

Agenda Item # 5A  
September 18, 2018

Worksession

**MEMORANDUM**

September 14, 2018

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-03, Farm Alcohol Production

Purpose: Discussion of Planning, Housing, and Economic Development Committee's recommendations and issues that may lead the Council's to approve, disapprove or amend ZTA 18-03

**Expected Participants:**

Gwen Wright  
Pam Dunn  
Greg Russ  
Josh Penn  
Richard Weaver  
Ehsan Motazedi  
Mark Beall

**PHED Recommendations:**

As a result of its meetings on July 19, 2018 and on July 23, 2018, the Committee recommended proceeding with ZTA 18-03 in a manner that would allow Farm Alcohol Production as a limited use. The Committee agreed that the ZTA should be amended to require that the:

- use must be accessory to the farm on which the alcohol production facility is located<sup>1</sup>;
- specific state which alcohol producers' licenses must be approved and complied with;
- majority of the ingredients used in the alcohol production process be grown in the County or from regionally grown products, if available at competitive prices.
- number of participants that trigger a count of the allowed 9 large events should be lowered to 225; and
- illumination at the property line must be limited to 0.1 footcandle or less.

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<sup>1</sup> Section 59.3.7.4.B.

Accessory Use means a use that is incidental and subordinate to the principal use of a lot or site or the principal building and located on the same lot or site as the principal use or building. Any permitted or limited use in a zone may be an accessory use to any other use in the same zone; any applicable use standards must be satisfied.

The Committee did not recommend any restriction based on the property's Transferred Development Rights status, but focused on a necessary connection to farming. The Committee also did not recommend: 1) a new requirement for access to any class of roadway; 2) retaining the separate provisions for a winery, 3) having different noise standards than those required by Chapter 31B, 4) requiring any minimum lot size or parcel size, or 5) restricting the use when Transferable Development Rights were severed from the land.

The Committee believes that ZTA 18-03 would clarify what Farm Alcohol Producer can and cannot do. It gives more assurance to farmers than reliance on Department of Permitting Services (DPS) interpretations. The ZTA is consistent with the idea that growing and selling should be allowed on farms. The Committee is confident that ZTA 18-03 will not change the landscape of the agricultural reserve given that the market support for only a limited number of these facilities.

### **Council President Riemer's Recommendations post PHED**

Council President Riemer recommends additional connections between agriculture and the material used for agriculture production and additional limits on the number and crowd size of allowed events.

Regarding the connection between locally grown products and products used in alcoholic production, he would make provisions consistent with new state law requirements for Class 4 licenses that will be applicable in 2022.<sup>2</sup>

Wineries and cideries must:

- 1) have at least 5 acres of grapes or other fruit in the cultivation site or on an abutting or confronting site; and
- 2) must either
  - (a) have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control;
  - (b) source a majority of their grapes or other fruit from Maryland.

Breweries and distilleries must source a majority of their ingredients, if available at competitive prices, from regionally grown products.

Under Council President Riemer's proposal, breweries and distilleries would retain the connection recommended by the PHED Committee. Such producers must source a majority of their ingredients, if available at competitive prices, from Regionally Grown Products. The PHED recommended a requirement for a long-range plan. The purpose of the plan is to increase the use of local Montgomery County agricultural products in the production process.

Under the Council President's recommendations on the maximum number of participants at any event with more than 100 but less than 225 participants, it would be limited to 50 events in a calendar year; however, 5 of those 50 events may have more than 225 participants without conditional use approval. With conditional use approval, the Hearing Examiner would be allowed to increase the number and size of events.

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<sup>2</sup> House Bill 972 (passed) establishes stricter requirements for a business to obtain a Class 4 limited winery license. Specifically, the bill changes the broad requirement that a licensee use Maryland agricultural products to produce wine and pomace brandy to instead require the licensee to own or have under contract at least 20 acres of grapes or other fruit in cultivation in the State for use in the production of wine or ensure at least 51% of the ingredients used in alcoholic beverages production are grown in the State.

Finally, the Council President recommends that; 1) the ordinary customary operations of a farm alcohol producers tasting room is more clearly defined as including but not limited to tasting room operations and membership related events.”, and 2) “festivals” be added to the list of the types of events that includes weddings and corporate events.

