



**AGENDA FOR THE
ENGLEWOOD CITY COUNCIL
STUDY SESSION
MONDAY, JULY 22, 2013**

- I. **Executive Session**
At 6:00 p.m. in the City Council Conference Room, City Council will discuss a real estate issue (Englewood Depot) pursuant to C.R.S. 24-6-402-4(a).
- II. **Breweries & Distilleries**
At 6:30 p.m. in the Community Room, Community Development Director Alan White will discuss breweries and distilleries.
- III. **City Manager's Choice.**
- IV. **City Attorney's Choice.**
- V. **Council Member's Choice.**



M E M O R A N D U M

TO: City Council

THRU: Alan White, Community Development Director ✓

FROM: Chris Neubecker, AICP, Senior Planner ✓

DATE: July 11, 2013

SUBJECT: Case # 2012-005: Zoning for Distilleries, Breweries and Wineries

Recommendation

The Community Development Department requests that the City Council review and consider for adoption proposed amendments to the Unified Development Code (UDC) of the Englewood Municipal Code, Title 16, Chapter 16, "Use Regulations", and Title 16, Chapter 11, "Use Classifications and Definitions of Terms", relating to Distilleries, Breweries and Wineries.

Background

In August 2012, the Planning and Zoning Commission heard requests for a new brewery and separately heard of plans for a new distillery. The brewery was eventually approved as a conditional use and recently opened as "Brews on Broadway". Distilleries, however, are currently prohibited (Sec. 16-11-1 G 2 c (2)). There was consensus from the Planning and Zoning Commission to research these industries and consider code amendments to facilitate new business development.

On July 2, 2013 the Planning and Zoning Commission reviewed proposed code changes, held a public hearing, and recommended that City Council approve an ordinance to change the UDC to allow distilleries and clarify language on breweries and wineries. The proposed changes would allow distilleries, breweries and wineries as Permitted Uses in I-1 and I-2 districts. The Commission also supported these businesses as Conditional Uses in the M-2, MU-B-1 and MU-B-2 districts, as long as the businesses are limited in size and are designed to encourage pedestrian traffic with such activities as tap rooms, retail sales, tours, etc.

Some of the key elements of this proposal include:

- Alcohol distillation would no longer be prohibited
- I-1 and I-2 districts: Distilleries, breweries and wineries would be "Permitted Uses"
- M-2, MU-B-1 and MU-B-2 districts: Distilleries, breweries and wineries would be "Conditional Uses" with a limit of 10,000 square feet of gross floor area.

- Within M-2, MU-B-1 and MU-B-2, distilleries, breweries and wineries would only be allowed in conjunction with a tap room or retail sales area. These features would ensure that businesses in these mixed use districts generate foot traffic and street activity in these highly visible areas. (Within I-1 and I-2, tap rooms and retail sales areas would be allowed, but not required.)
- Definitions are proposed for “distillery”, “brewery”, “winery” and “tap room”. The definitions are designed to align with the State of Colorado definitions.
- The definition of “Micro-brewery” is proposed for removal. Micro-breweries will fall under the definition of “brewery”.

Analysis

The distillation of alcohol is currently prohibited in Englewood. As a result, new distilleries are prohibited. The relatively recent but significant growth of the craft distilling industry in Colorado and the United States has a promising future, and one local resident proposes to open such a business in Englewood. Others are also considering small breweries. In order to facilitate businesses development, staff proposes some amendments to the Unified Development Code.

Contrary to many manufacturing businesses, distilleries, breweries and wineries do not generate significant noise, odor or traffic. Distilleries and breweries smell similar to bakeries, and truck deliveries may happen only a few times per month. As a result, smaller craft distillers, brewers and vintners can fit into mixed use business districts with relatively few impacts, provided their size is limited. Large manufacturing operations in mixed use districts, however, could negatively impact the streetscape and the pedestrian experience with large, blank walls facing the street. This is why a size limit of 10,000 sq. ft. is recommended.

Distilleries, breweries and wineries can also attract visitors into the community. Especially small scale producers focusing on high quality, these businesses often include tours and “tap rooms” that generate pedestrian activity. (This is why these industries would be allowed in mixed use districts if they include a tap room, retail store, or other elements that generate foot traffic and/or sales tax.) New manufacturers without these foot traffic generators would likely locate in the less expensive industrial districts.

Conclusion

Staff believes that the proposed code amendments capture the intent and consensus of the Planning and Zoning Commission’s many discussions on this topic. We believe that these changes will support new business development but will also help protect community character and create active storefronts in the M-2, MU-B-1 and MUB-2 districts.

