



STAFF REPORT

Planning Commission

Ordinance #1916

PC Date:	July 3, 2012	Case Planner:	Steve Timms
CC Date:	August 6, 2012		
Location:	City-Wide		
Applicant:	The City of Commerce City		
Address:	7887 E. 60 th Avenue, Commerce City, CO 80022		

Case Summary

Request: Commerce City is requesting to amend Section 21-5214 of the LDC dealing with alcohol establishments within the City.

Project Description: Retail liquor stores, taverns, private clubs, and beer and wine businesses are classified within the City's Land Development Code as a use-by-right within the C-2, C-3, MU-1, and I-1 zoning districts with taverns being an additional use-by-right within the I-2 and I-3 zoning districts.

The section of the LDC which is the subject of this action (Sec. 21-5214) currently requires a Conditional Use Permit if a new retail liquor store, tavern, private club, or beer and wine business locates in a relatively close proximity to an already established retail liquor store, tavern, private club, etc. There is currently no "like-to-like" standard in place, meaning the conditional use permit would apply for any new retail liquor store, tavern, private club, or beer and wine establishment use and not just a liquor store to liquor store, tavern to tavern, private club to private club use, etc.

The issue of requiring a conditional use permit for these types of businesses has been raised several times in the past by City Council and potential businesses looking to operate within the community. This issue went to City Council on May 14, 2012 as a study session. During this study session, there was discussion on items to change and update regarding this section, hence this report.

Staff Recommendation: Approval

Code History

The original ordinance regulating alcohol establishment locations has been around since February 2004 (Ordinance #1528). Since this effective date of this ordinance, the following conditional use cases have been processed that relate directly to this ordinance:

Case Number	Applicant/Location	Request	Council Decision
CU-64-04	Commerce City Plaza/4970 E. 62 nd Ave.	New Liquor Store	Denied
CU-66-05	El Rodeo Country/7600 Highway 2	New Tavern	Denied
CU-77-07	VFW Post 444/7100 Fairfax Dr.	New Private Club	Approved with Conditions
CU-78-07	Virginia Werth/8301 Rosemary	New Tavern	Approved with Conditions
CU-90-09	Doo Brothers/7710 Brighton Blvd	New Liquor Store	Denied

Note that this list is only for new alcohol establishments brought about by their proximity to another alcohol establishment. The list does not include those cases which are currently identified as a “cabaret” in the Land Development Code, and are required to obtain a conditional use permit, because of their proximity to residential uses. No changes are proposed for the cabaret/residential locational requirement section of the code with the exception of the terminology change (cabaret to entertainment license) to make the LDC consistent with the Municipal Code.

Request and Analysis

As referenced above, staff brought this particular LDC section to City Council at a study session on May 14, 2012. The existing Section 21-5214 is found below.

Existing Language (not updated)

Sec. 21-5214. Alcohol Sales

- (i) **Location to Other Alcohol Establishment.** No establishment licensed as a retail liquor store, tavern, club, or beer and wine business, as defined by state law, shall be operated or maintained within 2,500 feet of any other establishment licensed as a retail liquor store, tavern, club, or beer and wine business without first obtaining a conditional use permit.
- (ii) **Location to Residential.** Unless a conditional use permit is obtained, no establishment required to be licensed as a cabaret shall be operated or maintained within 2,000 feet of any residential zone district or any legally authorized residence, whether located in or outside of the city. For purposes of this section, distance shall be measured from the nearest point of the licensed establishment to the nearest point of the residential zone district or legally authorized residence.
- (iii) **Pre-Existing Use.** Any of the aforementioned establishments licensed to sell alcoholic beverages and in operation on February 2, 2004 shall be exempt from the provisions of this section. Such pre-existing uses shall be considered legal non-conforming uses and shall be governed by section 21-5520 (Non-Conforming Use).