## **Background**

Zoning Text Amendment (ZTA) 18-03, lead sponsor Council President Riemer, co-sponsors Councilmembers Leventhal, Katz, Floreen, Navarro, and Hucker, was introduced on April 10, 2018. ZTA 18-03 would allow Farm Alcohol Production in Agricultural and Rural Residential zones under certain circumstances.

Currently, wineries are specifically allowed in Agricultural and Rural Residential zones. ZTA 18-03 would incorporate many of the standards that were applicable to wineries and apply those standards and others to breweries, cideries, and distilleries. In addition to the manufacture of alcoholic beverages, ZTA 18-03 would allow tasting rooms and, to the extent allowed by the state manufacturing license, the sale of food. It would also allow up to nine events a year with 300 or more participants. A larger number of events could only be allowed if the use is approved as a conditional use.

On April 27, 2018, in the memorandum to the Planning Board, Planning staff had no objection to the intent of ZTA 18-03 but thought more conversation was warranted on the issue of events. Planning staff noted that Equestrian Facilities had regulated events in terms of the number of participants, the hours of operation, and the number of events, based on the parcel size. On May 14, 2018, the Planning Board agreed with Planning staff's comments.

The public hearing on ZTA 18-03 was held on May 15, 2018. There were 11 speakers, including the Planning Board representative.

Doug Licklitter, speaking on behalf of the Agricultural Advisory Committee, and Ed Boyce, founder of Black Ankle Vineyards, spoke in favor of ZTA 18-03 but expressed a concern that potential amendments to the ZTA may make it too restrictive on how the alcohol producer must use on-site agricultural products; in their opinion, the winery standard of 5 acres of fruit production would not work for breweries. Robert Butz also spoke in support of ZTA 18-03. In his opinion, it will promote a vibrant and successful Agricultural Reserve. Bob Sissle (speaking for the Montgomery Agricultural Producers), Drew Baker (founder of Old Westminster Winery), Jessica Snyder (Waredaca Brewing Company), and Phil Mooth (Brookfield Beer Farm) all supported ZTA 18-03 as a means of favoring the agricultural use of land and agritourism.

Caroline Taylor, speaking on behalf of 11 civic groups and 11 individuals, wanted the ZTA to assure master plan consistency and to mitigate impacts with a clear set of standards. Jim Brown, Sugarloaf Board member, recommended that the Council think about the safety aspects of more tasting room participants driving on rural roads.<sup>3</sup> He recommended distinguishing the approval process for large “beer halls” (300 participants) and smaller-scale tasting rooms. Tom Hertzog opposed ZTA 18-03. In his opinion, because

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<sup>3</sup> “Every society, all government, and every kind of civil compact therefore, is or ought to be, calculated for the general good and safety of the community.” George Mason.

it removes alcohol production from the requirement for a conditional use, the marketing for tasting rooms would change the character of the Agricultural Reserve.

## **Issues**

### ***1) Is the approval of ZTA 18-03 premature?***

There are 3 facts that argue against the Council's approval of ZTA 18-03 at this time.

- 1) ZTA 17-07 allowed breweries and distilleries in CR, CRT, and CRN zone. It also expanded the limits of brewing and distilling in EOF zones. (Those zones also allow retail uses – tasting rooms-without conditional use approval.) ZTA 17-07 only became effective on January 1, 2018. ZTA 18-03 would allow the same use in the Agricultural on much less expensive land. The Council may want to know the effects of ZTA 17-07 before considering ZTA 18-03.
- 2) The Department of Permitting Services has recently interpreted the building code to allow breweries and distilleries on farms with an entry level tasting room for less than 50 participants as an agricultural building that does not require a new building permit. The impact of this recent interpretation on promoting more such facilities in the Agricultural Reserve Zone is not known.
- 3) Increased interest in the economic development of Montgomery County's Agricultural Reserve through tourism has led to an on-going Planning Department study. The study was approved by the Council in the Department's work program. The Planning Department has not completed this work. Recommendations are expected by January 2019.

The study is examining various aspects of agritourism, including events held on farms, wineries, breweries, produce stands and farm-to-table offerings, to understand the land use regulations associated with these activities. It intends to examine applicable sections of the county's zoning ordinance and its subdivision regulations to determine if modifications in policy are needed to provide clarity and direction for property owners. The Planning Department established the Montgomery County Agritourism Study Advisory Committee (ASAC), composed of representatives drawn from County agencies, local farms, and civic groups, to help make recommendations.<sup>5</sup>

Allowing the Planning Board study to develop recommendations, may result in more consensus and a more comprehensive approach to the issues surrounding agricultural tourism.

