



CASCADE COUNTY PLANNING DEPARTMENT

“Working Together to Provide Efficient and Effective Public Service”

SUPPLEMENTAL STAFF REPORT FOR “MICRO-BREWERY” AND “ALCOHOL DISTILLERY” DEFINITIONS AND “FEDERAL FIREARM RETAILERS, DEALERS, REPAIRERS” LAND USE TEXT REVISIONS TO THE CASCADE COUNTY ZONING REGULATIONS

Presented By: Charity N. Yonker, Planning Director

Presented For: Public Meeting in front of the Board of County Commissioners on November 24, 2020 to consider the Cascade County Planning Board’s Recommendations for Text and Map Revisions to the Cascade County Zoning Regulations

On November 18, 2020, the Board of County Commissioner tabled further discussion and action for the following definitions proposed to be included in the Cascade County Zoning Regulations § 2 “Definitions”: 1) “micro-brewery”; and 2) “alcohol distillery.” Additionally, the “Federal firearms retailer, dealer, and repairer” land use was tabled for further discussion and action as more information was needed to determine whether this land use should be treated as a principle permitted use or a special use requiring a Special Use Permit in the Commercial, Mixed-Use 20, and Agricultural Districts.

I. CASCADE COUNTY ZONING REGULATIONS § 2 PROPOSED “DEFINITIONS” FOR “MICRO-BREWERY” AND “ALCOHOL DISTILLERY”

A. MICRO-BREWERY

The proposed CCZR § 2 definitions were initially proposed as follows:

MICRO-BREWERY

A place and/or building, or portion thereof, that is used or intended for the production, packaging, and distribution of beverage grade alcohol from the fermentation of grains, fruits, vegetables, honey and the like through a brewing process. Services may include products sold on-site for consumption along with other beverages and food as well as product sales for off-site consumption.

RESTAURANT

A place and/or building, or portion thereof, that is used or is intended for the preparation and sale of food and beverages for immediate consumption on the premises, and where consumption of beer, wine, or other liquors, *if any, is clearly secondary and subordinate to the sale of food and beverages*; the term does not include a grocery store with a food service section.

The Montana Department of Revenue categorizes “breweries” into the following types: 1) nano breweries; 2) domestic breweries; and 3) large breweries.¹ A nano brewery produces less than 100 barrels of beer per year, provides unlimited fee samples from 8:00 AM to 2:00 AM; sells beer to customers to take home from 8:00 AM to 2:00 AM; and sells and delivers beer to wholesalers, retailers, and directly to the public. A domestic brewery may give away or sell up to 48 ounces in samples to customers from 10:00 AM to 8:00 PM; sells beer to customers to take home from 8:00 AM to 2:00 AM; and sells and delivers beer to wholesalers, retailers, and directly to the public. Large breweries produce over 60,000 barrels of beer per year and can only sell and deliver beer to licensed beer wholesalers.

The American Planning Association provides definitions such as “brewery,” “brewpub,” and “microbrewery” as set forth in *A Planners Dictionary*.² Two definitions for “brewery” include:

An industrial use that brews ales, beers, meads, and/or similar beverages on site. Breweries are classified as a use that manufactures more than 15,000 barrels of beverage (all beverages combined) annually. In addition, uses that manufacture 15,000 barrels of beverage or less, but which do not meet one or more of the additional requirements needed to be considered brewpubs, are breweries.

A facility with a capacity to manufacture more than 1 million barrels of alcoholic and nonalcoholic malt liquor a year. This definition excludes brew-on-premises stores as defined herein and/or small breweries operated in conjunction with a bar or restaurant defined herein as an accessory use.

One definition for brewpub/microbrewery include:

A commercial business which conducts the retail sales of beer (malt beverages with alcohol content as defined by federal law) which is brewed on the premises in compliance with applicable state and federal laws. Such establishments may also include restaurants as an accessory use....

The City of Great Falls defines “micro-brewery” as “a place and/or building, or portion thereof, that is used or intended for (1) the manufacture of malt beverages and (2) the sale and on-site consumption of those beverages, along with other beverages and food.” The City of Great Falls includes “and where food consumption, if any, is clearly secondary to the sale of alcoholic beverages...” in their “tavern” definition³ similar to the language contained in the CCZR “restaurant” definition.

