



## Legislation Details (With Text)

**File #:** ID-162-18      **Version:** 1      **Name:**

**Type:** Ordinance      **Status:** Agenda Ready

**File created:** 4/19/2018      **In control:** City Council

**On agenda:** 6/26/2018      **Final action:**

**Title:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AMENDING SPECIFIED SECTIONS OF THE BRIGHTON MUNICIPAL CODE RELATED TO CONDITIONAL USES AND SETTING FORTH OTHER DETAILS IN RELATION THERETO

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. City Council Ordinance 18.05.01\_Conditional Use Code Amendment, 2. Planning Commission Resolution 18.03.13\_Conditional Use Code Amendment\_Signed, 3. City Council Newspaper Notice 18.05.01\_Conditional Use Code Amendment, 4. City Council Presentation 18.05.01\_Conditional Use Code Amendment

Date	Ver.	Action By	Action	Result
6/26/2018	1	City Council		
5/15/2018	1	City Council		
5/1/2018	1	City Council		

### Department of Community Development

**Reference:** Section 17-8-60 of the Municipal Code - Conditional Use Code Amendment

**To:** Mayor Kenneth J. Kreutzer and Members of City Council

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**Date Prepared:** April 6, 2018

### PURPOSE

City staff is requesting that the City Council amend the current conditional use regulations found in Section 17-8-60 of the *Municipal Code*, as well as a few other minor sections of code involving conditional uses. The amendments are to update the conditional use regulations for today's land uses as well as ensure the definitions are up-to-date.

### BACKGROUND

The *Municipal Code* contains provisions for conditional uses that were last amended in 2015. When amended in 2015, the amendment was done so the conditional use regulations would be aligned with the new oil and gas regulations that were enacted at that time.

In the first quarter of 2017, staff decided to look at the conditional use regulations and ensure they were meeting the needs of the City of Brighton and its residents. Staff noticed there were some uses that were continually coming to City Council that were being approved without any conditions. Two of those types of uses were for micro-breweries and childcare facilities located within religious institutions. Due to how these applications have been treated historically, staff wanted to try to find a way to expedite these types of applications to simplify the development process.

Another portion of this proposed amendment is meant to clearly define the development review process when an applicant submits a conditional use application. Well stated regulations include discussion of the overall process needed for approval so that developers have some predictability within the development process. Staff has reviewed other municipalities around Colorado and worked with the City Attorney to insure a process has been laid out that the City and developers can rely on.

Besides laying the groundwork for the overall application process, staff has also reworked the review criteria to ensure conditional uses are being reviewed appropriately while still being concise. Many times, it is easy to add additional review criteria but doing so can overburden an application unnecessarily or create repetitive criterion. Staff is proposing to reduce the review criteria to five, well-defined criteria that can broadly be used to review all conditional uses. Oil and gas projects would continue to refer to Section 17-64 of the *Municipal Code* for their review.

In updating the specific uses, staff has proposed amending the “Tavern, Cocktail Lounge, and Bar” use, which has lately been seen in the form of a brewery, to be a Use-By-Right in the Downtown instead of a Conditional Use. Staff is recommending this change because this type of application has been commonly approved in the Downtown, being that it is compatible with the area and often expected in that type of environment. Applicants will still be required to obtain a liquor license and satisfy all the liquor-related requirements both in the Liquor Code and the Municipal Code; and also a business license, to be able to operate. Staff believes that making these uses a Use-By-Right in the downtown will help to encourage the businesses in a desired location as well as simplify the development process by removing a step that serves to slow the overall development timeline.

Staff has also proposed adding a new use, “Micro-Brewery/Distillery/Winery” to the table of uses, making this use a Use-By-Right in the Downtown district, in the C-3 General Retail and Services district, and in industrial districts. The reason for this is that these micro-businesses, as defined by the volume of liquid that is produced for consumption, are becoming more prevalent across both Colorado, and the United States as more citizens explore the trade. With these types of micro-businesses becoming more of a main stay, staff feels allowing them as Uses-By-Right in the areas where they are expected, encourages them to locate in the appropriate locations. The definitions for micro-businesses has been researched both from observing how other communities who have been interacting with these types of businesses have regulated them as well as observing general trade definitions. Applicants will still be required to obtain a liquor license and satisfy all the liquor-related requirements both in the Liquor Code and the Municipal Code; and also a business license, to be able to operate

Staff is also proposing a few changes to the definitions section of Chapter 17 of the *Municipal Code*. These changes include making a daycare/preschool in a church a Use-By-Right and adding the definition of a transmission line, which does not currently exist. These changes are again to update the Code to present conditions as well as taking uses that are commonly expected in certain zones and make their review and approval administrative.

## **SUMMARY OF PROPOSED CODE AMENDMENT**

Staff recommends Section 17-8-60 the "Brighton Municipal Code" should be repealed in its entirety and readopted to read as follows:

### **Section 17-8-60**

#### **Section 17-8-60 - Conditional Uses**

- a. **Intent.** A conditional use is an additional use of land, structures or both that may be allowed with restrictions deemed necessary upon the review and approval of City Council. The conditional use is created in order to recognize that a use or structure may be allowed within a zone district on a specific parcel of ground in an area if restrictions and/or conditions are placed upon such use in order to ensure that such use or structure is compatible with the area in which it is intended to be located.
- b. **Applicability.** An application for a conditional use may be initiated by the property owner or an authorized agent for any use within an existing or pending zone district permitted as “conditional” as specified

in Section 17-8-30(b), as the same may be amended. Applications for the oil and gas conditional use approval process are not subject to Sections 17-8-60(d), 17-8-60(e), and 17-8-60(h) of Code and will instead refer to Section 17-64 for process and review requirements.

