



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Addon

J.1.

4/21/2020

Subject:

Legislative Intent and Permission to Advertise RE: Code Revisions to On-premise Consumption for Alcoholic Beverages

Fiscal Impact:

Option 1 - Reduction of \$5,148 in revenue / Option 2 - Reduction of \$2,288 in revenue

Dept/Office:

Planning and Development

Requested Action:

Staff requests that the Board grant legislative intent and permission to advertise amendments to Article VI, Zoning Regulations, relating to the on-premise consumption of alcoholic beverages for restaurants and snack bars.

Summary Explanation and Background:

During the February 6, 2020 Board of County Commissioners (BOCC) meeting, staff was directed to develop options that streamline the approval process for On-Site Consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant. Brevard County Zoning Regulations has provisions for either a Conditional Use Permit (CUP) or an administrative approval of State issued Alcohol Beverage Licenses to allow the consumption of alcoholic beverages for restaurants.

The attached report identifies County requirements, State requirements & license types, and potential improvements for the BOCC's consideration relating to the expediting of the approval process. Amending the code to allow administrative approval of on-site consumption of alcoholic beverages would result: in reducing the approval process by 60 days for applicants, saving applicants \$572.00, reducing staff time by approximately 75%, and reducing the number of CUP public hearings between 66% and 30%.

Option 1. Amend the Code to allow staff to provide an Administrative Approval process for on-site consumption of alcohol beverages with restaurants, without the need for a CUP, regardless of number of seats and the relation to a shopping center, and stipulate conditional use for cocktail lounge/bars as defined in the Code.

Option 2. Amend the Code to allow staff to provide and Administrative process for on-site consumption of beer and wine only, with restaurants, without the need for a CUP, regardless of relation to a shopping center, and stipulate conditional use for cocktail lounge/bars as defined in the Code.

Option 3. Provide alternative direction.

Clerk to the Board Instructions:



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 22, 2020

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

RE: Item J.1, Legislative Intent and Permission to Advertise for Code Revisions to On-Premise Consumption for Alcoholic Beverages

The Board of County Commissioners, in regular session on April 21, 2020, granted legislative intent and permission to advertise amendments to Article VI, Zoning Regulations, relating to the on-premise consumption of alcoholic beverages for restaurants and snack bars.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Deputy Clerk

/cmw

cc: Finance
Budget



Staff Report

BOARD OF COUNTY COMMISSIONERS

SUBJECT: Alcoholic Beverages for on-premise consumption requiring a Conditional Use Permit (CUP)

DATE: April 15, 2020

AUTHORS: Planning and Development Department

Introduction:

During the February 6, 2020 Board of County Commissioners (BOCC) meeting, staff was directed to develop options that streamline the approval process for On-Site Consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant. Brevard County Zoning Regulations has provisions for either a Conditional Use Permit or an administrative approval of a State issued Alcohol Beverage Licenses to allow the consumption of alcoholic beverages for restaurants. Since, the County Code does not differentiate between “beer & wine” and “full liquor”, as do the State issued Alcohol Beverage License, this report provides an evaluation of expediting the approval process for either.

County Requirements:

The Zoning Regulations allow restaurants in all of the commercial, tourist commercial, and industrial zoning classifications. However, the approval process (CUP or administrative) of consumption of alcoholic beverages is dependent on the zoning classification, number of restaurant seats, and whether the establishment in a shopping center. It should be noted that bars or cocktail lounges require Conditional Uses, Section 62-1906, in the BU-1, BU-2, TU-1, and TU-2 zoning classifications and not taken into consideration as part of this report.

- BU-1-A zoning classification, encompasses lands devoted to limited retail shopping and personal services to serve the needs of nearby low-density residential neighborhoods. Snack Bars/Restaurants are permitted with conditions in BU-1-A as outlined in Section 62-1842 Brevard County Code (BCC) regarding compliance with parking standards and a maximum limit of 49 seats, however, this code section requires a CUP for on-premise sale and consumption as an accessory to a snack bar or restaurant.
- BU-1, BU-2, TU-1 and TU-2 zoning classifications allow more intense commercial uses and restaurants are a permitted use. All of these zoning classifications require a CUP for on-premise consumption of alcoholic beverages, except in restaurants with more than 50 seats, when



Staff Report

BOARD OF COUNTY COMMISSIONERS

located in shopping centers, according to Brevard County Code Section 62-1906 (4). Shopping center is defined as a community commercial shopping center in a BU-1 or BU-2 zoning classification, having at least 21,800 square feet of floor area, an anchor retail tenant, and space primarily for other retail users.