¹ <https://mtrevenue.gov/liquor-tobacco/liquor-licenses/alcohol-manufacturers/breweries/>

² Davidson, M., & Dolnick, F. (2004). *A Planners Dictionary*. Chicago, IL: American Planning Association, Planning Advisory Service. doi:https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/PAS-Report-521-522.pdf

³ https://library.municode.com/mt/great_falls /codes/code_of_ordinances?nodeId=APXFLAUSDE



B. ALCOHOL DISTILLERY

The proposed CCZR § 2 definitions were initially proposed as follows:

ALCOHOL DISTILLERY

A place and/or building, or portion thereof, that is used or intended for the production, packaging, and distribution of beverage grade alcohol from the distillation of fermented grains, fruits, or vegetables, honey and the like. Services may include products sold on-site for consumption along with other beverages and food as well as product sale for off-site consumption.

RESTAURANT

A place and/or building, or portion thereof, that is used or is intended for the preparation and sale of food and beverages for immediate consumption on the premises, and where consumption of beer, wine, or other liquors, *if any, is clearly secondary and subordinate to the sale of food and beverages*; the term does not include a grocery store with a food service section.

The Montana Department of Revenue (“DOR”) categorizes alcohol distilleries into the following types: 1) micro-distillery; and 2) domestic distillery.⁴ A “micro-distillery” produces 200,000 proof gallons or less per year which is able to provide two (2) ounces of samples to each customer from 10:00 AM to 8:00 PM, sell up to 1.75 liters of product to each customer at the distillery for the customer to take home from 8:00 AM to 2:00 AM, sell and deliver distilled spirits to the DOR – Alcoholic Beverage Control Division, deliver to an agency liquor store using their own equipment, trucks, and employee, and use a common carrier to deliver to the DOR. A “domestic distillery” produces over 200,000 proof gallons of distilled spirits each year, which can sell and deliver distilled spirits to DOR – Alcoholic Beverage Control Division, and use a common carrier to ship to DOR. A “domestic distillery” may operate a warehouse separate from their manufacturing premises, if the warehouse is used exclusively for storage and the property endorsement is obtained through DOR.

The American Planning Association “Planners Dictionary,” the City of Great Falls, or other Montana counties, such as Missoula, Lewis & Clark, and Yellowstone, do not have “distillery” defined in their zoning regulations.

C. RECOMMENDATIONS

After reviewing and comparing the different brewery and alcohol distillery-related provisions along with similar language utilized in the “restaurant” definition and in the City of Great Falls’ definition for “tavern,” the proposed amendments are recommended as follows:

⁴ <https://mtrevenue.gov/liquor-tobacco/liquor-licenses/alcohol-manufacturers/distilleries/>



MICRO-BREWERY

A place and/or building, or portion thereof, that is used or intended for the production, packaging, **retail sale and/or wholesale**, and distribution of beverage grade alcohol from the fermentation of grains, fruits, vegetables, honey and the like through a brewing process, **and where preparation and sale of food and other beverages for consumption on the premises, if any, is clearly secondary and subordinate to the sale of on premises produced beverage grade alcohol.** ~~Services may include products sold on-site for consumption along with other beverages and food as well as product sales for off-site consumption.~~

ALCOHOL DISTILLERY

A place and/or building, or portion thereof, that is used or intended for the production, packaging, **retail sale and/or wholesale**, and distribution of beverage grade alcohol from the distillation of fermented grains, fruits, vegetables, honey and the like, **and where preparation and sale of food and other beverages for consumption on the premises, if any, is clearly secondary and subordinate to the sale of on premises produced beverage grade alcohol.** ~~Services may include products sold on-site for consumption along with other beverages and food as well as product sales for off-site consumption.~~

D. PROPOSED MOTIONS FOR CONSIDERATION

1. After consideration of public comments, testimony, and the Staff Report and supporting materials, I move the Board of Cascade County Commissioners **ADOPT** the propose definitions for related “micro-brewery” and “alcohol distillery” upon a finding that such text amendments substantially comply with the Cascade County Growth Policy and MCA § 76-2-203 with the following **MODIFICATIONS**:
 - a. **ADD** to CCZR § 2 “Definitions”: “MICRO-BREWERY” to be defined as the following:

A place and/or building, or portion thereof, that is used or intended for the production, packaging, retail sale and/or wholesale, and distribution of beverage grade alcohol from the fermentation of grains, fruits, vegetables, honey and the like through a brewing process, and where preparation and sale of food and other beverages for immediate consumption, if any, is clearly secondary and subordinate to the sale of on premises produced beverage grade alcohol.
 - b. **ADD** to CCZR § 2 “Definitions”: “ALCOHOL DISTILLERY” to be defined as the following:



A place and/or building, or portion thereof, that is used or intended for the production, packaging, retail sale and/or wholesale, and distribution of beverage grade alcohol from the distillation of fermented grains, fruits, vegetables, honey and the like, and where preparation and sale of food and other beverages for immediate consumption on the premises, if any, is clearly secondary and subordinate to the sale of on premises produced beverage grade alcohol.

2. After consideration of public comments, testimony, and the Staff Report and supporting materials, I move the Board of Cascade County Commissioners **DENY** the proposed definitions for “micro-brewery” and “alcohol distillery” upon a finding that such text amendments are not in substantially comply with the Cascade County Growth Policy and MCA § 76-2-203.

II. “FEDERAL FIREARM RETAILERS, DEALERS, AND REPAIRERS” LAND USE

A. POINTS FOR DISCUSSION

The “Federal Firearm Retailers, Dealers, Repairers” land use is proposed as a special use requiring a Special Use Permit in the Commercial, Mixed-Use 20, and Agricultural Districts in accordance with the Planning Board’s recommendations.

The CCZR does not define such use. When words or phrases in the CCZR are not explicitly defined, they carry the common meaning to give the Regulation a reasonable application.⁵ “Retail” is defined by the CCZR as “[a]n establishment where the principle use is the selling or renting of goods or merchandise to the general public for personal or household consumption, and rendering of services incidental to the sale of such goods.” The following definitions have been taken from Merriam-Webster⁶:

Retail (n.): the sale of commodities or goods in small quantities to ultimate consumers also: the industry of such selling.⁷

Deal (n.): 4) business; a. to sell or distribute something as a business; b. to engage in bargaining: trade.⁸

Repair (v.): 1) a. to restore by replacing a part or putting together what is torn or broken: fix; b. to restore to a sound or healthy state: renew.⁹

⁵ CCZR § 2.1, “General Remarks on Definitions.”

⁶ <https://www.merriam-webster.com/>

⁷ <https://www.merriam-webster.com/dictionary/retail>

⁸ <https://www.merriam-webster.com/dictionary/dealer>

⁹ <https://www.merriam-webster.com/dictionary/repair>



The US Department of Justice – Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) has at least nine (9) distinguishing types of licenses concerning dealing, selling, importing, and manufacturing of firearms and ammunition.¹⁰ “Federal Ammunition Manufacturer” is a separate land use permitted in the Mixed Use – 20 District with an SUP.¹¹ “Manufacturing, Light” remains as a use permitted upon issuance of a special use permit in the Commercial District and in the Agricultural District, and general “manufacturing and assembly” is permitted with a SUP in the Mixed Use District. If a business operation was to engage in more intensive processing or manufacturing processes (e.g. assembly, fabrication, treatment, packaging, storage, sales and distribution, metal processing, etc.), it would be considered an “industrial, heavy” or “industrial, light” that would be permitted as a principal use in the Light and Heavy Industrial District. Therefore, only firearms retailers, dealers, and repairers are incorporated under the specific land use.

The American Planning Association “Planners Definitions” provides the following example definitions:

Firearms Dealer

Any person engaged in the sale, lease, trade, or other transfer of firearms or ammunition at wholesale or retail. Firearms dealer shall not include any person engaged only in the business of repairing firearms.

A person engaged in the business of selling, transferring, leasing, repairing, or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease any firearm with the exception of a Bureau of Alcohol, Tobacco, and Firearms Federal Firearms License of Type 03 (collectors of curios and relics). Included in this definition are persons involved solely in the warehousing and storage of firearms.

Firearms Sales Establishment

An establishment having at least 25 percent of its gross floor area used for the sale of firearms, ammunition and ammunition components, and hunting or shooting equipment.

