



Community Development Department

DATE: March 2, 2021

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Domestic Distilleries and Microbrew Pubs – Zoning Ordinance Text Amendment

REQUEST

The Community Development Department – Planning Division is initiating a zoning ordinance text amendment relating to domestic distilleries and microbrew pubs. The proposed amendment would update the City's zoning provisions for smaller beer brewing operations to reflect current state law by eliminating definitions and provisions for brewpubs and microbreweries, and adding definitions and provisions for brewer taprooms and microbrew pubs; add definitions and provisions for smaller alcohol distillery operations; and assign each as a permitted or special use in specified zoning districts. The provisions, as proposed, would bring the City's zoning regulations in line with state law terminology and add provisions to allow domestic distilleries.

Please place this item on the March 9, 2021 City Commission meeting agenda and the March 23, 2021 City Commission meeting agenda.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on this request on February 24, 2021.

No residents spoke at the public hearing or submitted written comments.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning ordinance text amendment relating to brewpubs, brewer taprooms, microbreweries, microbrew pubs and domestic distilleries.

RECOMMENDED CITY COMMISSION ACTION

March 9th meeting of the Board of City Commissioners – consider the zoning ordinance text amendment as outlined in Ordinance 6456 and call for a public hearing on this item

for the March 23rd meeting of the Board of City Commissioners.

March 23rd meeting of the Board of City Commissioners – hold a public hearing on the zoning ordinance text amendment as outlined in Ordinance 6456 and take final action on the request.

STAFF CONTACT INFORMATION

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CITY OF BISMARCK
ORDINANCE NO. 6456

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND SECTIONS 14-02-03 (DEFINITIONS), 14-03-07 (USE GROUPS), 14-03-08 (SPECIAL USES), 14-04-10 (CA COMMERCIAL DISTRICT), 14-04-12 (CG COMMERCIAL DISTRICT), 14-04-14 (MA INDUSTRIAL DISTRICT), 14-04-21 (DOWNTOWN DISTRICTS), 14-04-21.3 (USE CATEGORIES) and 14-04-21.4 (USE STANDARDS) OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO BREWPUBS, BREWER TAPROOMS, MICROBREWeries, MICROBREW PUBS AND DOMESTIC DISTILLERIES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amend. 14-02-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Definitions, is hereby amended to read as follows:

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

* * * * *

~~Brewpub: A restaurant that manufactures up to 10,000 barrels (31 gallons/barrel = 310,000 gallons) of fermented malt beverages per year for consumption on the premises.~~

* * * * *

Brewer Taproom: A facility that manufactures no more than 25,000 barrels of fermented malt beverage per year for

wholesale, sale directly to consumer or for consumption on the premises. A brewer taproom may be co-located within a restaurant or a separate stand-alone facility.

* * * * *

Domestic Distillery: A facility that manufactures less than 25,000 gallons of spirits per year produced on-site and available for wholesale, for sale directly to consumers on-site, or sale to other domestic distilleries on-site. A domestic distillery may be co-located within a restaurant or a separate stand-alone facility.

* * * * *

~~Micro-Brewery: A facility that manufactures up to 10,000 barrels of fermented malt beverages per year for wholesale or sale directly to the consumer.~~

* * * * *

Microbrew Pub: A facility that manufactures up to 10,000 barrels (31 gallons/barrel = 310,000 gallons) of fermented malt beverages per year for wholesale or sale directly to consumer or for consumption on the premises. A microbrew pub may be co-located within a restaurant or a separate stand-alone facility.

Section 2. Amend. 14-03-07 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Use Groups, is hereby amended to read as follows:

14-03-07. Use Groups. In order to carry out the purposes of this title, certain uses having similar characteristics are classified together as "use groups". In any district in which a use group is permitted, it is the intent of this title to permit any particular member of that use group to be located within that district. In any district in which a use group is not listed as a permitted use, it is the intent of this title to prohibit each and every member of that use group from locating within that district. These use

groups shall apply to all zoning districts except the Downtown Core and Downtown Fringe district.