Based on the discussion from that session, staff is proposing five changes to the code. They are as follows:

1. Editing the code for “like or similar establishments” Because of the way the code is currently written, it is the most restrictive in the state as it relates to new retail liquor stores, taverns, private clubs, and beer and wine establishments. At this time, staff would like to propose to clarify this section of code so that the separation requirement only applies for “like or similar” establishments (liquor store to liquor store, or tavern to tavern, for example). Staff believes that this was the original intent of this section of code, but the language is not clear enough.
2. Remove the private club from this list having to obtain a conditional use permit. Currently there are only three private club alcohol licenses issued within the city. They are as follows:
 - VFW Club- 7100 Fairfax Drive
 - American Legion Club- 5421 E 71st Avenue
 - Eagles Club- 8160 Rosemary Street

Because private clubs are for private membership and are not subject to the traditional needs/desires requirement of other alcohol establishments, and because they are not a public class of license and do not rent out their facility to outside public events, they will not have the traditional “overconcentration” requirement traditionally cited when reviewing liquor applications via a CUP.

3. Allow the code to only apply to businesses within the city. The current wording of the code requires that any of these alcohol type businesses outside of the city limits (unincorporated Adams County, Brighton, Denver, and Thornton) also be included within the calculation. These businesses can protest new Commerce City alcohol businesses via this section of the code, but because the surrounding communities do not have a similar ordinance in place, Commerce City cannot protest their new alcohol businesses through the Planning Commission or City Council, potentially causing Commerce City to lose revenue and new commercial operations and to have a host of new alcohol businesses along the border of the City.
4. Revisit the Conditional Use Permit (CUP) requirement. City Council discussed the need for some level of review of these applications, but thought that the traditional CUP process for these use types was long and expensive. Therefore, the code was updated to change the CUP process to a Use-By-Permit (UBP) process, with only one public hearing through the Board of Adjustment. The UBP process would shorten the review time by one-half and also would impose a much cheaper application fee. There are no changes proposed to the 2500-foot distance requirement at this time.
5. Change the language from cabaret to entertainment license. The specific language as it relates to a cabaret use is changed in regards to updating the existing cabaret language to align with the updated language in the municipal code concerning entertainment licenses. The term cabaret is no longer found within the municipal code, and needs to be updated. There is no proposed change to the conditional use permit process for cabaret/entertainment license uses and its associated separation requirement from residential properties.

For reference, the existing Section 21-5214 along with the proposed language of Section 21-5214 is contained below.

Proposed Language (with Updates)

Sec. 21-5214. Alcohol Sales

- (i) **Location to Other Alcohol Establishment.** No retail liquor store, tavern, or beer and wine business, as defined by state law, shall be operated or maintained within 2,500 feet of an establishment that holds the exact same class of liquor license and is located within the municipal boundaries of the city without first obtaining a use-by-permit.
- (ii) **Location to Residential.** Unless a conditional use permit is obtained, no business whose operations require both a liquor license and a Class 1 entertainment establishment license shall be operated or maintained within 2,000 feet of any residential zone district or any legally authorized residence, whether located in or outside of the city. For purposes of this section, distance shall be measured from the nearest point of the licensed establishment to the nearest point of the residential zone district or legally authorized residence.
- (iii) **Pre-Existing Use.** Any of the aforementioned establishments licensed to sell alcoholic beverages and in operation on February 2, 2004 shall be exempt from the provisions of this section. Such pre-existing uses shall be considered legal non-conforming uses and shall be governed by Section 21-5520 (Non-Conforming Use).

Development Review Team Recommendation

Based on the information provided above, the Development Review Team recommends that the Planning Commission forward the requested amendment to the LDC to the City Council with a favorable recommendation.

Recommended Motion

To recommend approval (DRT recommendation):

I move that the Planning Commission recommend that City Council approve Ordinance #1916, an ordinance amending the Commerce City Land Development Code, Section 21-5214.

Alternative Motions

To recommend approval subject to condition(s):

I move that the Planning Commission recommend that City Council approve Ordinance #1916, an ordinance amending the Commerce City Land Development Code, Section 21-5214, subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the Planning Commission recommend that City Council deny Ordinance #1916, an ordinance amending the Commerce City Land Development Code Section 21-5214, because it fails to meet the following criteria:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny Ordinance #1916.