

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN**

ORDINANCE NO: G-19-38

AN ORDINANCE concerning

Entertainment at eating and drinking establishments

FOR the purpose of allowing entertainment as an accessory use to restaurants and alcohol manufacturing establishments, subject to certain criteria; establishing entertainment at certain small scale craft beverage establishments as a conditional use; and otherwise generally pertaining to entertainment at eating and drinking establishments

BY repealing and reenacting, with amendments,
 Sec. 404, Table 404-1
 Appendix A, "Land Management Code"
 The Code of the City of Frederick, 1966 (as amended)

BY adding
 Sec. 810
 Appendix A, "Land Management Code"
 The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
 Sec. 857
 Appendix A, "Land Management Code"
 The Code of the City of Frederick, 1966 (as amended)

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That The Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), § 404, Table 404-1 be repealed and reenacted, with amendments, as follows:

Table 404-1 Use Matrix

Use	RC	RO	R4	R6	R8	R12	R16	R20	PB	NC	GC	MO	M1	M2	DB	DR	DBO	MU	MXE	IST	PRK	LBCS Function	LBCS Structure	NAICS	
<u>Entertainment at eating and drinking establishment</u>									A	A	A	A	A	A	A				A	A					

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That The Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), §810, be added to read as follows:

Sec. 810. Entertainment at Eating and Drinking Establishments

- (a) **Definitions.** For purposes of this subsection, the following terms have the meanings given.
- (1) "Eating and drinking establishment" means:
 - A. a "restaurant, general", as defined in Sec. 1002 of this LMC; or
 - B. a "small scale craft distillery/brewery/winery as defined in Sec. 1002 of this LMC.
 - (2) "Entertainment" means any single event, series of events, or ongoing activity to which the public is invited or allowed to watch, listen, or participate in, or that is conducted for the purpose of diverting or amusing patrons, including but not limited to live musical performances; the playing of recorded music by a disc jockey or other agent or employee of the eating and drinking establishment; or presentations by single or multiple performers, such as actors, dancers, comedians, hypnotists, or mimes. "Entertainment" does not include activities relating to specified sexual activities, specified anatomical areas, private performances, or straddle dances, as those terms are defined in this LMC.
- (b) **Entertainment as accessory.** Entertainment is permitted by right as an accessory to a principal permitted use of an eating or drinking establishment (without conditional use approval) only if:
- (1) entertainment takes place between 9 a.m. and 9 p.m. on Sunday through Thursday and 10 p.m. on Friday and Saturday;
 - (2) entertainment occurs solely inside of the principal structure;
 - (3) the primary functions of the eating and drinking establishment continue to occur while entertainment is being provided and the presence of entertainment may not generate any additional impacts beyond that of the principal use; and
 - (4) except in the DB, MU, and GC zoning districts, the eating or drinking establishment is more than 500 feet from the property line of the nearest lot used for residential purposes.
- (c) **Conditional use approval.** Entertainment at an eating and drinking establishment not meeting the criteria of subsection (b) of this section may provided as follows:
- (1) At a restaurant, general, entertainment will be permitted only as a component of a restaurant with entertainment pursuant to conditional use approval and all other requirements of Section 856 of this LMC.

- (2) At a small scale craft distillery/brewery/winery, entertainment may be provided only pursuant to conditional use approval and subject to all other requirements of Section 857 of this LMC.

SECTION III. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That The Code of the City of Frederick, 1966 (as amended), Appendix A (Land Management Code), §857, be repealed and reenacted, with amendments, as follows:

Sec. 857 [WINERY, BREWERY, OR FARM BREWERY] WINERY, BREWERY OR FARM BREWERY AND CERTAIN SMALL SCALE CRAFT BEVERAGE ESTABLISHMENTS

(a) Generally.

(1) This section applies to a:

A. winery;

B. brewery;

C. farm brewery; and

D. small scale winery/brewery/distillery at which entertainment is sought that does not meet the criteria of Sec. 810 of this LMC.

(2) For purposes of this section, the uses set forth in paragraph (1) of this section will be referred to collectively as "alcohol manufacturing establishments".