**The Committee (3-0) recommends proceeding with the approval of ZTA 18-03 with amendments. Staff recommends deferring action on ZTA 18-03.**

### ***2) Should Farm Alcohol Production be allowed as a limited use instead of a conditional use?***

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<sup>5</sup> The Committee membership represents County stakeholders and helps ensure a balanced discourse and study on the provision of Agritourism in the County. The membership of the Committee can be found on the Planning Department's web site - <http://montgomeryplanning.org/wp-content/uploads/2018/06/Final-Advisory-Committee-List.pdf>

As reviewed in detail below, wineries, breweries and distilleries associated with agriculture are currently allowed in the Agricultural Reserve zone without the approval of ZTA 18-03. ZTA 18-03 would allow Farm Alcohol Production as a limited use and expand provisions for tasting rooms. It would also allow a number of large events at these facilities beyond the tasting room's normal operations.

Approval as a limited use does not allow for a case by case determination of whether the retail tasting room, is appropriate at a particular location. A limited use allows the Council to detail standards under which the use is acceptable, but it is difficult to have uniform standards that assure compatibility in every case.

An alternative (or in addition) to development standards for the use, would be to make the use subject to conditional use approval. This would be exactly how Agricultural Processing is allowed currently; however, Agricultural Process may be a primary use and Farm Alcohol Production must be an accessory use to farming. The Council received testimony on both sides of this issue. The Condition Use approval process adds cost and time to the approval process.

**The Committee (3-0) recommended allowing Farm Alcohol Production as a limited use with a requirement for conditional use approval to allow more or bigger events. At least until the Planning Board's Agricultural Tourism study is completed, Staff recommends requiring the new Farm Alcohol Production use to be a condition use when the tasting room is design for 50 of more participants.**

Countryside Alliance recommends requiring conditional use approval for any farm alcohol producer with a tasting room design for 85 participants or more.

### **3) Does ZTA 18-03 require sufficient links to agriculture?**

*Generally*

ZTA 18-03 allows Farm Alcohol Production under the category of "Accessory Agricultural Uses". As a general matter, an accessory use is defined (in part) under Section 59.3.7.4.B as follows:

Accessory Use means a use that is incidental and subordinate to the principal use of a lot or site or the principal building and located on the same lot or site as the principal use or building.<sup>6</sup>

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<sup>6</sup> DPS Staff submitted the following process when asked how the department would go about determining that a use was accessory to farming:

The applicant will need to submit a business program for all current farming activities occurring on site as well as proposed accessory uses. Their business program should be as detailed as possible to include the type of farming activities and how much area is covered with these activities. It should also be very detailed in the type(s) of accessory uses that are proposed, how much area it will cover, will it be utilizing existing structure or proposed structure or temporary tents as well as an estimate as to how many and how often the accessory events will be taking place. Applicant must also submit to the DPS ZSPE a site plan showing the existing farming activities that are taking place on the site. The site plan should also show the proposed accessory uses to the farming and proposed parking.

DPS ZSPE Process:

1. ZSPE will review the business program and site plan that was submitted to DPS. Zoning may request additional information or clarification from the applicant if needed.
2. ZSPE will research the property on the Zoning Map and the State Tax Records to determine the zone and what the property is access as, i.e. Residential, Commercial, Exempt, or Agricultural.

It is not the intent of sponsor to allow Farm Alcohol Production as a primary use of a site. Farming must be retained as the primary use. This is in addition to the requirement that the site be classified as agricultural by the State Department of Assessments and Taxation.<sup>7</sup> There is also a requirement for State Licensing. A Class 8 Farm Brewery License requires that the end product must be “manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed farm.”

**The Committee (3-0) recommended requiring a Farm Alcohol Production use to accessory to the farm in the text of the zone and to require compliance with specific state alcohol production licenses which, to some degree limit the scale of production.<sup>8</sup>**

The specific connection required between agricultural and the alcohol production in ZTA 18-03 as introduced is:

Some ingredients used in the production process must be grown on-site.<sup>9</sup>

“Some ingredients” means that any ingredients, without regard to their significance in terms of dollar value or percentage of raw materials, would be sufficient to satisfy the provision.

The current requirement for wineries is to have at least 5 acres in fruit used in the winery process. That requirement would be deleted in ZTA 18-03 as introduced.

