



THE TOWN OF WINDSOR
DEPARTMENT OF PLANNING & DEVELOPMENT

STAFF REPORT

TO – PLANNING ADVISORY COMMITTEE

FROM – DEPARTMENT OF PLANNING & DEVELOPMENT

SUBJECT – Land Use By-law Amendments - BREWERIES, WINERIES, DISTILLERIES and CIDERIES

DATE – October 24, 2018

ORIGIN

- 1) A recent court decision around the definition of “Accessory Use” related to Craft or Micro breweries and;
- 2) the need to be investment-ready for entrepreneurs with clear rules and regulation.

RECOMMENDATION

It is recommended:

THAT THE PLANNING ADVISORY COMMITTEE HOLD A PUBLIC PARTICIPATION MEETING, ON PROPOSED AMENDMENTS TO THE LAND USE BY-LAW, TO BETTER ENABLE THE CRAFT BEVERAGE INDUSTRY IN THE TOWN.

BACKGROUND

When the existing planning documents for the Town of Windsor were written and adopted in 2005, the interest in breweries, wineries, cideries or distilleries was likely not considered as a possible use in the downtown core. The use was restricted to industrial zones which includes breweries, distilleries, wineries, and accessory brewpubs and restaurants in the Light Industrial (LI-1) zone, and breweries, distilleries, wineries in both the Joint Industrial Type Two (LI-2), and Joint Industrial Type Three (LI-3) zones. As this industry has expanded, particularly within the last few years, it is common today to see these businesses operating in more “urban” environments and contributing to the revitalization of downtowns.

Within our downtown and other non-industrial areas, breweries, wineries, cideries and distilleries are currently permitted as accessory and incidental uses to any primary main use that is permitted within any given zone. In other words, they can be permitted as an accessory use to a restaurant, retail or other primary use of a property. This has allowed for these uses in zones outside of industrial areas (e.g. Town Centre) with certain restrictions.

A recent court decision regarding breweries as an “accessory use” restricts the sale and distribution of any product made onsite to the main use (retail, restaurant) and does not allow for offsite sales or sales in the NSLC. Staff feel it is important to clarify this and better define these potential uses to avoid future

confusion or unintended consequences. Recognizing these uses as-of-right (not only as an accessory use) in the Commercial and Town Centre designations, the accessory use restrictions would not apply.

With the recent interest and potential for further development of this nature in our downtown, Staff are recommending the consideration of amendments to our current planning documents to better support existing and future development of this nature in the downtown and other commercially zoned areas. Amendments would allow existing and future businesses the opportunity to grow and expand their business and in turn provide jobs and further economic growth for the Town. These businesses want to set up in desirable downtown locations and take advantage of higher visibility and increased foot traffic.

Staff are seeking direction from PAC and Council on moving ahead with consultation and amendments to the Land Use By-law to ensure the Town is investment-ready for craft beverage opportunities as they present themselves.

POLICY REVIEW

The following is a summary of the Town's current policy:

1. Municipal Planning Strategy (MPS)

Policies outlined here provide the policy framework in which the regulation of the Land Use By-law is bound. It is not envisioned that amendments to the policies of the Municipal Planning Strategy will be required.

- Sections 7 and 8 of the MPS outlines general policies for lands designated Town Centre, Highway Commercial, General Commercial and Shopping Centre.

Policy 7.1.1 *It shall be the policy of Council to establish a Town Centre (TC) zone encompassing the area generally bounded by King Street, Stannus Street, Victoria Street, and Water Street between Highway 101 and Albert Street. Within the Town Centre zone, it shall be the policy of Council to allow a wide range of commercial, entertainment, institutional and community uses.*

Policy 8.2.1 *It shall be the policy of Council to establish a Highway Commercial (HC) zone which permits a wide range of retail and highway commercial uses, indoor recreational uses, existing dwellings, residential uses on upper levels of commercial buildings, service commercial uses, and similar uses compatible with highway commercial development.*