(3) [A winery, brewery, or farm brewery] An alcohol manufacturing establishment is permitted as a conditional use in certain zoning districts as specified in the Use Matrix (Table 404-1 of this LMC) and subject to compliance with the criteria set forth in this section.

(b) Other laws. A use permitted under this section must be established and operated in compliance with all applicable laws and regulations, including but not limited to the Maryland Annotated Code, Alcoholic Beverages Article, and the regulations promulgated by the Frederick County Liquor Board.

(c) Proximity to residential properties.

~~[(i)]~~(1) Except in the DB and MU zoning districts, the principal structure comprising [a winery, brewery, farm brewery] an alcohol manufacturing establishment must be located at least 500 feet from a residentially zoned lot, as measured by the closest point of the structure.

~~[(ii)]~~(2) The Board may waive this requirement if the applicant demonstrates that adequate screening or buffering will be provided by other commercial structures, roadways, or trees to ensure the conditional use will not have a substantial adverse impact on adjacent neighborhoods or residential properties.

(d) Permitted uses. Subject to the requirements of this subsection, a use permitted under this section may include retail sales, tasting rooms, and food and beverage service.

[(i)](1) The total area dedicated to retail sales, tasting rooms, and food and beverage service within any structure cannot comprise more than a total of 40 percent of the total square footage of that structure.

[(ii)](2) Section 812 of this LMC does not apply to a use permitted under this section.

(e) **Entertainment.**

[(i)](1) Subject to the requirements of this subsection, a use permitted under this section may include entertainment.

[(ii)](2) For purposes of this section:

[(A)] **A.** "Entertainment" means any single event, series of events, or ongoing activity, to which the public is invited or allowed to watch, listen, or participate in, or that is conducted for the purpose of diverting or amusing patrons, including but not limited to:

[(1)] (i) Live musical performances;

[(2)] (ii) The playing of recorded music by a disc jockey or other agent or employee of the [brewery, farm brewery, or winery;] **alcohol manufacturing establishment;** or

[(3)] (iii) Presentations by single or multiple performers, such as actors, dancers, comedians, hypnotists, or mimes.

[(B)] **B.** "Entertainment" includes a festival, performance, party, or like occurrence that:

[(1)] (i) Is held outside, not contained within the primary structure comprising the [brewery, farm brewery, or winery] **alcohol manufacturing establishment;** and

[(2)] (ii) Has or reasonably should be anticipated to have fewer than 2,000 individuals in attendance at any one time during the occurrence.

[(C)] **C.** "Entertainment" does not include activities relating to specified sexual activities, specified anatomical areas, private performances, or straddle dances, as those terms are defined in this LMC.

[(iii)] (3) As part of its approval of a use under this section, the Board may attach reasonable conditions relating to entertainment if the Board finds it necessary to prevent substantial adverse impacts on adjacent properties. Conditions may include the specification of certain days or times during which entertainment may or may not be offered.

(f) **Special events.**

[(i)] **(1)** Subject to the requirements of this section, a use permitted under this section may include special events.

[(ii)] **(2)** For purposes of this section, a "special event" is a festival, performance, party, or like occurrence that:

[(A)] **A.** Is held outside, not contained within the primary structure comprising the [brewery, farm brewery, or winery;] alcohol manufacturing establishment; and

[(B)] **B.** Has or reasonably should be anticipated to have 2,000 or more individuals in attendance at any one time during the occurrence.

[(iii)] **(3)** An applicant desiring to conduct special events as part of its use shall submit with its application an event management plan in accordance with this section.

[(A)] **A.** An event management plan must include the following:

[(1)] **(i)** A general description of the types of special event to be held including locations and facilities to be used, anticipated attendance and capacity, types of entertainment to be provided, days of the week and hours during which special events will be held;

[(2)] **(ii)** A description of vehicular ingress, egress and access points, parking accommodations and measures that will be implemented to mitigate anticipated offsite traffic impacts;

[(3)] **(iii)** A description of the security planning, procedures, staffing and other measures that will be implemented to ensure the safety of event participants and the general public; and

[(4)] **(iv)** A description of the facilities planning, procedures and other measures that will be implemented to ensure that adequate sanitary sewer, water and utilities will be provided to event participants and the general public to serve the increased capacity needs during events.