**The Committee (3-0) did not recommend retaining a separate provision for wineries.**  
*Staff recommends retaining the requirement for on-site fruit cultivation for wineries.*

Grains of various types are used in the production of beer and distilled spirits. Hops are used in beer. Both grains and hops can be grown in the County. Brewers are very particular about their ingredients. The Committee (3-0) recommended adding provisions to increase the connection of Farm Alcohol Production to local agriculture:

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3. ZSPE may contact the Montgomery County Office of Agriculture if they need help determining what is currently taking place on the site as far as the farming activities as well and to see if the applicant has approach them about the propose accessory uses. The Office of Agriculture will have its own internal processes which may include working with the Maryland Soil Conservation District.
  4. ZSPE will also coordinate internally at DPS with other sections if other permits are needed such as Commercial Building, Sediment Control, ROW, and Well & Septic.
  5. Once ZSPE has completed all the research, they will go over all the information to make sure they are in agreement with the accessory use.
  6. If all requirements are met, ZSPE will issue a letter to the applicant letting them know their accessory use is approved or not.

<sup>7</sup> The law directs the Department of Assessments and Taxation to determine if the land is "actively used" for farm or agricultural purposes and defines "actively used" as "land that is actually and primarily used for a continuing farm or agricultural use." A parcel of land that is less than 20 acres but greater than or equal to 5 acres may be eligible to meet the gross income test of \$2,500 annually when the extent of agricultural activity is difficult to determine.

<sup>8</sup> The concern for the scale of operations in the Agricultural Reserve is at least in part addressed by limiting Farm Alcohol Production to specific state licenses (Class 1 for distilleries, Class 4 for wineries and Class 8 for breweries). The Farm Brewery License is limited to 15,000 barrels of beer a year. Existing facilities in the County are using these licenses.

<sup>9</sup> Section 59.3.2.10.B.2.a.ii.

**“A majority of the ingredients used in the alcohol production process, if available at competitive prices, must be grown on-site or within the county or sourced from Regionally Grown Products”;** and

**“A long-range plan to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.”**

These requirements are more aspirational than the current requirement; however, the requirements are more than the use of “an ingredient from a Maryland agricultural product”, as required by a Class 8 Farm Brewers license.

Council President Riemer recommends a separate provision for wineries and cideries. He recommends making the local ingredients for these producers consistent with new state law requirements that will be applicable in 2022 for Class 4 licenses.<sup>10</sup>

Wineries and cideries must:

- (a) have least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control; or
- (b) source a majority of their grapes or other fruit from Maryland.

In addition, he recommends adding a provision to require at least 5 acres of grapes or other fruit in cultivation site or on an abutting or confronting site. (This is similar to the current on-site fruit growing requirement for wineries but would allow abutting and confronting property to count toward meeting the 5 acre minimum.)

Under Council President Riemer’s proposal, breweries and distilleries would retain the connection recommended by the PHED Committee. Such producers must source a majority of their ingredients, if available at competitive prices, from Regionally Grown Products. The PHED recommended a requirement for a long-range plan. The purpose of the plan is to increase the use of local Montgomery County agricultural products in the production process.

The Countryside Alliance would want a requirement that a majority of ingredients come from the farmer (with an exception for catastrophic weather) and notes that a farm market allows a maximum of 25% of produce to come from off-site growers. The group recommends at least 20 acres of Maryland property be owned or rented by the producer with at least 5 acres minimum of the site of the production facility. This requirement would make the need for a long term plan to increase the use of Montgomery County products unnecessary.

### **Staff Comment**

The Council could more closely define “accessory to a farm” in quantitative terms. That could be a percentage of the site used for farm alcohol production, a percentage of income from the use, or a maximum size to these production and retail (tasting room) facilities. The Committee did not recommend any such limits. Under the ZTA as proposed by the Committee, the determination of whether farm alcohol

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<sup>10</sup> House Bill 972 (passed) establishes stricter requirements for a business to obtain a Class 4 limited winery license. Specifically, the bill changes the broad requirement that a licensee use Maryland agricultural products to produce wine and pomace brandy to instead require the licensee to own or have under contract at least 20 acres of grapes or other fruit in cultivation in the State for use in the production of wine or ensure at least 51% of the ingredients used in alcoholic beverages production are grown in the State.

production was an accessory use (subordinate to the primary agricultural use) would be the sole responsibility of the Department of Permitting.