* * * * *

4. Service group A. A use in service group A is one in which the principal activity is the serving of food for consumption on the premises, personal service, household or clothing service, or the repair of small equipment and which:

* * * * *

c. The following uses are declared to be typical uses in service group A:

* * * * *

7) Food service establishment, ~~including brewpub,~~ but exclusive of drive-in restaurant.

* * * * *

Section 3. Amend. 14-03-08 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Special Uses, is hereby amended to read as follows:

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such permit or certificate.

* * * * *

4. Permanent uses (planning and zoning commission approval). The city planning and zoning commission is

authorized to grant special use permits for the following uses:

* * * * *

u. ~~Microbrewery~~ Microbrew Pub and Domestic Distillery.
A ~~microbrewery~~ microbrew pub and/or domestic distillery
may be permitted in any ~~CG or DC~~ CA, DC or DF district
as a special use provided:

1. The site may not be located within three hundred (300) feet of the nearest lot line of any religious institution, public or parochial school, public library, hospital, or college or university building used for academic purposes, unless the entity(s) affected by the above limitation consent to the granting of the special use permit.

2. A facility at the proposed site will not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area; the general nature, character, age and condition of the adjacent development; the proximity to residential areas, regardless of zoning; or any other criteria the City may deem pertinent.

3. All brewing, and/or distilling and storage activities are located within a completely enclosed building.

4. The facility complies with all applicable building code, health and sanitation, and zoning regulations.

5. The facility complies with all applicable licensing and operational requirements of the State.

6. Beverages brewed or distilled onsite cannot be sold or otherwise provided for consumption on the premises unless the owner ~~of the microbrewery~~ holds the appropriate liquor license from the City.

7. Beverages brewed or distilled onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner ~~of the microbrewery~~ holds appropriate liquor license from the City.

8. Adequate parking is provided onsite in accordance with the provisions of Section 14-03-10.

Section 4. Amend. 14-04-10 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the CA Commercial District, is hereby amended to read as follows:

14-04-10. CA Commercial District. In any CA commercial district, the following regulations shall apply:

* * * * *

2. Uses permitted. The following uses are permitted:

* * * * *

The following special uses are permitted as per Section 14-03-08 hereof:

* * * * *

h. Microbrew pub.

i. Domestic distillery.

Section 5. Amend. 14-04-12 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the CG Commercial District, is hereby amended to read as follows:

14-04-12. CG Commercial District. In any CG commercial district the following regulations shall apply:

* * * * *

2. Uses permitted. The following uses are permitted:

* * * * *

t. Microbrew pub.

u. Domestic distillery.

The following uses are allowed as special uses pursuant to Section 14-03-08 hereof:

* * * * *

~~1. Microbrewery.~~

Section 6. Amend. 14-04-14 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the MA Industrial District, is hereby amended to read as follows:

14-04-14. MA Industrial District. In any MA industrial district the following regulations shall apply:

* * * * *

2. Uses permitted. The following uses are permitted:

* * * * *

o. Microbrew pub.

p. Domestic distillery.

q. Brewer Taproom

* * * * *

Section 7. Amend. 14-04-21 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Downtown Districts, is hereby amended to read as follows:

14-04-21. Downtown Districts.

* * * * *

Use Table.

Use Category	Definition	Use Standards	District	
			DC	DF
* * * * *				
Commercial Uses				
* * * * *				
<u>Domestic Distillery</u>	A facility that manufactures less than 25,000 gallons of spirits per year.	<u>X</u>	<u>SUP</u>	<u>SUP</u>
* * * * *				
<u>Microbrewery Microbrew Pub</u>	Small-scale brewery that manufactures up to 10,000 barrels of fermented malt beverages per year.	X	SUP	--- <u>SUP</u>
* * * * *				

Section 8. Amend. 14-04-21.3 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Use Categories, is hereby amended to read as follows:

14-04-21.3 Use Categories.