A review of CCZR Special Use Permits (“SUP”) issued since 2016 for “Federal Firearm Retailers, Dealers, Repairers” showed that three (3) home-based businesses have been permitted, one of which later obtained a separate SUP for light manufacturing and assembly, and all uses permitted in the Agricultural District. These permit applications provide that sales and trade would occur online, on-

¹⁰ Types: 01: Dealer in Firearms other than Destructive Devices (Includes: rifles, shotguns, pistols, revolvers, gunsmith activities, and National Firearms Act (NFA) weapons); 02: Pawnbroker in Firearms other than Destructive Devices (Includes: rifles, shotguns, pistols, revolvers, gunsmith activities, and National Firearms Act (NFA) weapons); 03: Collector of Curios and Relics (NOTE: This is not a license to conduct business...); 06: Manufacturer of Ammunition for Firearms other than Ammunition for Destructive Devices or Armor Piercing Ammunition; 07: Manufacturer of Firearms other than Destructive Devices; 08: Importer of Firearms other than Destructive Devices or Ammunition for Firearms other than Destructive Devices, or Ammunition other than Armor Piercing Ammunition (NOTE: Importer of handguns and rifles); 09: Dealer in Destructive Devices; 10: Manufacturer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition; 11: Importer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition. 18 U.S. C. Chapter 44 – Type 03 License; 18 U.S.C. Chapter 44 – Type 01, 02, 06, 07, 08, 09, 10, and 11 Licenses.

¹¹ See Planning Board’s Recommended Revisions CCZR § 7.6.11(35).



premises and at gun shows. A pending SUP Application for “light manufacturing and assembly” is located in the Agricultural District and provided that they desire to utilize existing agricultural infrastructure on the premises to machine and fabricate small parts and components for firearms for the firearms and agricultural industries.

B. PROPOSED MOTIONS FOR CONSIDERATION

1. After consideration of public comments, testimony, and the Staff Report and supporting materials, I move the Board of Cascade County Commissioners **ADOPT** the following text amendments to the Cascade County Zoning Regulations in accordance with the recommendation of the Cascade County Planning Board to have “Federal Firearms Retailers, Dealers, Repairers” as a use permitted upon issuance of a special use permit in the Mixed-Use 20, and Agricultural Districts upon a finding that such text amendments substantially comply with the Cascade County Growth Policy and MCA § 76-2-203.
2. After consideration of public comments, testimony, and the Staff Report and supporting materials, I move the Board of Cascade County Commissioners **ADOPT** the following text amendments to the Cascade County Zoning Regulations in accordance with the recommendation of the Cascade County Planning Board upon a finding that such text amendments substantially comply with the Cascade County Growth Policy and MCA § 76-2-203 with the following **MODIFICATIONS**:
 - a. **ADD** to the CCZR §§ 7.6.9 “Mixed Use – 20,” and 7.7.2 “Agricultural District” the following land use as a permitted principle use: [*“Federal Firearm Retailers, Dealers, Repairers”/“Home-based Federal Firearm Retailers, Dealers, Repairers”*].
 - b. **REMOVE** from CCZR §§ 7.6.11(36) “Mixed Use – 20,” and 7.7.4(21) “Agricultural District” the land use “Federal Firearm Retailers, Dealers, Repairs” as a use permitted upon issuance of a special use permit.
3. After consideration of public comments, testimony, and the Staff Report and supporting materials, I move the Board of Cascade County Commissioners **ADOPT** the following text amendments to the Cascade County Zoning Regulations in accordance with the recommendation of the Cascade County Planning Board upon a finding that such text amendments substantially comply with the Cascade County Growth Policy and MCA § 76-2-203 with the following **MODIFICATIONS**:
 - a. **REMOVE** from CCZR §§ 7.6.11(36) “Mixed Use – 20 District” as a use permitted upon issuance of a special use permit”: Federal Firearm Retailers, Dealers, Repairers.
 - b. **ADD** to CCZR §§ 7.6.9 “Mixed Use – 20 District” under “Permitted Principal Uses”: Federal Firearm Retailers, Dealers, Repairers.
 - c. **RETAIN** CCZR § 7.7.4(21) “Agricultural District”: “Federal Firearm Retailers, Dealers, Repairs” as a use permitted upon issuance of a special use permit.

