CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

Date: **November 27, 2017**

ITEM: Ordinance Amendment - Amend Title 9 (Zoning), Chapter 2 (Zoning Rules and Definitions) to add a definition for distilleries and tasting rooms, Amend Title 9 (Zoning) Chapter 6 (Commercial, Office and Industrial Zoning District), Section 6 (Commercial, Office and Industrial Use Regulations) to add SIC 2085 – Distillery, Amend Title 9 (Zoning), Chapter 10 (Performance Standards) to add regulations for distilleries with a tasting room, and Amend Title 9 (Zoning), Chapter 15 (Off Street Parking and Loading) to regulate parking requirements for distilleries with a tasting room – City Initiated – AO-003660-2017 **(Continued from November 13, 2017)**

Ordinance: Approval of First Reading

FINANCIAL IMPACT: Undetermined.

BACKGROUND: At the last Iowa legislative session, legislation was adopted that allows distilleries to sell their products by the glass for on-site consumption with the proper liquor license. This new legislation goes into effect on January 1, 2018. Because of this new legislation, staff reviewed City code and found that SIC 2085, Distillery was not specifically listed, however, SIC 208, Beverages (which distilleries would fall under) was listed as a Permitted Conditional Use in Business Park and Light Industrial zoning and permitted by right in General Industrial zoning. Nothing in the code addressed tasting rooms for on-site consumption associated with a distillery. Staff determined that because the liquor will be sold retail, a tasting room operates similar to a bar versus free tasting with prospective retailers of the product as would be done as part of the wholesale of the liquor. Per a recent change to City Code, taprooms associated with a brewery are allowed in the same zoning districts in which distilleries are allowed. To be consistent with that recent City Code change, staff requests approval of an ordinance amendment to define tasting rooms, to allow tasting rooms in association with a distillery as a permitted conditional use in the General Industrial, Light Industrial, Business Park, and other commercial districts and to establish requirements for area coverage, licensing, and parking.

Plan and Zoning Commission Action:
Vote: 6-0 approval. Commissioner Costa absent
Date: November 20, 2017
Motion: Adopt a resolution recommending the City Council approve the ordinance amendment.

November 6, 2017 Meeting:
This request was originally considered by the Plan & Zoning Commission on November 6, 2017. At the meeting a resident spoke in opposition to the allowance of distilleries with tasting rooms in Neighborhood Commercial districts due to concerns on the safety of alcohol production uses, especially located in proximity to residential areas. The Commission voted to continue the Ordinance Amendment request to the November 20, 2017 meeting to allow input from the Fire Marshal regarding allowing distilleries within Neighborhood Commercial districts.

November 20, 2017 Meeting:
At the November 20, 2017 Plan & Zoning Commission meeting, the Commission heard from a resident that was concerned with allowing distilleries with tasting rooms in Neighborhood Commercial districts due to their close proximity to residential areas. The Fire Marshal spoke about the safety measures that were in place in the fire code and the building code to allow these types of uses. He stated that he did not have any more concern about distilleries than any other land use that might be allowed in a Neighborhood Commercial area. Several Commission members stated that they didn't think a distillery was appropriate in a Neighborhood Commercial area. The Plan & Zoning Commission members voted to recommend approval of the ordinance amendment with the modification to remove distilleries with a tasting room as a Permitted Conditional Use in Neighborhood Commercial districts. The attached ordinance has been revised to reflect the Plan and Zoning Commission recommendation.

OUTSTANDING ISSUES: There are no outstanding issues. The following items of interest are noted in the attached Plan and Zoning Commission report (see Exhibit I):

- Applicant's Request
- City Council Subcommittee *(Not presented due to the cancellation of meetings in October)*
- Staff Review and Comment
  - *Size of Distilleries*
  - *Parking Requirements*
  - *Review Process*
  - *Staff Recommendation*
- Comprehensive Plan Consistency
- Noticing Information
- Staff Recommendation and Conditions of Approval

RECOMMENDATION: Based upon the preceding review and a finding of consistency with the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council approve the first reading to amend City Code to regulate tasting rooms associated with distilleries, subject to the removal of distilleries with a tasting room as a Permitted Conditional Use in Neighborhood Commercial districts and subject to meeting all City Code requirements.

