

# CITY OF SMYRNA

## COMMUNITY DEVELOPMENT DEPARTMENT

### MEMORANDUM

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To: Mayor and Council

From: Russell Martin, AICP, Community Development Director  
Tom Boland, Economic Development Manager

Date: October 14, 2019

CC: Tammi Saddler-Jones, City Administrator

**RE: Alcoholic Beverage Ordinance - Code Amendment – Wineries**

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#### **BACKGROUND**

Over the past year, the Community Development Department has met with a winery looking to locate their business within the City of Smyrna. Community Development staff has worked with the winery to identify potential business locations, as well as assist with the permitting and licensing process. The City's Zoning and Alcoholic Beverage Ordinances are silent on wineries. The City updated the Zoning and Alcoholic Beverage Ordinance in late 2018 to address the licensing and zoning requirements for breweries and distilleries. Wineries fall under a separate classification under the State Code of Georgia and are permitted separately from breweries and distilleries. Community Development is proposing a code amendment to the Alcoholic Beverage Ordinance to address the licensing requirements for wineries.

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#### **ANALYSIS**

Community Development has reviewed the City's Alcoholic Beverage Ordinance and found that wineries are not addressed under the licensing requirements of the ordinance. The proposed code amendment would clearly define what wineries are, the regulations associated with operation of wineries with respect to alcohol sales and the licensing requirements.

Community Development is proposing to amend Section 6-2 of the Alcoholic Beverage Ordinance to add specific definitions related to wineries. These terms include the definitions for winery, wine, table wine, fortified wine, and dessert wine. These terms need to be defined to maintain consistency with state law and to provide clarity as to the definition of a winery. The definitions will also provide a clear distinction between wineries, breweries and distilleries.

In addition to the definitions, Community Development is proposing code amendments to the Alcoholic Beverage Ordinance with respect to license types, limitations on use, consumption on package licensed premises, carry out restrictions, hours of operations, Sunday sales, distance requirements, winery requirements and the fee schedule.

## STAFF COMMENTS

Community Development has researched the state law and surrounding municipalities to review how these governing authorities address wineries within their jurisdictions. These municipalities included Cobb County and Marietta. The proposed code amendments below are consistent with state law and ordinances of surrounding municipalities. With these proposed code amendments, the City of Smyrna will be competitive with other municipalities in attracting wineries into the City. Therefore, Community Development recommends **approval** of the proposed code amendments below to address wineries within the City's Alcoholic Beverage Ordinance:

**Section 6-2 of the Alcoholic Beverage Ordinance shall be amended to add definitions related to wineries. The proposed amendments to the section shall read as follows (amended portions are highlighted).**

Dessert wine means a wine having an alcoholic strength of more than 14 percent alcohol by volume but not more than 24 percent alcohol by volume.

Fortified wine means any alcoholic beverage containing not more than 24 percent alcohol by volume made from honey, fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, brandy.

Table wine means a wine having an alcoholic strength of not more than 14 percent alcohol by volume.

Wine means any alcoholic beverage containing not more than 24 percent alcohol by volume made from honey, fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage.

Winery means any establishment where wines are manufactured.

**Section 6-34 of the Alcoholic Beverage Ordinance shall be amended to add winery to the list of types of licenses. The proposed amendment to the section shall read as follows (amended portions are highlighted).**

(14) Winery

**Section 6-37 of the Alcoholic Beverage Ordinance shall be amended to add wineries to this section that places limitations on use related to package sales. The proposed amendment to the section shall read as follows (amended portions are highlighted).**

Sec. 6-37. - Limitations on use.

- (a) It shall be unlawful for any person operating premises licensed for the sale of wine and malt beverages to store or have on the premises any distilled spirits without a license therefor.
- (b) No package sales shall be allowed in, or in connection with, any restaurant, cafe, eating place, private club or in any establishment other than a retail store, Wine Specialty Shop, Growler Specialty Shop, Cigar Specialty Shop, **Winery**, Brewery or Brewpub.
- (c) Except in Wine Specialty Shops, Growler Specialty Shops, **Wineries**, Breweries or Brewpubs, no package sales shall be allowed in the same room where pouring sales are allowed.

**Section 6-45 of the Alcoholic Beverage Ordinance shall be amended allow wineries to allow the sale and consumption of alcoholic beverages by the drink on premises of a location with a package license. The proposed amendment to the section shall read as follows (amended portions are highlighted).**

Sec. 6-45. - Consumption on package licensed premises prohibited.

