiration of the use permit upon change in: ownership of the property; possession; or the operation or management of the facility.

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(54) Reserved.

(55) Reserved.

(56) Reserved.

(57) Reserved.

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"[The attached Chart/Table/Graphic, entitled, "Table of Uses Permitted" is hereby declared to be a

part of this ordinance as if fully set forth herein.]"