Lead Staff Member: Brian Portz, AICP BP

STAFF REVIEWS:

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	*Des Moines Register*	
Date(s) Published	October 27, 2017	
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development and Planning		
Date Reviewed	Not reviewed		
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Plan and Zoning Communication
- Attachment A - Plan and Zoning Commission Resolution
- Attachment B - Proposed Rezoning Ordinance *(now Exhibit II)*

Exhibit II - Proposed Rezoning Ordinance

EXHIBIT I

CITY OF WEST DES MOINES
PLAN AND ZONING COMMISSION

Meeting Date: November 20, 2017

Item: Ordinance Amendment - Amend Title 9 (Zoning), Chapter 2 (Zoning Rules and Definitions) to add a definition for distilleries and tasting rooms, Amend Title 9 (Zoning) Chapter 6 (Commercial, Office and Industrial Zoning Districts), Section 6 (Commercial, Office and Industrial Use Regulations) to add SIC 2085 – Distillery, Amend Title 9 (Zoning), Chapter 10 (Performance Standards) to add regulations for distilleries with a tasting room, and Amend Title 9 (Zoning), Chapter 15 (Off Street Parking and Loading) to regulate parking requirements for distilleries with a tasting room – City Initiated – AO-003660-2017 **(deferred from November 6, 2017)**

Request Action: Approval of an amendment to the City Code

Case Advisor: Brian S. Portz, AICP BP

Applicant's Request: At the last legislative session, legislation was adopted that allows distilleries to sell their products by the glass for on-site consumption with the proper liquor license. This new legislation goes into effect on January 1, 2018. Because of this new legislation, staff reviewed City code and found that SIC 2085, Distillery was not specifically listed, however, SIC 208, Beverages (which distilleries would fall under) was listed as a Permitted Conditional Use in Business Park and Light Industrial zoning and permitted by right in General Industrial zoning. Nothing in the code addressed tasting rooms for on-site consumption associated with a distillery. Staff determined that because the liquor will be sold retail, a tasting room operates similar to a bar versus free tasting with prospective retailers of the product as would be done as part of the wholesale of the liquor. Per a recent change to City Code, taprooms associated with a brewery are allowed in the same zoning districts in which distilleries are allowed. To be consistent with that recent City Code change, staff requests approval of an ordinance amendment to define tasting rooms, to allow tasting rooms in association with a distillery as a permitted conditional use in the General Industrial, Light Industrial, Business Park, and other commercial districts and to establish requirements for area coverage, licensing, and parking.

November 6, 2017 Meeting: At the November 6, 2017 Plan & Zoning Commission meeting, the Commission voted to continue the Ordinance Amendment request to the November 20, 2017 meeting to allow input from the Fire Marshal regarding allowing distilleries within Neighborhood Commercial districts due to concerns expressed at the public hearing on the safety of alcohol production uses, especially located in proximity to residential areas. Planning Staff again discussed the allowance of distilleries with tasting rooms within Neighborhood Commercial areas with the Fire Marshal and he indicated that he doesn't have any concerns with this type of use in Neighborhood Commercial or other Commercial districts, since there are Fire and Building Code regulations specific to inherent hazards of the use that will be put into place at the time of construction of such a use. The Fire Marshal said that he will be at the November 20th meeting to answer any questions that the Commission may have.

City Council Subcommittee: Due to cancellation of two Development and Planning City Council Subcommittee meetings in October, this item was not presented to the subcommittee.

Staff Review and Comment: Staff notes the following:

- *Size of Distilleries:* Staff proposes to limit which zoning districts that distilleries with tasting rooms can be located based on their size. As with breweries with a taproom, the smaller the distillery, the more commercial zoning districts they may be allowed. Specifically, distilleries of 5,000 square feet or less with a tasting room may be allowed with approval by the Board of Adjustment of a Permitted Conditional Use (Pc) Permit in Neighborhood Commercial (NC), Community Commercial (CMC), Support Commercial (SC), Regional Commercial (RC), Valley Junction Historical Business (VJHB), Warehouse Retail (WR), Business Park (BP), Light Industrial (LI), or General Industrial (GI) with a Permitted Conditional Use (Pc). Distilleries greater than 5,000 square feet, but less than or equal to 10,000 square feet with a tasting room are allowed with approval of a Pc in all of the above districts except for NC and VJHB. And, distilleries greater than 10,000 square feet with a tasting room are only allowed with approval of a Pc in BP, LI and GI districts.

- *Parking Requirements:* In coordination with the parking requirements for taprooms in association with a brewery, staff is proposing 3 parking spaces per 1,000 square feet for the distillery plus 1.5 parking spaces per 100 square feet for the area of the distillery where the tasting room is located.

- *Review Process:* Staff proposes that tasting rooms in association with distilleries be reviewed through the Permitted Conditional Use (Pc) permit process. This will enable a review of the licensing, the parking, and the distillery size limitations that are proposed to be included in the ordinance. It will also allow for the establishment of conditions of approval or restrictions should the Board of Adjustment determine such is necessary for the use to locate on a particular site.