Except as otherwise specified herein, it shall be unlawful for any person licensed for the operation of a package store only to permit or allow any consumption of alcoholic beverages on the premises of such package store location. It shall be the duty of the owner and/or operator of each establishment to police and prevent the consumption of any alcoholic beverages upon the premises of any package store location. Consumption on the premises shall be allowed only in those locations having a pouring license. However, wine or malt beverages may be sold by the drink and consumed on the premises, provided that a specialty wine shop, Growler Specialty Shop, hotel sundry shop/hotel reception license, Brewpub, Brewery, **Winery**, educational tasting license or Cigar Specialty Shop is obtained and the requirements of such license are met as provided herein.

**Section 6-46 of the Alcoholic Beverage Ordinance shall be amended to allow wineries to sell alcoholic beverages by the package for carry out purposes. Subsection (b) is to be amended and shall read as follows (amended portions are highlighted).**

- (b) It shall be unlawful for any pouring licensee, except those licensees holding a wine specialty shop Growler Specialty Shop, **Winery**, Brewery or Brewpub license, to sell, or offer to sell, or to give, to any customer or patron any alcoholic beverages by the package for carry out purposes.

**Section 6-61 of the Alcoholic Beverage Ordinance shall be amended to establish hours of operations for wineries. Subsection (c) is to be amended and shall read as follows (amended portions are highlighted).**

- (c) Pouring, distilled spirits and pouring, wine and malt beverages with or without Brewpub add on, Wineries ~~And Breweries,~~ Licensees in pouring distilled spirits and licensees in pouring wine and malt beverages and licensees in Breweries and Wineries shall not sell except between the hours of 8:00 a.m. and 2:00 a.m. the following morning, Monday through Friday (Saturday morning), and on Saturday from 8:00 a.m. until 2:55 a.m. Sunday morning. This section shall apply to private clubs as well. Provided that, these hours may be extended as provided by a special late hours sales permit and Sunday sales permit as described in this chapter.

**Section 6-62 of the Alcoholic Beverage Ordinance shall be amended to address Sunday sales for wineries. Subsection (a) is to be amended and shall read as follows (amended portions are highlighted).**

- (a) In addition to the hours of operation specified in this chapter, licensees in pouring distilled spirits and licensees in pouring wine and malt beverages, with or without Brewpub add on, but not including wine specialty shop, Growler Specialty Shop Cigar Specialty Shop, Wineries, Breweries or educational tasting permits, may sell and serve on Sundays from 11:00 a.m. until midnight and may continue to sell until 4:00 a.m. (Monday morning), provided that the licensee applies for and receives a Sunday sales permit for such sales from the city. The licensee must also hold a city alcoholic beverage pouring license.

**Add Section 6-82 to the Alcoholic Beverage Ordinance to provide specific requirements for wineries. The proposed section shall read as follows (amended portions are highlighted).**

**Sec 6-82 – Wineries.**

- (a) Wineries shall be licensed by the state of Georgia and operate in accordance with all state laws and regulations.
- (b) Wineries may not sell any alcoholic beverage except wines that are produced at the facility or produced at other facilities owned by the same winery.
- (c) Wineries may not hold a separate pouring license.

**Section 6-118 of the Alcoholic Beverage Ordinance shall be amended to address distance requirements from certain locations for wineries. Subsections (b)(5) and (b)(6) are to be amended and shall read as follows (amended portions are highlighted).**

Sec. 6-118. - Distance from certain locations.

- (a) It is the policy of the city that, in keeping with the purposes of this article, any premises proposed for license for the sale of alcoholic beverages shall be at a suitable distance from a school, church, park, public building, library, and residence. These requirements are in addition to distance requirements imposed by state law.
- (b) A suitable distance shall be as follows:
  - (1) For a license for package distilled spirits, a suitable distance is 600 feet from a school, and 300 feet from a church, park, public building, library, or residence.
  - (2) For a license for pouring distilled spirits, including a Cigar Specialty Shop, a suitable distance is 600 feet from a school, and 200 feet from a church, park, public building, library or residence; provided, however, in no event shall the primary customer entrance of the proposed premises be located closer than 75 feet from the property line of the school, church, park, public building, library, or residence.
  - (3) For a license for package wine and malt beverages with or without the wine specialty shop or Growler Specialty Shop add on, a suitable distance is 600 feet from a school, and 300 feet from a church, park, public building, or library; provided that the distance from a church, park, public building, or library shall be waived when the applicant is a grocery store.
  - (4) For a license for pouring wine and malt beverages, with or without the Brewpub add on, including a Cigar Specialty Shop a suitable distance is 600 feet from a school, and 200 feet from a church, park, public building, library or residence; provided, however, in no event shall the primary customer entrance of the proposed premises be located closer than 75 feet from the property line of the school, church, park, public building, library, or residence. However, at a public hearing, advertised in the same manner that is specified in section 6-113 herein, the city may waive the distance requirements of this section if satisfactory evidence is produced to cause the city to conclude that there would be no adverse effect to the value of the property that is within the prohibited set back area if a license is granted.
  - (5) For a license for wholesale, or for a license for manufacture, but not including **Wineries**, Brewpubs or Breweries, a suitable distance is 600 feet from a school, and it is 600 feet from a church, park, public building, library, or residence.
  - (6) For a license for a Brewery **or a Winery**, a suitable distance is 600 feet from a school, and 300 feet from a church, park, public building, library, or residence.