We welcome feedback from the City Council on this issue.

Next Steps

If the City Council supports these changes, we will move forward with first reading of an ordinance at the meeting of August 6, 2013.

MEMORANDUM



TO: Dan Brotzman, City Attorney

FROM: Dugan Comer, Prosecuting Attorney
Nancy Reid, Deputy City Attorney

DATE: July 18, 2013

REGARDING: Manufacturing of Intoxicating Liquors.

Can the City enact zoning to restrict the location and size of a business to manufacture, sell and distribute intoxicating liquor?

Where the State has the exclusive right and power to license and regulate the sale of alcoholic beverages, a municipal ordinance which conflicts with the states liquor laws is preempted. However, a comprehensive statutory regulatory scheme governing the sale and distribution of intoxicating liquors preempts only local ordinances and regulations that would have the effect or intent of frustrating the state's authority. Berger v. City of Boulder, 195 P.3d 1138 (2008),

The regulation of alcoholic beverages is not within the express powers granted to home-rule jurisdictions if the legislature has preempted this area Colorado Constitution Article 20 §6. However, a grant to the state liquor authority of power to control alcoholic beverage traffic within the state does not preclude local communities from controlling alcoholic beverage traffic within their boundaries in proper exercise of their police powers. It is acceptable for a local liquor control rule to differ from a state liquor control statute. Big Top, Inc. v Schooley, 368 P.2d 201 (1962). This policy was clearly stated by the Court in Casico, Inc. v. City of Manchester, 142 N.H. 312, 702 A.2d 302 (1997). "Absent a direct conflict between a statute and an ordinance, or some other clear indication, either express or implied, that the legislature intended to occupy the field of liquor licensing and its regulation to the exclusion of local licensing authorities, state law will not be held to preempt local ordinances in this area." In Colorado, the courts have consistently ruled that the zoning regulations of a home rule municipality are not preempted where they do not conflict with the State's requirements.

As noted above, the statutes are silent as to whether the City can regulate a State licensed manufacturer as to the size of the business. In looking at other cases where there is no conflict between the state statutes and local ordinances, the Courts have found that local rules are applicable, Jayhawk Cafe v. Colorado Springs, 165 P.3d 821 (2007). (where local rules on the hearing were not in conflict with the statutes. And, when the City of Fort Collins banned all Sunday sales of 3.2 malt beverages, where the State only limited the hours. The Colorado Supreme Court found that there was no conflict between the Statute regarding hours and the Ordinance banning the Sunday sales and therefore the Ordinance was a valid exercise of the City's Home Rule police powers. Kelly v. City of Fort Collins, 431 P.2d 785 (1967)

In contrast, if the City's regulations conflict with the States express authority they fail. As in the case of Berger v. City of Boulder, supra, where the State regulations allowed a bar to remain open until 2:00 A.M. and the City attempted to further restrict the hours of operation. The Court found that the City's attempt failed because it was in direct conflict with the State statutes.

Though the statute does not define manufacturer, it does define the different types of alcoholic beverages that can be manufactured in the state, these include a brewery, which means any establishment where malt liquors or fermented malt beverages are manufactured, this definition does not include a brew pub; a distillery where spirituous liquors are manufactured, and spirituous liquors are further defined as any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, etc. Finally, a winery is defined as any establishment where vinous liquors are manufactured.

Though the statute precludes local regulation of liquor manufacturing, as defined above, there is no specific pre-emption of local zoning ordinances by the state when it comes to licensing such manufacturing. 12-47-402 C.R.S. sets forth the requirements that attach to a manufacturer's license. In addition to the above section, 12-47-402(6)(d) states that: "The state licensing agency shall not grant a license for an additional sales room unless the applicant has complied with local zoning restrictions and the provisions of section 12-47-301(2)(a). However, that does not address zoning restrictions on the manufacturing facility itself.

While the statutes are silent on the zoning of manufacturers, other outlets, such as retail stores, bars, etc. are regulated by 12-4-113 C.R.S. which prohibits the issuance of a license where the zoning does not permit such a business [See Crittenden v. Hassen, 585 P.2d 928 (1978), which upheld the County's denial of a liquor permit based on zoning, even when the license application was pending at the time of rezoning}.

The location and size limitations proposed in this ordinance should not be in conflict with the State regulations and are consistent with the requirements for other liquor establishment

NNR/nf