* * * * *

a. Domestic Distillery. Domestic Distilleries are facilities that manufacture less than 25,000 gallons of

spirits per year produced on-site and available for wholesale, for sale directly to consumers on-site, or sale to other domestic distilleries on-site. A domestic distillery may be co-located within a restaurant or a separate stand-alone facility.

ab. Drive-through Facilities. Drive-through facilities are any portion of a building from which business is transacted, or capable of being transacted, directly with customers located in a motor vehicle. Such a facility is usually accessory to a principal use and may also be referred to as a drive-in or drive-up. Examples include drive-through windows at financial institutions and restaurants.

bc. Entertainment Event, Major. Major entertainment events are characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature. Examples include stadiums, sports arenas, auditoriums, exhibition halls, convention centers and fairgrounds. This category does not include outdoor recreation and entertainment uses, such as golf driving ranges and racetracks.

ed. Microbrewery. ~~Microbreweries are small-scale breweries that manufacture up to 10,000 barrels of fermented malt beverages per year for wholesale or sale directly to the consumer.~~ Microbrew pub: A facility that manufactures up to 10,000 barrels (31 gallons/barrel = 310,000 gallons) of fermented malt beverages per year for wholesale, sale directly to consumer or for consumption on the premises. A brewpub may be co-located within a restaurant or a separate stand-alone facility.

de. Office. Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical or financial services. Examples include professional services such as lawyers, accountants, engineers or architects; financial businesses such as lenders, brokerage houses, bank headquarters or real estate agents; data processing; sales offices; government offices and public utility offices; TV and radio

studios; medical and dental clinics; medical and dental labs; and blood-collection facilities.

ef. Parking, Accessory. Accessory parking facilities provide parking that is accessory to a specific use, but not located on the same parcel as the use. Examples include short and long-term parking facilities, both surface and in structures. A facility that provides both accessory parking for a specific use and fee parking for people not connected to the use is classified as a commercial parking facility.

fg. Parking, Commercial. Commercial parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and fee parking for people not connected to the use is also classified as a commercial parking facility. Examples include short and long-term parking facilities, both surface and in structures.

gh. Retail Sales and Services. Retail sales and services are firms that are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods. Examples of retail sales and services are broken down into four categories: sales-oriented, personal-service-oriented, entertainment-oriented, and repair oriented.

Examples of sales-oriented uses include stores selling, leasing or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery and videos; food sales; and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light trucks and other recreational vehicles.

Examples of personal services-oriented uses include branch banks; laundromats; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians (out-patient only); and animal grooming.

Examples of entertainment-oriented uses include restaurants, cafes, delicatessens, brewpubs, bars and taverns; indoor entertainment activities such as bowling alleys, ice rinks, game arcades, and pool halls; dance halls; indoor firing ranges; theaters; health clubs and gyms; membership clubs and lodges; and hotels, motels and other temporary lodging with an average stay of less than 30 days, including bed and breakfast facilities.

Examples of repair-oriented uses include repair of televisions, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer.

This category does not include self-service storage uses, adult entertainment centers, animal hospitals or kennels, off-premise advertising signs or microbreweries.

Section 9. Amend. 14-04-21.4 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Use Standards, is hereby amended to read as follows:

14-04-21.4 Use Standards.

* * * * *

6. ~~Microbrewery~~ Microbrew Pub and Domestic Distillery.

a. The site may not be located within three hundred (300) feet of the nearest lot line of any religious institution, public or parochial school, public library, hospital, or college or university building used for academic purposes, unless the entity(s) affected by the above limitation consent to the granting of the special use permit.

b. A facility at the proposed site will not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area; the general nature, character, age and condition of the adjacent development; the proximity to residential areas, regardless of zoning; or any other criteria the City may deem pertinent.

c. All brewing, distilling and storage activities are located within a completely enclosed building.

d. The facility complies with all applicable building code, health and sanitation, and zoning regulations.

e. The facility complies with all applicable licensing and operational requirements of the State.

f. Beverages brewed or distilled onsite cannot be sold or otherwise provided for consumption on the premises unless the owner ~~of the microbrewery~~ holds the appropriate liquor license from the City.

g. Beverages brewed or distilled onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner ~~of the microbrewery~~ holds the appropriate liquor license from the City.

h. Adequate parking is provided onsite in accordance with the provisions of Section 14-03-10.