Policy 8.3.1 *It shall be the policy of Council to establish a General Commercial (GC) zone which permits uses such as retail stores, restaurants, clubs, offices, banks and financial institutions, day care centres, places of entertainment, personal service shops, studios, existing dwellings, residential uses on upper levels of commercial buildings, and local shopping centres.*

Policy 8.4.1 *It shall be the policy of Council to establish a Shopping Centre*

(SC) zone which will apply only to the area surrounding the existing regional shopping centre, Fort Edward Mall. Commercial uses in this zone shall include regional shopping centres, large format retail stores, banks and financial institutions, offices, retail uses, restaurants, entertainment uses, auto sales, service stations, building supply centres and other similar uses.

- Section 16.3 provides guidance to Council when considering Land Use By-law Amendments. Table 1 outlines considerations from Policy 16.3.1 and provides Staff comment to each. These areas will be further investigated if PAC and Council provide direction to proceed with gathering additional input before amendments are put forward.

Table 1 – Review of Policy 16.3.1 of the MPS

Policy 16.3.1 <i>In considering amendments to the Town of Windsor Land Use By-law, Council shall consider:</i>	
Consideration	Staff Comment
<i>(a) whether the proposal is considered premature or inappropriate in terms of:</i>	
<i>(i) the adequacy of sewer and water services;</i>	No issues anticipated.
<i>(ii) the adequacy of school facilities;</i>	No issues anticipated.
<i>(iii) the adequacy of fire protection;</i>	No issues anticipated.
<i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i>	No issues anticipated.
<i>(v) the financial capacity of the Town to absorb any costs relating to the development.</i>	No issues anticipated.
<i>(b) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i>	No issues anticipated.
<i>(c) the adequacy of the dimensions and shape of the lot for the intended use;</i>	No issues anticipated.
<i>(d) the pattern of development which the proposal might create;</i>	No issues anticipated.
<i>(e) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses, marshes or bogs and susceptibility of flooding;</i>	No issues anticipated.
<i>(f) whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations; and</i>	Volume levels of production/distribution are under the purview of the NSLC.

<i>(g) any other matter required by relevant policies of this Strategy.</i>	No issues anticipated
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2. Land Use By-law

See Background for how the Land Use By-law handles these uses currently. Staff feel it is important to better enable craft beverage uses outside of the Industrial areas of Town and ensure it is clear what and how things are permitted. At this point, Staff feel it would be reasonable to allow a certain scale of craft beverage use in the Pesaquid Comprehensive Development (P-CDD), Town Centre (TC), General Commercial (GC), Highway Commercial (HC) and Shopping Centre (SC) zones by including breweries, wineries, distilleries and cideries in the list of permitted uses. Definitions would also be required for “breweries, wineries, distilleries and cideries” with other minor amendments likely warranted (e.g. parking requirements).

Examples of potential amendments are outlined in Attachment 1. These would be further refined based on feedback from PAC / Council, the business community and other stakeholders before finalizing amendments that would go forward through the legislated process.

DISCUSSION

The intent would be to permit a certain size of brewery in more urban locations (e.g. Town Centre) with the assumption that the smaller operations are associated with retail, tasting rooms or restaurant space that are complimentary to downtown environments / are pedestrian oriented. Larger facilities, as defined by the Province (see below “commercial brewery”), would be required to locate in industrial areas. Subject to consultation with stakeholders, it may be warranted to use Development Agreements or Site Plan approval for aspects of these amendments.

Relevant Provincial (NSLC) Definitions:

"Commercial Brewery" means a manufacturer of beer, where the primary business function is to sell packaged product to the NSLC and thence to the general public through retail liquor stores or for export, and which manufactures 15,000 hectolitres or more of beer per year. Commercial breweries retail pricing is subject to NSLC standard beer pricing policies on all production.

"Craft Brewery" means a manufacturer of beer, where the primary business function is to sell packaged product to the NSLC and thence to the general public through retail liquor stores, or for export, and which manufactures more than 2000 hectolitres but less than 15,000 hectolitres of beer per year. Craft breweries may, subject to approval from the Alcohol and Gaming Division, have an adjacent licensed premise that shall be totally segregated from their manufacturing facility and operated under the terms and conditions of the liquor license issued for the licensed premise, and may have an ownership interest in up to four additional licensed premises.