*Where TDRs have been severed*

A number of land uses, not related to agriculture, were prohibited by ZTA 17-07, when Transferable Development Rights were severed from AR zoned land. There is no such prohibition in ZTA 18-03.

Farm Alcohol Production must be accessory to a farm and at least some on-site agricultural products must be used. There is an association with agriculture for this use; it would be allowed without regard to the status of TDRs on the underlying site.

**The Committee (3-0) did not recommend adding a provision to prohibit Farm Alcohol Production when TDRs were severed from the land.**

*Minimum lot size or site area*

ZTA 18-03 as introduced did not require a minimum lot size of site area. With the safeguard that Farm Alcohol Production must be accessory to farming, Council President Riemer does not recommend imposing a minimum parcel size. He was impressed by the Department of Permitting Services review of what it takes to be an accessory use.<sup>14</sup> As reproduced previously in the memorandum, the definition accessory includes the terms “incidental” and “subordinate”. In his opinion a minimum lot size restriction will unnecessarily limit the opportunity for alcohol production.

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<sup>14</sup> DPS Staff submitted the following process when asked how the department would go about determining that a use was accessory to farming:

The applicant will need to submit a business program for all current farming activities occurring on site as well as proposed accessory uses. Their business program should be as detailed as possible to include the type of farming activities and how much area is covered with these activities. It should also be very detailed in the type(s) of accessory uses that are proposed, how much area it will cover, will it be utilizing existing structure or proposed structure or temporary tents as well as an estimate as to how many and how often the accessory events will be taking place. Applicant must also submit to the DPS Zoning and Site Plan Enforcement (ZSPE) section a site plan showing the existing farming activities that are taking place on the site. The site plan should also show the proposed accessory uses to the farming and proposed parking.

DPS ZSPE Process:

1. ZSPE will review the business program and site plan that was submitted to DPS. Zoning may request additional information or clarification from the applicant if needed.
2. ZSPE will research the property on the Zoning Map and the State Tax Records to determine the zone and what the property is access as, i.e., Residential, Commercial, Exempt, or Agricultural.
3. ZSPE may contact the Montgomery County Office of Agriculture if they need help determining what is currently taking place on the site as far as the farming activities as well and to see if the applicant has approached them about the proposed accessory uses. The Office of Agriculture will have its own internal processes which may include working with the Maryland Soil Conservation District.
4. ZSPE will also coordinate internally at DPS with other sections if other permits are needed such as Commercial Building, Sediment Control, ROW, and Well & Septic.
5. Once ZSPE has completed all the research, they will go over all the information to make sure they are in agreement with the accessory use.
6. If all requirements are met, ZSPE will issue a letter to the applicant letting them know their accessory use is approved or not.



Staff brought to the Committee's attention existing text in the Subdivision Regulations (Chapter 50) that seem to indicate that the site area for a farm must be 25 acres. Council President Riemer would further recommend exempting Farm Alcohol Brewing from all subdivision requirements. This would require the introduction of a Subdivision Regulation Amendment which he will sponsor for introduction in the fall.

Planning Staff categorized all agriculturally-assessed land in the Agricultural Reserve and all Rural Residential zones by parcel size as follows:

LOT SIZE	NO. OF PARCELS	ACRES	PERCENT OF PARCELS
0 - 3 Acres	137	240	7.7%
3 - 5 Acres	87	367	4.9%
5 - 10 Acres	319	2,321	18.0%
10 - 25 Acres	526	8,458	29.7%
> 25 Acres	702	62,818	39.6%
<b>TOTAL</b>	<b>1,771</b>	<b>74,205</b>	<b>100.0%</b>

There are minimum lot sizes for other uses in the Agricultural Reserve. The minimum site area for most buildings is 25 acres. The minimum lot area for a house is 40,000 square feet within a 25-acre site. The reason for the large minimum site size is to retain as much area for agriculture as possible. Small sites allow for divided land ownership and an intensification of use.<sup>15</sup>

A Slaughterhouse must be on a minimum 20-acre site. Agricultural Processing and a Winery approved as a conditional use must be on a minimum of 10 acres. An Agricultural Auction Facility must be on a minimum of 5 acres. An Equestrian Facility must be on a minimum of 2 acres (for 2 horses). A Farm Supply Operation and a Nursery must be on at least 2-acre lots. More than 85% of the area of agriculturally-assessed land is in parcels of 25 acres or greater. Almost 40% of those parcels are that size. Is that not sufficient to accommodate the demand for such facilities?