Section 10: Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 11. Effective Date. This ordinance shall take effect after final passage, adoption and publication.



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

February 24, 2021

Application for: Zoning Ordinance Text Amendment

TRAKiT Project ID: ZOTA2021-001

Project Summary

<i>Title:</i>	Domestic Distilleries and Microbrew Pubs
<i>Status:</i>	Planning & Zoning Commission – Public Hearing
<i>Project Contact:</i>	Will Hutchings, Planner
<i>Sections Amended:</i>	14-02-03 (Definitions) 14-03-07 (Use Groups) 14-03-08 (Special Uses) 14-04-10 (CA Commercial District) 14-04-12 (CG Commercial District) 14-04-14 (MA Industrial District) 14-04-21 (Downtown Districts) 14-04-21.3 (Use Categories) 14-04-21.4 (Use Standards)
<i>Request:</i>	Consider revisions to provisions for microbreweries, and to allow brewer tap rooms and domestic distilleries.

Staff Analysis

The Community Development Department – Planning Division is initiating a zoning ordinance text amendment to revise terminology used for brewpubs, microbreweries and microbrew pubs; allow for domestic distilleries and brewer taprooms and assign each as permitted or special uses in specified zoning districts.

The amendments are being proposed at the request of the Planning and Zoning Commission, who at their regularly scheduled meeting on November 18, 2020, heard a request from a potential business owner that asked that “craft distilleries” be allowed in commercial zoning districts. The Planning and Zoning Commission directed staff to draft an amendment for their consideration.

The Planning and Zoning Commission tentatively approved the draft amendments on January 27, 2020 and called for a public hearing.

Staff conducted additional research on the request, specifically the existing terminology used in the current zoning ordinance for microbreweries and brewpubs and current North Dakota Century Code. Upon further investigation, staff discovered inconsistencies in terminology between the City and State and are recommending additional changes to ensure consistency.

What is a domestic distillery?

A domestic distillery is a small operation that produces distilled spirits. North Dakota Century Code defines the threshold to qualify as a domestic distillery as a facility that manufactures no more than 25,000 gallons of produced domestic spirits per year. These facilities are required to use 51% of North Dakota farm product. Domestic distilleries may sell manufactured spirits for wholesale, for sale direct to consumers on-site and to other domestic distilleries.

Domestic distilleries are also commonly known as “craft distilleries” or “micro distilleries”. The emergence of

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small-scale distilleries is on the rise in many cities across the nation as the public seeks a variety of locally produced consumer options. They are similar to microbrew pubs both in scale and potential neighborhood impact considerations.

What is a microbrew pub?

A microbrew pub is a small operation that produces brewed malt beverage or beer. North Dakota Century Code defines a microbrew pub, as “a brewer that brews 10,000 or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises or serves beer produced or manufactured on the premises for purposes of sampling the beer.”

Microbrew pubs are also commonly known as “brewpubs”, “microbreweries” or “craft breweries.” The term “nanobrewery” may also be used to define a microbrew pub that is even smaller in size and production levels.

What is a brewer taproom

A brewer taproom is a larger operation that produces brewed malt beverage or beer and allows for on-site consumption as well as wholesale and sale directly to consumers. The maximum amount of production allowed for a brewer taproom may not exceed 25,000 barrels of beer per year per North Dakota Century Code.

Current Ordinance Regulations

Currently, the City of Bismarck zoning ordinance uses two terms for these types of facilities: microbrewery and brewpub. A microbrewery is used to define a standalone facility that produces 10,000 barrels or less of beer on-site for sale on-site or wholesale. A brewpub is defined as a restaurant that produces 10,000 barrels or less of beer for consumption on site.