- PBP, Planned Business Park, PIP, Planned Industrial Park, IU, light Industrial, and IU-1, Heavy Industrial zoning classification allow all uses permitted in the BU-1 and BU-2 classification.

Notwithstanding the aforementioned, all restaurants serving alcohol, regardless of zoning classification, with 50 seats, or less, must meet a minimum distance requirement from churches or schools. This stipulation does not apply to restaurants with more than 50 seats located in shopping centers.

In addition to the location and size requirements above, the code recognizes the potential off-site impacts to the surrounding area when granting approval for on-site consumption of alcoholic beverages. A CUP application requires an applicant to meet general standards of 62-1901 and specific standards of Section 62-1906, to which the Board may prescribe appropriate specific conditions to reduce the impact of the proposed use on adjacent and nearby properties or neighborhoods, relating to:

- Access
- Traffic
- Noise
- Screening or buffering
- Signage and lighting
- Hours of operation

A CUP application process is typically a minimum 90 days from submittal through public hearing. This process requires approximately 16 hours of staff time. The cost to the applicant is \$849, of which, \$160 is advertising cost. Between 2014 and 2019 the Board considered a total of 74 CUPs for various applications. Of those, 22 were for beer and wine only, and 28 were for full liquor. None of the CUPs for alcohol were denied, however one was withdrawn. In addition, approximately nine alcoholic beverage licenses for beer and wine were administratively approved in that time frame which did not require a CUP.



Staff Report

BOARD OF COUNTY COMMISSIONERS

State Requirements and License Types:

The State requires the applicants to obtain local government zoning approval prior to issuing a one of three license types. The three main license types issued by the Florida Division of Alcoholic Beverages and Tobacco (ABT) associated with a restaurant are as follows:

- 2-COP (Consumption On-Premise) which allows beer and wine only.
- 4-COP (Consumption On-Premise) which allows beer, wine and liquor.
- SFS (Special Food Service) allows beer, wine and liquor. Establishment must have at least 2,500 square feet of service area, be equipped to serve 150 persons at one time, and derive at least 51% of gross food and non-alcoholic beverages. No package sales are allowed.

Potential Improvements:

While examining the process under Board direction, staff discovered a number of potential improvement areas to reduce processing time and cost to applicant. The proposed Code changes could potentially affect restaurants serving only beer and wine, or could include restaurants with full liquor. Staff has not included changes to the CUP requirement for cocktail lounges and bars. Options include:

Option 1. Amend the Code to allow staff to provide an Administrative Approval process for on-site consumption of alcohol beverages with restaurants, without the need for a CUP, regardless of number of seats and the relation to a shopping center, and stipulate conditional use for cocktail lounge/bars as defined in the Code.

This amendment would result in approximately 66% fewer applications requiring BOCC public hearings.

- Application fee for Administrative Approvals is currently \$277.00. The fee for a Conditional Use Permit is \$849. This change would result in a cost savings of \$572.00 to the applicant.
- Administrative Approvals are processed in less than 30 days and would not require advertising for public hearings. This results in a processing time savings of 60 days for the applicant and reduce staff time by approximately 75%.

Staff would make the final determination, however, the ability of staff to impose additional or special operational requirements would be limited. There would be no public input prior to granting the Administrative Approval. Problematic establishments with Administrative Approvals,



Staff Report

BOARD OF COUNTY COMMISSIONERS

not corrected through Code Enforcement, could be reviewed by the Board for modification or revocation of the Administrative Approval.

Option 2. Amend the Code to allow staff to provide and Administrative process for on-site consumption of beer and wine only, with restaurants, without the need for a CUP, regardless of relation to a shopping center, and stipulate conditional use for cocktail lounge/bars as defined in the Code.

This amendment would result in approximately 30% fewer applications requiring BOCC public hearings.