[(B)] **B.** The Board shall approve the event management plan if the applicant demonstrates, and the Board finds, that the proposed special events:

[(1)] **(i)** Will not unreasonably constrain the City in the conduct of its governmental functions and operations or unreasonably overburden public facilities or services;

[(2)] **(ii)** Will not substantially interrupt the safe and orderly movement of traffic in the vicinity of the [winery, brewery, or farm brewery;] alcohol manufacturing establishment;

[(3)] (iii) Are not likely to have an adverse impact on the ability of the Frederick Police Department to provide its standard level of police protection to the City; and

[(4)] (iv) Are not likely to have an immediate and adverse effect upon the public health, safety, or welfare.

[(C)] C. An approved event management plan may be modified by the Mayor or the Mayor's designee if deemed reasonably necessary to protect the public health, safety, or welfare. As soon as practicable after a modification, the Division shall provide the property owner with a copy of the modified event management plan.

[(iv)] (4) The property owner or the owner's agent must establish an annual list of special events to be held during a calendar year, including the dates, times, and duration of the events. The list must be submitted to the Division no earlier than November 1st of the preceding year and no later than 60 days before the first special event is scheduled to occur in that calendar year. After the list is submitted, prior to adding a special event or changing the date, time, or duration of a listed event, the property owner or the owner's agent shall notify the Division in writing. The notice must be received by the Division at least 60 days before the special event.

[(v)] (5) If the Zoning Administrator determines that a planned special event exceeds the scope or intensity of the event management plan in terms of anticipated attendance, type of entertainment to be provided, or duration, the property owner or the owner's agent may not conduct the special event without first obtaining a large private events permit in accordance with Section 18-13 of the City Code.

[(vi)] (6) The Mayor or the Chief of Police may order that a special event not be conducted or, if the special event has commenced, that it be terminated immediately in a safe and orderly manner, upon finding:

[(A)] A. A public emergency has arisen where municipal resources required for the emergency are so great that deployment of municipal personnel, equipment or services for the special event would have an immediate, adverse effect upon welfare and safety of persons or property; or

[(B)] B. A substantial failure by the property owner or the owner's agent to comply with the approved event management plan or any of the terms or conditions of this article or other Federal, state, or local law or regulation, such that there is an imminent threat to the safety or welfare of persons or property. If reasonably possible before ordering the non-commencement or termination of a special event under this subparagraph, the Mayor or Chief of Police will provide the property owner with a written notice of termination describing the grounds for the non-commencement or termination, together with a correction order allowing the property owner to avert the non-commencement or termination by taking specified action within a certain period, the satisfactory completion of which shall be as reasonably determined by the Mayor or Chief of Police.

- (g) **Application.** In addition to the requirements of Article 11 of this LMC, the application for [a winery, brewery or farm brewery] an alcohol manufacturing establishment as a conditional use must include a scaled building floor plan showing the location and size of each component of the [winery, brewery or farm brewery] alcohol manufacturing establishment's operations, including but not limited to the following:
- [(i)] (1) Ingress and egress points;
 - [(ii)] (2) Manufacturing;
 - [(iii)] (3) Storage;
 - [(iv)] (4) Parking and loading;
 - [(v)] (5) Offices;
 - [(vi)] (6) Indoor areas for tours, tasting, food and beverage service, and events;
 - [(vii)] (7) Outdoor areas, including patios, terraces, and plazas, to be used for entertainment, special events, food and beverage service, and tastings;
 - [(viii)] (8) Restrooms; and
 - [(ix)] (9) Retail sales.
- (h) **Nuisance.** The applicant shall provide guarantees as deemed necessary by the Board that the use will not constitute a nuisance because of noise or other activities associated with the use.

SECTION VI. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.


SECTION IX. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, that this ordinance shall take effect on December 15, 2019, and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

NOTE: [Bold Brackets] indicates material deleted
Underlining indicates material added
 *** indicates no change

APPROVED: December 5, 2019

PASSED: December 5, 2019


 Michael C. O'Connor, Mayor


 Michael C. O'Connor, President,
 Board of Aldermen

Approved for Legal Sufficiency:

Sandra A. Nichols

City Attorney