Note: A craft brewery that produces in excess of 15,000 hectolitres of beer in any given year, as determined by the NSLC, will automatically become a commercial brewery, will no longer qualify for a craft brewery permit, will no longer be permitted to operate or own a licensed premise, and will be subject to NSLC commercial beer markup on all production.

“Nano Brewery” means a small capacity manufacturing facility where the primary business function is the production of less than 2000 hectolitres of beer per year and, counted separately, less than 2000 hectoliters of wine, cider or other non-spirits per year (no distillation permitted and each product separately approved by the NSLC), and is authorized by the NSLC to sell product to the NSLC and thence to the general public through retail liquor stores, or for export, or to the general public in approved containers at its facility, or for consumption in its adjacent, totally segregated, licensed premises, or other sales as may be authorized by the NSLC. Sales may occur at the manufacturing facility and in up to four additional licensed premises in which the nano brewery principal owner has at least 51% ownership interest.

"Distillery" means a manufacturing plant, located in the Province, to which a license has been issued by the Government of Canada and to which a permit has been issued by the NSLC and where liquor, other than beer or wine, is manufactured or blended and bottled for sale to the NSLC or for export;

“Craft-distillery Class A” means a distillery that has an annual production of between 0 and 75,000 litres of finished product;

“Craft-distillery Class B” means a distillery that has an annual production of between 75,001 and 150,000 litres of finished product.

CONCLUSIONS

Staff have drafted potential Land Use By-law amendments (consistent with other jurisdictions) but want to ensure existing and potential business owners, the WBES, and other stakeholders are consulted before PAC recommends amendments to Council.

Given this, it is recommended that the PAC hold a public participation meeting to gather additional feedback before amendments are recommended on to Council and through the legislated process.

PROCESS

This report will be reviewed by the Planning Advisory Committee (PAC) and will be an introduction to the issue. PAC will have the opportunity to provide feedback to Staff on this report and it is recommended that additional feedback be gathered by Staff (e.g. meet with relevant stakeholders) and that that a Public Participation meeting be held at the next PAC meeting before a recommendation is provided to Council. Council will then give first reading to the amendments and is then required by the Municipal Government Act to hold a Public Hearing prior to a final decision/2nd reading of the by-law amendments. The Public Hearing would be scheduled subsequent to first reading, along with public notice and advertising. Amendments to the Land Use By-law can be appealed to the Nova Scotia Utility and Review Board (UARB).

Section 210 of the Municipal Government Act states that a Public Participation program for such an amendment is at the discretion of Council and is recommended by Staff.

ATTACHMENT 1 – DRAFT (EXAMPLE) AMENDMENTS TO LAND USE BY-LAW

The following amendments are proposed:

1. Amend Section 14.0 Town Centre (TC) of the Land Use By-law by adding “Breweries, wineries, distilleries and cideries” to 14.1 as shown in **RED** below:

Permitted Uses

14.1 The following uses shall be permitted in the Town Centre (TC) zone:

- Arts and crafts studios including photography
- Banks and financial institutions
- Clubs and community organizations
- Commercial schools
- Day care centres, licensed and non-licensed
- Emergency service facilities (i.e. police, ambulance and fire stations)
- Entertainment, recreation and assembly uses within a wholly enclosed building
- Farm markets
- Funeral homes
- Garden and nursery sales and supplies
- Hotels, motels and other tourist accommodations
- Licensed liquor establishments
- **Breweries, wineries, distilleries and cideries**
- Local shopping centres
- Museums, art galleries and libraries
- Offices
- Parking structures
- Repair and rental establishments
- Residential uses (not on the ground floor except for the area bounded by King Street, Stannus Street, Gray Street and Victoria Street (*Amended WLUB 15-02 Effective August 8, 2018*))
- Restaurants
- Retail stores
- Service and personal service shops
- Taxi, train and bus stations
- Veterinary clinics and animal hospitals
- Existing dry cleaning and laundry establishments
- Existing residential uses

