
MEMORANDUM

To: Mark Woulf, Alcohol Policy Coordinator
From: John Strange, Assistant City Attorney
Re: Draft Substitute Ordinance Creating Alcohol Overlay District
Date: March 19, 2014

Accompanying this Memorandum is a Draft Substitute for Legistar item #32961, amending various sections of MGO Chapter 28 and, among other things, creating an Alcohol Overlay District. The Draft Substitute incorporates the changes previously requested by members of the ALRC.

You recently relayed a series of questions that have been received from members of the ALRC and the public relating to the mechanics of how this ordinance will apply to certain establishments going forward. This Memorandum will briefly address those questions based on how the Draft Substitute is currently written. As you know, Matt Tucker will also be available at the meeting to walk members through the ordinance.

1. In the new Alcohol Overlay District, what does it mean to be a grandfathered?

I suggest moving away from the idea of “grandfathering” and orienting people to the concept of continuing operation either as a nonconforming or permitted use. For example, in the Alcohol Overlay District created by this ordinance, Taverns, Brewpubs, Liquor Stores, or establishments engaged in Accessory Retail Alcohol Sales will no longer be allowed. However, any such establishment that was in operation before this ordinance is passed will be allowed to continue as a nonconforming use.

2. If an establishment is a nonconforming use, does that mean the property can always be used as a Tavern, Brewpub, Liquor Store, or for Retail Alcohol Sales?

No. If the establishment 1) performs any structural repairs or alterations to the building or structure that exceeds 50% of the total assessed value of the building or structure, 2) extends or expands its nonconforming use, or 3) discontinues the use for a continuous period of twelve (12) months, any future use of the building and premises must conform to the new zoning ordinance.

3. What is the 50% rule?

The 50% rule refers to the amount of structural repairs or alterations a property containing a nonconforming use may undergo without invalidating the nonconforming use. By rule, structural repairs or structural alterations to the building or structure shall not exceed fifty percent (50%) of the total assessed value of the building or structure.

4. What does it mean to expand or extend a nonconforming use?

In this case, expanding or extending a use refers to expanding the use of property to include other types of uses. Such an expansion will invalidate the nonconforming use and mean that any future use of the building and premises must conform to the zoning ordinance.

5. What is the 12 month rule, and when does it begin?

If a nonconforming use discontinues for a continuous 12-month period, then any future use of the building and premises must conform to the zoning ordinance. The 12-month period starts on the first day the property ceases its use. For example, if the Tavern's last day of operation is July 1, the 12-month period starts on July 2.

6. If a business is being operated as a nonconforming use, can it be sold as it is being used? Yes. Legal nonconforming uses run with the land and not the owner. Sale of a nonconforming use does not result in discontinuance of nonconforming use. However, to sell the business the owner may also have to get additional approval from the ALRC to transfer the liquor license.

7. If a business is nonconforming, what can owners do to plan for succession or retirement? It is understandable that you would get this question from business owners, but they should be advised to with an attorney and/or a financial advisor who can set up the best plan for them, keeping in mind the rules and regulations related to the fact that their business may be nonconforming.

8. What is the difference between a nonconforming use and a permitted use?

Unlike a nonconforming use, which is allowed even though it is illegal under the new law, a permitted use is allowed. For example, this new law creates two new principal land uses – Nightclub and Restaurant-Nightclub. This law creates definitions and supplemental regulations for both new land uses. If an establishment in operation before the new law passes meets these new definitions, they will be allowed to continue as a permitted use.

9. Are permitted uses subject to the same requirements as nonconforming uses (see #2 above)? No.