



Legislation Text

File #: 20-0198, **Version:** 1

Ordinance To Amend And Re-Enact Chapter 3 Of 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"

Background Statement:

This amendment is in response to additional authority granted by House Bill 731 (2020) & Senate Bill 676 (2020), which amended section 15.2-2286 of the Code of Virginia. As of July 1st, 2020, the City of Hampton is added to the localities that are authorized to impose a condition on use permits for businesses which have retail alcoholic beverage licenses, stating that the use permit will automatically expire upon any of the following: change in ownership of the property, change in tenant, change in operation or management of the facility (business entity change), or the passage of a specific period of time (e.g., 5 years). Under the previous law, use permits ran with the land and new operators could "step into the shoes" of former operators.

This new authority applies to use permits only and does not apply to zoning administrator permits. Zoning administrator permits are approved administratively with general conditions and do not expire upon a change in ownership, tenant, or operator. Use permits require approval by City Council with site specific conditions.

This amendment adds a use permit or zoning administrator permit requirement to those restaurants with a retail alcoholic beverage license and breweries/distilleries/wineries; it does not change which districts restaurants or breweries/distilleries/wineries are permitted in. Restaurants which do not have a retail alcoholic beverage license are not affected by this amendment.

Restaurants with a retail alcoholic beverage license and breweries/distilleries/wineries are proposed to be permitted with a zoning administrator permit with the condition that the hours are limited to 6am - 10pm. Those establishments wishing to operate outside of those hours will require a use permit.

Live entertainment 1 uses and live entertainment 2 uses will continue to require a zoning administrator permit or use permit, respectively.

Existing, legally permitted restaurants and breweries, which would require a use permit or zoning administrator permit under the new regulations, would be considered to be legally non-conforming. This means they can continue to operate indefinitely. However, if operations cease for 24 months or longer, legal nonconforming status is lost and any new operation must adhere to the current requirements at that time.

This amendment is accompanied by a separate, related amendment to Chapter 2 of the Zoning Ordinance, #20-0199, which adds a definition for "retail alcoholic beverage licenses."

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.

[The attached Chart/Table/Graphic, entitled, "Table of Uses Permitted in Standard Zoning Districts " is hereby declared to be a part of this ordinance as if fully set forth herein.]

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

[The attached Chart/Table/Graphic, entitled, "Table of Uses Permitted in Special Zoning Districts" is hereby declared to be a part of this ordinance as if fully set forth herein.]

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Section 3-3. - Additional standards on uses.

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- (22) Live entertainment 1, in conjunction with a restaurant, without a retail alcoholic beverage license, 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 live entertainment 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 live entertainment permit will be scheduled for review by the zoning administrator to consider if the continuation of the live entertainment permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the live entertainment 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 live entertainment permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the live entertainment 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 live entertainment permit in five-year increments. Each such extension shall be subject to the same administrative review. If the zoning administrator determines that the live entertainment permit would be detrimental to the public health, safety and welfare and that to continue the activities under the live entertainment 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 live entertainment permit; and
- (i) The zoning administrator, or appointed designee, shall have the ability to revoke the live entertainment permit upon violation of any of the above conditions.

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

Micro-brewery/distillery/winery in all districts shall comply with the following minimum conditions:

- (a) 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, FM-4 districts are subject to a zoning administrator permit with the following attached conditions:
 - (i) The hours of operation of the micro-brewery/distillery/winery shall not extend beyond 6:00 a.m.-10:00 p.m.;
 - (ii) The micro-brewery/distillery/winery shall comply with section 22-9 of the City Code, as amended, pertaining to noise;
 - (iii) 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, parking, setbacks, and building code requirements;
 - (iv) 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 restaurant permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the restaurant 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, 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 restaurant permit would not be detrimental to the public health, safety and welfare zoning administrator 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 the zoning administrator permit would be detrimental to the public health, safety and welfare and that to continue the activities under the restaurant permit would 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 will notify the permittee of a denial of the extension in writing in the same manner as required under chapter 25 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 22 of the zoning ordinance. Nothing contained herein shall

limit the rights of a permittee to seek a new zoning administrator permit; and

(v) 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 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) and those in districts LFA-2, LFA-3, LFA-4, LFA-6, and FM-2 are subject to obtaining a use permit by city council. 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 more restrictive conditions when the proposal is adjacent to residential land uses. 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) Restaurant, without a drive-through or drive-in, with a retail alcoholic beverage license shall comply with the following minimum conditions:

(a) All restaurants, without a drive-through or drive-in in the C-1, C-2, C-3, M-1, M-2, BB-3, BB-4, BB-5, HRC-1, HRC-2, HRC-3, LBP, DT-1, DT-2, PH-1, PH-2, and PH-3 districts, with a retail alcoholic beverage license and restaurants with a drive-through or drive-in in the C-1, C-2, C-3, M-1, M-2, BB-3, BB-4, BB-5, HRC-1, HRC-2, HRC-3, LBP, DT-1, and DT-2 districts, with a retail alcoholic beverage license are subject to a zoning administrator permit with the following attached conditions:

(i) The hours of operation of the restaurant shall not extend beyond 6:00 a.m.-10:00 p.m.;

(ii) The restaurant shall comply with section 22-9 of the City Code, as amended, pertaining to noise;

(iii) The restaurant shall be subject to the provisions of the Hampton Zoning Ordinance and Hampton City Code, to include, but not be limited to, parking, setbacks, and building code requirements;

(iv) 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 restaurant permit would not

be detrimental to the public health, safety and welfare and that to continue the activities under the restaurant 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, 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 restaurant permit would not be detrimental to the public health, safety and welfare zoning administrator 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 the zoning administrator permit would be detrimental to the public health, safety and welfare and that to continue the activities under the restaurant permit would 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 will notify the permittee of a denial of the extension in writing in the same manner as required under chapter 25 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 22 of the zoning ordinance. Nothing contained herein shall limit the rights of a permittee to seek a new zoning administrator permit; and

(v) 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) Restaurants, with or without a drive-through or drive-in, with a retail alcoholic beverage license in the C-1, C-2, C-3, M-1, M-2, BB-3, BB-4, BB-5, HRC-1, HRC-2, HRC-3, LBP, DT-1, DT-2, PH-1, PH-2, and PH-3 districts requesting to operate outside the conditions set forth under the provisions of Section 3-3(54)(a) and restaurants, with a drive-through or drive in, with a retail alcoholic beverage license in the PH-1, PH-2, and PH-3 districts are subject to obtaining a use permit by city council. 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 more restrictive conditions when the proposal is adjacent to residential land uses. 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.

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

- (a) Live entertainment 1 venues with a retail alcoholic beverage license are subject to a zoning administrator permit with the following attached conditions.
 - (i) The hours of operation shall not extend beyond 6:00 a.m.-10:00 p.m.;
 - (ii) Live entertainment shall be conducted inside the building only;
 - (iii) 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;
 - (iv) The live entertainment 1 venue shall comply with section 22-9 of the City Code, as amended, pertaining to noise;
 - (v) 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;
 - (vi) The live entertainment 1 venue shall maintain compliance with all applicable federal and state laws and requirements of licensing agencies, including but not limited to ABC licensing;
 - (vii) 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, 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 restaurant 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 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 in 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 25 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 22 of the zoning ordinance. Nothing contained herein shall limit the rights of a permittee to seek a new restaurant permit; and

(viii) 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) Restaurants or micro-breweries/distilleries/wineries requesting to operate beyond the conditions set forth under the provisions of Section 3-3(55)(a) are subject to obtaining a use permit by city council. 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 more restrictive conditions when the proposal is adjacent to residential land uses. Conditions shall include, but are not limited to, the following:

(i) Hours of operation;

(ii) Sound or noise;

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

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

(a) Live entertainment 2 venues are subject to obtaining a use permit by city council. 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 more restrictive conditions when the proposal is adjacent to residential land uses. Conditions shall include, but are not limited to, the following:

(i) Hours of operation;

- (ii) Sound or noise;
 - (iii) Term limitation on the use permit, administrative review, and extension or denial of use permit.
 - (b) Live entertainment 2 venues, with a retail alcoholic beverage license, are subject to the conditions listed in sec. 3-3(56)(a) and the following condition:
 - (i) Expiration of the use permit upon change in: ownership of the property; possession; or the operation or management of the facility.
- (57) Brewery/distillery/winery shall comply with the following minimum conditions:
- (a) All breweries/distilleries/wineries in the M-3, HRC-1, HRC-2, LBP, and FM-3 districts are subject to a zoning administrator permit with the following attached conditions:
 - (i) The hours of operation of the brewery/distillery/winery shall not extend beyond 6:00 a.m.-10:00 p.m.;
 - (ii) The brewery/distillery/winery shall comply with section 22-9 of the City Code, as amended, pertaining to noise;
 - (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, parking, setbacks, and building code requirements;
 - (iv) 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 restaurant permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the restaurant 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, 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 restaurant permit would not be detrimental to the public health, safety and welfare zoning administrator 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 the zoning administrator permit would be detrimental to the public health, safety and welfare and that to continue the activities under the restaurant permit would 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 will notify the permittee of a denial of the extension in writing in the same manner as required under chapter 25 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 22 of the zoning ordinance. Nothing contained herein shall limit the rights of a permittee to seek a new zoning administrator permit; and

(v) 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 (57)(a) and breweries/distilleries/wineries in the LFA-2, LFA-3, LFA-4, and LFA-6 districts are subject to obtaining a use permit by city council. 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 more restrictive conditions when the proposal is adjacent to residential land uses. 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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