2. Amend Section 17.0 General Commercial (GC) by adding “Breweries, wineries, distilleries and cideries” to 17.1 as shown in **RED** below:

Permitted Uses

17.1 The following uses shall be permitted in the General Commercial (GC) zone:

- Arts and crafts studios including photography

- Banks and financial institutions
- **Breweries, wineries, distilleries and cideries**
- Clubs and community organizations
- Commercial schools
- Country inns
- Day care centres, licensed and non-licensed
- Entertainment, recreation and assembly uses within a wholly enclosed building
- Garden and nursery sales and supplies
- Licensed liquor establishments
- Local shopping centres containing uses permitted in the GC zone
- Offices
- Parking structures
- Repair and rental establishments
- Residential uses (not on the ground floor)
- Restaurants, excluding drive-through restaurants
- Retail stores
- Service and personal service shops
- Taxi, train and bus stations
- Veterinary clinics and animal hospitals
- Existing residential uses

3. Amend Section 18.0 Highway Commercial (HC) by adding “Breweries, wineries, distilleries and cideries” to 18.1 as shown in **RED** below:

Permitted Uses

18.1 The following uses shall be permitted in the Highway Commercial (HC) zone:

- Arts and crafts studios including photography
- Automobile service stations, car washes and repair centres
- Automobile, truck and motorcycle sales, service or rental establishments
- **Breweries, wineries, distilleries and cideries**
- Building supply establishments
- Day care centres, licensed and non-licensed
- Dry cleaning and laundry establishments
- Entertainment, recreation and assembly uses within a wholly enclosed building
- Farm equipment sales and service
- Farm markets
- Funeral homes
- Garden and nursery sales and supplies
- Hotels and motels
- Kennels
- Licensed liquor establishments
- Manufactured home sales
- Offices (not on the ground floor)
- Recreational vehicle sales, service and rental establishments
- Recycling depots
- Repair and rental establishments
- Residential uses (not on the ground floor)
- Restaurants, including drive-through and take-out establishments

- Retail stores
 - Self storage operations (*Amendment WLUB 10-02 Effective February 25, 2011*)
 - Service shops
 - Taxi, train and bus stations
 - Veterinary clinic and animal hospitals
 - Wholesaling and wholesale sales
 - Existing residential uses
4. Amend Section 19.0 Shopping Centre (SC) of the Land Use By-law by adding “Breweries, wineries, distilleries and cideries” to 19.1 as shown in **RED** below:

Permitted Uses

19.1 The following uses shall be permitted in the Shopping Centre (SC) zone:

- Arts and crafts studios including photography
 - Automobile service stations, car washes and repair centres
 - Automobile, truck and motorcycle sales, service or rental establishments
 - Banks and financial institutions
 - **Breweries, wineries, distilleries and cideries**
 - Building supply establishments
 - Clubs and community organizations
 - Day care centres, licensed and non-licensed
 - Entertainment, recreation and assembly uses within a wholly enclosed building
 - Farm markets
 - Garden and nursery sales and supplies
 - Hotels and motels
 - Licensed liquor establishments
 - Offices
 - Parking structures
 - Personal service shops
 - Recreational vehicle sales, service and rental establishments
 - Regional shopping centres containing uses permitted in the Shopping Centre (SC) zone
 - Restaurants, including drive-through and take-out establishments
 - Retail stores, including large format retail stores
5. Amend Section 31.0 “Definitions” by adding the following definition for “Breweries, wineries, distilleries, and cideries” under 31.1:

Breweries, Wineries, Micro Distilleries, and Cideries means a facility used for the fermenting, brewing, or distilling of beverage alcohols and includes facilities on the same lot where the beverage alcohols may be blended, mixed, stored or packaged, and may include accessory sales, tours, tasting rooms and customer seating areas.

Note: more detailed definitions to distinguish between “commercial breweries” and “craft breweries” (and distilleries) will be warranted.