- (7) Within the area defined as Smyrna Central Downtown or within property zoned to a mixed use zoning category, a license for the pouring of distilled spirits or for pouring wine and malt beverages with or without the Brewpub add on, or for a Cigar Specialty Shop, it shall be 100 feet from a school, and 100 feet from a church, and no distance requirement from a residence, park, public building or library. However, at a public hearing, advertised in the same manner that is specified in section 6-113 herein, the city may waive the distance requirements of this section if satisfactory evidence is produced to cause the city to conclude that there would be no adverse effect to the value of the property that is within the prohibited set back area if a license is granted.
  - (8) Within the area defined as Smyrna Central Downtown or within property zoned to a mixed use zoning category, a license for package wine and malt beverages with or without the wine specialty shop or Growler Specialty Shop add on, a suitable distance shall be 300 feet from a church, and no distance requirement from a residence, park, public building, or library.
- (c) The measurement of suitable distance, unless otherwise specified in this chapter, shall be defined as:
  - (1) The measure in lineal feet of the most direct route of travel on the ground by a pedestrian from the center of the nearest door of customer entry of the proposed license premises to the nearest property line of the church, school, park, public building, library, or residence. Such travel shall be measured as a straight line from the customer door to the property line and is not required to follow a line running along the nearest sidewalk or street route; provided that, when a straight line of travel would not be a customary and reasonable line of travel because of obstacles to such travel, the line of travel shall be angled around such obstacles and the distance shall be the sum of the segments of the line.
  - (2) Except as otherwise specified herein, the measurement of suitable distance within the Smyrna Central Downtown or within property zoned to a mixed-use zoning category shall be defined as the measure in lineal feet from the center of the front door of customer entry of the proposed license premises to the front door of the church, school, public building, library and/or residence, and the nearest property line of a park. Such travel shall not be measured as a straight line from front door to front door and is required to follow a line running along the nearest sidewalk or street route.
- (d) After issuance of any license, no change in the location of a customer entry shall be made which would affect compliance with any distance requirements of this article.
- (e) An application for a new license on an existing licensed location, or on a previously licensed location for a period of one year from expiration of the previous license to the date of application, shall not be required to comply with the distance requirements from a school, church, park, public building, library, or residence. An application filed under this section shall meet and qualify under all other requirements of this article for the granting of a new license.

**Section 6-124 of the Alcoholic Beverage Ordinance shall be amended to add breweries, brewpubs and wineries to the list of exempted licenses for the pouring requirements. The section shall be amended and shall read as follows (amended portions are highlighted).**

Sec. 6-124. - Pouring requirements.

No pouring license, except a license for a wine specialty shop, growler specialty shop, cigar specialty shop, brewery, brewpub, winery, hotel sundry shop/hotel reception or educational tasting, shall be issued to, or held by, any applicant unless at least 50 percent of the business by volume, when considering the total of sales from alcoholic beverages and food prepared to be consumed on the premises, shall be from the sale of prepared foods to be consumed on the premises.

- (1) All establishments licensed to pour shall submit a quarterly audit showing the sales of alcoholic beverages and food prepared on the premises and nonalcoholic drinks to the city business license office no later than at the time of renewal for the coming license year.
- (2) Authorized officials of the city may examine the records of applicants at any reasonable time to ascertain that the requirements of this section are met.
- (3) The dining area or serving area of the applicant must have a minimum seating capacity of 40.

**Add a new fee to the City of Smyrna Fee Schedule for Community Development for Licenses for Wineries and Breweries.**

Winery License (manufacturing, package & tastings) - \$1,700  
Brewery License (manufacturing, package & tastings) - \$1,700