- *Staff recommendation:* After further review, staff is recommending no changes to the ordinance amendment as proposed. Sufficient safeguards exist with the size restrictions, Permitted Conditional Use review process and the current regulations contained in the building and fire codes. Should the Plan and Zoning Commission wish to recommend further restrictions to distillery uses, the following modifications could be considered:

    - Place restrictions on on-site grain milling, allowing that operation only in industrial areas.
    - Change use matrix to remove the Permitted Conditional Use for distilleries from Neighborhood Commercial districts.
    - Allow in the designated zoning district depending on size only when no residential use or zoning is designated within 'X' feet of the proposed establishment. (Should this approach be chosen, staff seeks Commission recommendation on a suitable distance.)

Comprehensive Plan Consistency: The project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan and the land use map of the Comprehensive Plan.

Noticing Information: On October 27, 2017, notice of the November 6, 2017, Plan and Zoning Commission and November 13, 2017 City Council public hearings for this project was published in the *Des Moines Register*.

Staff Recommendation and Conditions of Approval: Staff recommends the Plan & Zoning Commission approve a resolution recommending to the City Council approval of the ordinance amendment.

Attachments:

Attachment A – Proposed Resolution

Exhibit A – Proposed Ordinance

ATTACHMENT A

RESOLUTION NO. PZC-17-107

A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE AN ORDINANCE TO AMEND TITLE 9 (ZONING), CHAPTER 2 (ZONING RULES AND DEFINITIONS) TO ADD A DEFINITION FOR DISTILLERIES AND TASTING ROOMS, TITLE 9 (ZONING), CHAPTER 6 (COMMERCIAL, OFFICE AND INDUSTRIAL ZONING DISTRICTS), SECTION 6 (COMMERCIAL, OFFICE AND INDUSTRIAL USE REGULATIONS), SUBSECTION C, TABLE 6.1 (USE MATRIX) TO ADD SIC 2085 – DISTILLERY, AMEND TITLE 9 (ZONING), CHAPTER 10 (PERFORMANCE STANDARDS) TO ADD REGULATIONS FOR DISTILLERIES WITH A TASTING ROOM, AND AMEND TITLE 9 (ZONING), CHAPTER 15 (OFF STREET PARKING AND LOADING) TO REGULATE PARKING REQUIREMENTS FOR DISTILLERIES WITH A TASTING ROOM

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, and Title 10, Chapter 1 et seq, of the West Des Moines Municipal Code, staff requests an amendment to Title 9 (Zoning), Chapter 2 (Zoning Rules and Definitions) to add a definition for distilleries and tasting rooms, Amend Title 9 (Zoning) Chapter 6 (Commercial, Office and Industrial Zoning Districts), Section 6 (Commercial, Office and Industrial Use Regulations), Subsection C, Table 6.1 (Use Matrix) to add SIC 2085 – Distillery, Amend Title 9 (Zoning), Chapter 10 (Performance Standards) to add regulations for distilleries with a tasting room, and Amend Title 9 (Zoning), Chapter 15 (Off Street Parking and Loading) to regulate parking requirements for distilleries with a tasting room;

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, this Commission held a duly-noticed hearing to consider the application for an amendment to ordinance;

WHEREAS, this Commission did consider the application for an amendment to ordinance;

NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings for approval in the staff report or as amended orally at the Plan and Zoning Commission public hearing are adopted.

SECTION 2. The AMENDMENT TO ORDINANCE (AO-003660-2017) is recommended to the City Council for approval, as stated in the staff report or as amended in the attached Exhibit A.

PASSED AND ADOPTED on November 20, 2017.

Craig Erickson, Chairperson
Plan and Zoning Commission

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 20, 2017 by the following vote:

AYES: Andersen, Brown, Crowley, Erickson, Hatfield, Southworth
NAYS:
ABSTENTIONS:
ABSENT: Costa

ATTEST:

Jennifer Canaday
Recording Secretary

EXHIBIT II

Prepared by: B. Portz, West Des Moines Development Services, PO Box 65320, West Des Moines, IA 50265, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

ORDINANCE NO.

TO AMEND TITLE 9 (ZONING), CHAPTER 2 (ZONING RULES AND DEFINITIONS) TO ADD A DEFINITION FOR DISTILLERIES AND TASTING ROOMS, TITLE 9 (ZONING), CHAPTER 6 (COMMERCIAL, OFFICE AND INDUSTRIAL ZONING DISTRICT), SECTION 6 (COMMERCIAL, OFFICE AND INDUSTRIAL USE REGULATIONS), SUBSECTION C, TABLE 6.1 (USE MATRIX) TO ADD SIC 2085 – DISTILLERY, AMEND TITLE 9 (ZONING), CHAPTER 10 (PERFORMANCE STANDARDS) TO ADD REGULATIONS FOR DISTILLERIES WITH A TASTING ROOM, AND AMEND TITLE 9 (ZONING), CHAPTER 15 (OFF STREET PARKING AND LOADING) TO REGULATE PARKING REQUIREMENTS FOR DISTILLERIES WITH A TASTING ROOM

