



STAFF REPORT

Planning Commission

ORDINANCE #2127

PC Date:	May 2, 2017	City Staff:	Steve Timms
CC Date:	June 19, 2017		
Location:	City-Wide		
Applicant:	City of Commerce City		
Address:	7887 East 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, 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 Use-by-Permit if a new retail liquor store, tavern, or beer and wine business locates in a relatively close proximity (2500 feet) to an already established retail liquor store, tavern, etc.

The issue of requiring special land use approval 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 March 27, 2017 as a study session. During this study session, there was discussion on removing this regulation of the Code since State law has changed regarding liquor stores and items now classified as a tavern or beer/wine establishment may hinder opportunities to bring in uses to the City, such as restaurants and lodging establishments, hence this report.

Staff Recommendation: Approval

Background Information

The original ordinance regulating alcohol establishment locations has been around since February 2004 (Ordinance #1528). As a part of that ordinance, certain alcohol uses, such as liquor stores, taverns, private clubs, and beer/wine establishments were required to obtain a Conditional Use Permit if a new location wanted to open up within 2500 feet on an existing similar use. In 2012, as a part of Ordinance #1916, this code was change to drop private clubs from these regulations, to no longer count out of city businesses within the separation, and to require a Use by Permit, rather than a Conditional Use Permit for new businesses. In 2015, the Liquor Authority was replaced with a liquor hearing officer and related process.

Request and Analysis

As referenced above, staff brought this particular LDC section to City Council on March 27, 2017 at a study session for discussion and feedback.

For context, the City currently has 64 alcohol licenses issued, with 2 Beer/Wine licenses, 15 retail liquor stores, and 12 tavern licenses. No new tavern licenses have been issued since 2007. One new liquor store license was issued in 2014 (Belle Creek liquor store) and one new beer and wine license was issued in 2015 (Starbucks). There have been no land use cases concerning alcohol related uses since 2009. The current municipal review of separation requirements for alcohol related uses can be found in the table below:

City	Liquor Stores	Tavern	Beer/Wine
Arvada	0	0	0
Aurora	2000	0	0
Boulder	0	0	0
Brighton	0	0	0
Colorado Springs	0	0	0
Commerce City	2500	2500	2500
Greeley	0	0	0
Lakewood	0	0	0
Longmont	0	0	0
Loveland	0	0	0
Parker	0	0	0
Thornton	0	0	0
Westminster	0	0	0

Liquor Stores:

As of July 1, 2016 there is a new state statutory distance restriction of 1,500 feet between retail liquor stores and retail liquor stores and liquor license drugstores. According to state law, this distance cannot be modified, expanded, or eliminated, even by a Home Rule Municipality. Therefore, at a minimum the current liquor store separation of 2,500 feet would have to be modified. If modified, the state required separation would be reviewed by the City Clerk's Office as a part of the liquor license process and hearing.

Beer/Wine Establishments:

As previously noted, there are two existing beer/wine establishments within the City: One is for the Mile High Marketplace, a regional entertainment and shopping venue. The other is for Starbucks at Tower and E. 104th Avenue. Based on the current regulations, another venue similar to Starbucks could not be located within a half mile of Tower Road and E. 104th Avenue without obtaining a Use by Permit. Based on feedback from the community, Starbucks and other similar uses are very highly desired within the community. In addition, taking a look at the beer/wine license types for Denver (Exhibit A), one finds a variety of food establishments (or similar) that the City is trying to obtain, such as Starbucks, Anthony's Pizza and Pasta, Common Grounds Coffee, Larkburger, Qdoba, Smashburger, Thai Basil, Wingstop, Tokyo Joe's and Sip and Paint (see Denver's complete list). In the study session, City Council felt that the separation of beer and wine establishments was no longer needed and that the City should do what it can to help these types of businesses, not penalize or delay their entrance into the City.

Tavern Businesses:

Similar to beer/wine establishments, tavern licenses have modernized over the past decade. Places that now require a tavern license are non-traditional and can be very high-end such as: Movie theaters, hotels (especially those near DIA), coffee shops, and day spas. Denver's existing tavern license operators can be found on Exhibit B. When discussing this item with City Council, they felt like the current regulations may make it harder to attract hotels and related entertainment facilities along Tower Road, E-470, and the entire City, as this would prevent clustering of lodging opportunities, something which has been identified and encouraged along Tower Road and E-470..

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

Existing Language

Sec. 21-5214. Alcohol Sales

(1) Special Location Restrictions.

- (a) Proximity 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.
- (b) Proximity 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.
- (c) 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).

- (2) **Micro-winery.** A micro-winery shall conduct at least two of the following four activities on-site: crushing, fermentation, bulk aging/storing, or bottling.
- (3) **Brewpub.** Not more than 30 percent of the gross floor area of a brewpub shall be used for the production of beer.
- (4) **Tasting Room.**
 - (a) **Food Sales.** The sale of food in any tasting room is prohibited. The incidental provision of food, without compensation, is allowed.
 - (b) **Room Orientation.** A tasting room shall be oriented toward the public façade. The public façade of the building shall be established by the building's address. Within a shopping center, a tasting room shall be oriented toward the common space that provides public access to the building.

Proposed Language (with updates)

Sec. 21-5214. Alcohol Sales

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(b) **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 preexisting uses shall be considered legal non-conforming uses and shall be governed by section 21-5520 (Non-Conforming Use).

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In summary, this update is a direct result of context, regulations, and uses which have changed and evolved over the past decade as it relates to alcohol uses. More than ever, eating, drinking, and lodging establishments are a priority of this community. In an effort to make the City more “business friendly” and to respond to updating our regulations to be in-line with surrounding jurisdictions and state laws, these updates are proposed. Finally, it is important to note that the remaining subsections of 21-5214 would not change and that any new alcohol-related use would still have to comply with all regular state and local application requirements and would still have to proceed through the traditional hearing officer process with associated public hearing.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team recommends that the Planning Commission forward the requested amendment to the LDC to the City Council with a recommendation of approval.

Recommended Motion

To recommend approval:

I move that the Planning Commission recommend that City Council approve Ordinance #2127, an ordinance amending the Commerce City Land Development Code.

Alternative Motions

To recommend approval subject to condition(s):

I move that the Planning Commission recommend that City Council approve Ordinance #2127, an ordinance amending the Commerce City Land Development Code subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the Planning Commission recommend that City Council deny Ordinance #2127, an ordinance amending the Commerce City Land Development Code 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 #2127.

To recommend continuance:

I move that the Planning Commission continue the requested Ordinance #2127 to a future Planning Commission agenda.