- c. **Notice Requirements.** A conditional use approval follows the notice procedures found in 17-8-30(f).
- d. **Review Criteria.** The City Council shall consider the following criteria when making a determination as to approval, approval with conditions or denial of a conditional use:
  - 1. The proposed use shall be consistent with the Brighton Comprehensive Plan and other master plans;
  - 2. The location, size, design and operating characteristics of the proposed use or structure shall be compatible with the existing and future land uses within the general area in which the proposed use or structure is to be located and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on conditional uses or structures to protect the public health, safety and welfare by mitigating impacts to achieve compatibility and complementary design, especially where a nonresidential use is located adjacent to a residential use;
  - 3. The site shall be physically suitable for the type and intensity of the proposed conditional use or structure;
  - 4. The proposed conditional use or structure shall not adversely affect traffic flow or parking in the neighborhood;
  - 5. The conditional use is consistent with the purpose and intent of the zoning district and overlay district in which it is located.
- e. **Lapse.** Final approval of a conditional use shall be valid for one (1) year. Any conditional use which is not established within one year of its final approval, discontinued for at least one year, or replaced by another use of land, shall expire. Actions to establish use include: building permits, certificate of occupancy, business license, or commencement of other City administrative processes that demonstrate a substantial investment.
- f. **Approval.** Approval of the conditional use shall be by resolution setting forth the conditions, if any, on the approval and whether the conditional use approval shall run with the land, is assignable, or is limited to the continued conditional use of the property by the applicant. If the resolution fails to so provide, the approval shall be limited to the continued use of the property by the applicant.
- g. **Recording.** The City will record the document of approval for a conditional use approval with the applicable County Clerk and Recorder's office and the City will require the applicant to pay for all recording fees.
- h. **Appeal of Decision.** If an application for a conditional use is denied by the City Council, an applicant may not apply for a similar Conditional Use, as determined by the Community Development Director, on the same parcel for a period of one (1) year.

## **Section 17-12-20**

### **Sec. 17-12 - Definitions**

*Child care center.* A facility, by whatever name known, that is maintained for the whole or part of a day for the care of five (5) or more children who are eighteen (18) years of age or younger and who are not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes, but is not limited to, facilities commonly known as day care centers, school-age child care centers, before and after school programs, nursery schools, kindergartens, preschools, day camps, summer camps and centers for developmentally disabled children, and those facilities that give twenty-four-hour care for children and includes those facilities for children under the age of six (6) years with stated educational purposes operated in conjunction with a public, private or parochial college or a private or parochial school; except that the term shall not apply to any kindergarten maintained in connection with a public, private or parochial elementary school system of at least six (6) grades or operated as a component of a school district's preschool program operated pursuant to Article 28 of Title 22, C.R.S. The term shall not include any facility licensed as a family child care home or foster care home. Any child care center located within an already approved church or school shall be considered a use-by-right that is accessory to the principal use.

*Micro-Brewery.* A facility that produces no more than fifteen thousand (15,000) barrels per year of fermented malt

beverages on site and shall include a taproom in which guests/customers may sample the product.

**Micro-Distillery.** A facility that produces no more than fifteen thousand (15,000) gallons per year of spirituous beverages on site and shall include a tasting room in which guests/customers may sample the product.

**Micro-Winery.** A facility that produces no more than fifteen thousand (15,000) gallons per year of vinous beverages on site and shall include a tasting room in which guests/customers may sample the product.

**Transmission Lines.** A land use which transmits various resources that are eventually consumed, either in their raw state or processed state, including, but not limited to, electrical lines, water lines, sewage lines, gas lines, and oil lines.

## **Section 17-32-30**

Sec. 17-32-30. - Table of uses.

Use Categories	Specific Uses	Zone Districts																											
		R	R	R	R	R	R	M	D	M	M	M	P	S	S	C	C	C	C	B	I	I	M	F	P	O	A	A	
		E	1	1	1	2	3	H	T	U	U	U	U	4	4	O	1	2	3	P	1	2	E	C	L	P	/	/	
				A	B					N	C	R	D	C	G											E	R	E	
										C	C	/	E	C	W										N				
		X = Use by Right						C = Conditional Use				S = Special Use				T = Temporary Use				None = Prohibited									
COMMERCIAL USES																													
Restaurants	Tavern, cocktail lounge, or bar							X	C	X	X	#					C	C	C	C									
	Micro-Brewery/Distillery/Winery							X									X		X	X									

## PLANNING COMMISSION RECOMMENDATION

On March 13, 2018, the Planning Commission reviewed the proposed code amendment. After a brief discussion to ensure they understood the proposal, the Planning Commission voted unanimously to recommend approval of the code amendment as it was presented. That recommended version is the one included in this packet.

## STAFF RECOMMENDATION

As land uses continue to change, it is important that the City has regulations that are able to meet the needs of citizens and applicants, as well as elected officials who must make determinations on applications. Staff believes the proposed Code amendment does that and recommends approval of the amendment.

## OPTIONS FOR COUNCIL CONSIDERATION

- Approve the Ordinance on first reading as drafted;
- Approve the Ordinance on first reading with changes;
- Continue the item to a date certain if more information is needed; or
- Deny the Ordinance as drafted.

## ATTACHMENTS

- Ordinance (Draft)

- Planning Commission Resolution (Signed)
- Newspaper Notification of Public Hearing
- Draft Presentation Slides