The City of Bismarck first permitted microbreweries and brewpubs in 2009, establishing a production threshold of no more than 5,000 barrels of beer per year. The zoning ordinance was amended in 2013 to raise the production threshold to 10,000 barrels of beer per year.

Brewpubs are currently listed as a permitted use under Service Group A and are an allowable use in the CA – Commercial, CG – Commercial and MA – Industrial zoning districts. In the Downtown zoning regulations, brewpubs are listed as an Entertainment-Oriented use and are a permitted use in the DF – Downtown Fringe and DC – Downtown Core zoning districts. To date, no facility has operated strictly as a brewpub as defined under the current zoning ordinance.

Microbreweries are allowed as a permanent special use in the CG – Commercial and DC – Downtown Core zoning districts. Staff has also interpreted microbreweries to be allowed in the MA – Industrial Zoning district as a manufacturing use. However, this is not specifically stated in the ordinance. Unlike a brewpub, a microbrewery does not need to be a restaurant, but, of the five facilities within the community that currently operate as a microbrewery, three are also restaurants.

Proposed Ordinance Regulations

The proposed zoning ordinance text amendment would reclassify brewpubs and microbreweries as microbrew pubs to align with current North Dakota Century Code regulations and definitions, and remove the requirement that facilities must be located within a restaurant if selling brewed beer for on-site consumption only. The proposed amendment would also define and set allowable zoning districts for operation of domestic distilleries.

As proposed, staff is recommending that microbrew pubs and domestic distilleries both be subject to the same zoning requirements. Microbrew pubs and domestic distilleries would be permitted as an allowable use in the CG – Commercial and the MA – Industrial zoning districts and permitted as a special use with the approval of the Planning and Zoning Commission in the CA – Commercial, DF – Downtown Fringe and DC – Downtown Core zoning districts. The special use requirement for these zoning districts would ensure additional review of potential incompatibility with adjacent land uses.

Since the production level of a brewer taproom is larger, they would only be a permitted use in the MA – Industrial zoning districts.

(continued)

Building Code Considerations

Domestic distilleries may be subject to additional building code requirements due to the higher alcohol volume and production process. Prospective applicants will be encouraged to consult with the Building Inspections Division and the Fire Department prior to obtaining any necessary permits for operation or construction.

Sanitary Sewer Considerations

Domestic distilleries and microbrew pubs will be encouraged to consult with the Public Works - Utility Operations to discuss any industrial pre-treatment requirements that may be necessary prior to operation, and to coordinate any excessive discharges of produced product into the sanitary sewer system with the municipal wastewater treatment plant.

Concurrent Alcohol License Amendment

The City Attorney and City Administration are currently working on necessary amendments to the list of current alcohol licenses. The proposed ordinance amendment will be introduced to the Bismarck City Commission and a public hearing would be held in conjunction with the proposed zoning ordinance text amendment.

Existing Microbreweries

Currently there are 3 microbreweries permitted as special uses operating within the City of Bismarck:

1. Gideons Brewery (DC – Downtown Core)
2. Stonehome BrewPub (PUD – Planned Unit Development)
3. Bismarck Brewing (CG – Commercial)

Under the proposed changes these facilities would be permitted as allowable uses under the microbrew pub definition.

Required Findings of Fact (relating to land use)

1. The proposed text amendment would not adversely affect the public health, safety or general welfare;
2. The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance;
3. The proposed text amendment is consistent with the general intent and purpose of the zoning ordinance; and
4. The proposed text amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning ordinance text amendment of Sections 14-02-03 (Definitions), 14-03-07 (Use Groups), 14-03-08 (Special Uses), 14-04-10 (CA Commercial District), 14-04-12 (CG Commercial District), 14-04-14 (MA Industrial District), 14-04-21 (Downtown Districts), 14-04-21.3 (Use Categories), 14-04-21.4 (Use Standards) relating to brewpubs, brewer taprooms, microbreweries, microbrew pubs and domestic distilleries as presented in the draft ordinance attached to the staff report.

Attachments

1. Draft zoning ordinance amendment