- BU-1-A zoning classification where snack bars and restaurants are permitted with conditions, revise Section 62-1842 to allow on premise sale and consumption of beer and wine, and,
- BU-1 BU-2, TU-1 and TU-2 zoning classifications, restaurants are a permitted use, revise to allow on premise consumption of beer and wine as a permitted use.
- Revise Section 62-1906(4) to delete the requirement that a restaurant be located in a shopping center to be exempt from a CUP.

These proposed Code changes would not require specific documentation related to the sale and consumption of beer and wine, unless stated in the code, other than the typical requirements of the snack bars or restaurants.

Option 3. Provide alternative direction.

Additional considerations:

These options and changes to the Code would only affect the County requirements for the on-premise sale and consumption of alcohol associated with restaurants. Zoning approval of the State issued ABT license would still be required, and the County would sign off on the license if allowed in the zoning classification, meeting the applicable requirements.

Attachments:

Brevard County Code Sec., #62-1102, Definitions and rules of construction.

Brevard County Code Sec., #62-1842, Snack bars and restaurants.

Brevard County Code Sec., #62-1906, Alcoholic beverages for on-premises consumption.

Brevard County Code Sections Related to Alcohol Requirements

Sec. 62-1102. Definitions and rules of construction.

For the purpose of this article, the following terms shall have the meaning set forth in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

Bar and cocktail lounge mean any place in the business of selling and dispensing alcoholic beverages of any type, or any place where any sign is exhibited or displayed indicating that alcoholic beverages are obtainable within or thereon, and where such beverages are consumed on the premises.

Sec. 62-1842. Snack bars and restaurants.

Snack bars and restaurants must comply with the applicable parking requirements, and the establishment shall not have more than 49 seats. All snack bars and restaurants with up to 30 seats as of July 30, 1998, wishing to expand up to 49 seats shall comply with all applicable development regulations.

(Code 1979, § 14-20.16.1(12); Ord. No. 98-46, § 1, 8-27-98)

Sec. 62-1906. Alcoholic beverages for on-premises consumption.

The sale of or serving of alcoholic beverages on the premises shall only be permitted in accordance with the following conditions:

- (1) a. *A bar or cocktail lounge may be a conditional use in a general retail zoning classification (BU-1), a retail warehousing and wholesale business zoning classification (BU-2), a general tourist commercial zoning classification (TU-1) and a transient tourist zoning classification (TU-2). Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division.*
- b. *A bar or cocktail lounge is prohibited within the restricted neighborhood commercial zoning classification, BU-1-A. The on-premises sale or serving of alcoholic beverages in BU-1-A may be a conditional use as accessory to a snack bar and restaurant pursuant to section 62-1842. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division.*
- (2) *The on-premises sale or serving of alcoholic beverages may be a conditional use as an accessory use to civic, philanthropic or fraternal organizations, lodges, fraternities and sororities, or marinas, golf courses, stadiums or other similar recreational uses, in those zoning classifications in which such uses are permitted. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in section 62-1151. The conditional use shall be granted only as an accessory use to the primary use requested. Bottle clubs shall be considered commercial uses subject to the requirements of this section.*

- (3) *Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.*
- (4) *For restaurants with more than 50 seats located in shopping centers, no conditional use permit is required for on-premise consumption of alcoholic beverages.*
- (5) *Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.*
- (6) *Expansion of conditional use permit. The square footage area or location of premises designated for a conditional use permit for on-premises consumption of alcoholic beverages shall not be expanded beyond that approved by the conditional use permit without filing a new application for a conditional use permit in accordance with the requirements contained in this section and section 62-1901 and having same approved by the board of county commissioners. "Expansion," as used herein, shall include the enlargement of space for such use and uses incidental thereto as well as the extension of a beer and/or wine use to include intoxicating liquor. The new application must cover both the existing approved designated area as well as the proposed expanded area. All areas approved shall be regulated under the same business license and shall be subject to uniform rules and regulations.*

(Code 1979, § 14-20.16.2(B)(5); Ord. No. 93-24, § 1, 11-10-93; Ord. No. 2002-63, § 1, 12-17-02; Ord. No. 04-29, § 39, 8-5-04; Ord. No. 06-54, § 2, 10-5-06)