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

Section 1. Amendment. Title 9 (Zoning), Chapter 2 (Zoning Rules and Definitions), Section 2 (Definitions), is hereby amended by placing in alphabetical order the following definitions in italicized and bold lettering:

> ***Distillery: A business that produces an alcoholic product by the process of distillation.***
>
> ***Tasting Room: Any portion of a distillery where either the sale or consumption of the distillery product by the glass occurs.***

Section 2. Amendment. Title 9 (Zoning), Chapter 6 (Commercial, Office and Industrial Zoning District), Section 6 (Commercial, Office and Industrial Use Regulations), Subsection C, Table 6.1 (Use Matrix – Division D - Manufacturing) is hereby amended by adding the text in italicized and bold lettering and deleting the strikethrough highlighted text:

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
2082 Brewery with no taproom									***Pc***		***Pc***	***P***			
2082 Brewery less than ***or equal to*** 5,000 sq. ft. in conjunction with a taproom	Pc	Pc	Pc		Pc		Pc	Pc	Pc		Pc	Pc			
2082 Brewery ***greater than 5,000 sq. ft. and*** less than ***or equal to*** 10,000 sq. ft. in conjunction with a taproom	Pc	Pc			Pc			Pc	Pc		Pc	Pc			
2082 Brewery ***greater than*** ~~over~~ 10,000 sq. ft. ~~with or without~~ ***in conjunction with*** a taproom									Pc		Pc	P			
2085 Distillery with no tasting room									***Pc***		***Pc***	***P***			
2085 Distillery less than or equal to 5,000 sq. ft. with a tasting room	***Pc***	***Pc***			***Pc***		***Pc***	***Pc***	***Pc***		***Pc***	***Pc***			
2085 Distillery greater than 5,000 sq. ft. and less than or equal to 10,000 sq. ft. with a tasting room	***Pc***	***Pc***			***Pc***			***Pc***	***Pc***		***Pc***	***Pc***			
2085 Distillery greater than 10,000 sq. ft. with a tasting room									***Pc***		***Pc***	***Pc***			

5813 Drinking Places	Pc	Pc	Pc		Pc		Pc	Pc			Pc	Pc			
-Taproom/beer parlor in conjunction with a brewery of less than ***or equal to*** 5,000 sq. ft.	Pc	Pc	Pc		Pc		Pc	Pc	Pc		Pc	Pc			
-Taproom/beer parlor in conjunction with a brewery ***or distillery*** greater than 5,000 sq. ft. and less than ***or equal to*** 10,000 sq. ft.	Pc	Pc			Pc			Pc	Pc		Pc	Pc			
-Taproom/beer parlor in conjunction with a brewery ***or distillery*** greater than 10,000 sq. ft.									Pc		Pc	Pc			

Section 3. **Amendment.** Title 9 (Zoning), Chapter 10 (Performance Standards), Section 4 (Specific Use Regulations), Paragraph A, is hereby amended by adding the following italicized and bold text:

24. Tasting Rooms in conjunction with a Distillery: In those districts where a tasting room is allowed, the tasting room shall only be allowed by approval of a permitted conditional use permit to operate in conjunction with a distillery. The distillery must have a native distilled spirits liquor control license issued through the State of Iowa and a class LC liquor license issued by the city. For tasting rooms exceeding 50 percent of the gross square footage of the distillery, or serving cocktails, spirits or liquor produced elsewhere, those uses will be considered a drinking place/bar for purposes of this ordinance and regulation.

Parking space requirements for a distillery with a tasting room will be calculated at the parking rate for SIC 5813, drinking places for that portion of the distillery identified as the liquor consumption area. This parking calculation shall be in addition to the parking requirement for SIC 2085, Distillery for that portion of the distillery identified for production purposes.

Section 4. Amendment. Title 9 (Zoning), Chapter 15 (Off Street Parking and Loading), Section 7-E is hereby amended by adding the following italicized and bold text:

2085 Distillery with Tasting Room	• ***3 spaces per 1,000 square feet of GFA for the distillery plus 1.5 spaces per 100 square feet of GFA for the area of the distillery where the tasting room is located***
5813 Drinking places	• 1.5 spaces per 100 square feet of GFA
-Tasting Room in conjunction with a distillery	• ***1.5 spaces per 100 square feet of GFA of the tasting room in addition to that parking required of the distillery***

Section 5. Repealer. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

Section 6. Savings Clause. If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

Section 7. Violations and Penalties. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Section 1-4-1 of the City Code of the City of West Des Moines, Iowa.

Section 8. Other Remedies. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

Section 9. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council on the _____ day of _____, 2017, and approved this _____ day of _____, 2017.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T Jacobson
City Clerk

The foregoing Ordinance No. _____ was adopted by the Council for the City of West Des Moines, Iowa, on _____, 2017 and was published in the Des Moines Register on _____, 2017.

_____
Ryan T. Jacobson
City Clerk