**The Committee (3-0) did not recommended any minimum lot size or parcel size in reliance on the requirement that the use be accessory of the farm.**

Staff recommended a 25-acre minimum lot size. The Countryside Alliance recommended a minimum lot size of 20 acres for limits use and 10 acres for projects approved as a conditional use.

**4) How many events should be allowed and what size crowd triggers and event?**

No events are allowed at an Agricultural Production facility. Farms are allowed events for agricultural tourism if the use is accessory to farming. A provision for wineries allows a limited use winery, 9 events

<sup>15</sup> The Master Plan for the Preservation of Agriculture and Rural Open Space stated its public purpose in part as protection of the environment, maintenance of open space, and the preservation of rural lifestyles.

where a ticket or a cover charge is required. More events are allowed if a conditional use is approved. There are no limits to the number of participants attending any allowed event at a winery or on a farm.

Farm Agricultural Production facilities would be limited to 9 events in a calendar year. All Farm Alcohol Production would be limited by their State license as to how much product can be sold on-site and the types of food that could be sold.<sup>17</sup>

As a limited use, ZTA 18-03 would allow “events and activities that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery...”. The number of participants at these events would be limited by required sanitation facilities.<sup>18</sup> In addition, a maximum number of 9 events or activities with more than 300 participants is allowed in a calendar year. More larger events are limited in number unless a conditional use is approved.

**The Committee recommended reducing the number of participants that would trigger something classified as an event to 225 and retaining and allowance for 9 events before a conditional use is required.**

Under the Council President’s recommendations on the maximum number of participants at any event with more than 100 but less than 225 would be limited to 50 events in a calendar year; however, 5 of those 50 events may have more than 225 participants without conditional use approval. With conditional use approval, the Hearing Examiner would be allowed to increase the number and size of events.

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<sup>17</sup> § 2-209. Farm brewery license

(a) In general. —

- (1) There is a Class 8 farm brewery license.
- (2) Subject to paragraph (3) of this subsection, a Class 8 farm brewery license allows the licensee to sell and deliver beer manufactured in a facility on the licensed farm or in a facility other than one on the licensed farm to:
  - (i) A wholesaler licensed to sell and deliver beer in the State; or
  - (ii) A person in another state authorized to acquire beer.
- (3) The beer to be sold and delivered under paragraph (2) of this subsection shall be manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed farm.
- (4) A Class 8 farm brewery may be located only at the place stated on the license.
- (5) Notwithstanding any local law, a licensee may exercise the privileges of a Class 8 farm brewery license.
- (6) A licensee may:
  - (i) Sell beer produced by the licensee for consumption on the licensed farm;
  - (ii) In an amount not exceeding 6 fluid ounces per brand, provide samples of beer that the licensee produces to a consumer:
    1. At no charge; or
    2. For a fee; and
  - (iii) Sell or serve:
    1. Bread and other baked goods; 2. Chili; 3. Chocolate; 4. Crackers; 5. Cured meat; 6. Fruits (whole and cut); 7. Salads and vegetables (whole and cut); 8. Hard and soft cheese (whole and cut); 9. Ice cream; 10. Jelly; 11. Jam; 12. Vinegar; 13. Pizza; 14. Prepackaged sandwiches and other prepackaged foods ready to be eaten; 15. Soup; and 16. Condiments.
- (7) Subject to subsections (d) and (e) of this section, a licensee may exercise the privileges of the license each day during the following times:
  - (i) From 10 a.m. to 6 p.m., for consumption of beer and sales and service of food at the licensed farm; and
  - (ii) From 10 a.m. to 10 p.m.

<sup>18</sup> Under Section 59.3.2.10.B.2.a.vii, the structure used for tasting rooms “must satisfy all building, life safety, fire, and sanitation code requirements.”

Countryside Alliance require normal and customary events for groups of less than 100 guests as a limited use. For weddings, corporate retreats and other commercial events, the Alliance recommends 4 ticketed events with more than 200 participants but less than 500 participants and a general allowance for 25 events a year with no more than 150 participants. Larger events should require conditional use approval, in the opinion of the Alliance.

**5) *Should off-site illumination be limited?***

Wineries may not cast more than 0.1 footcandle of light at the property line. Agricultural processing facilities are not required to satisfy a lighting standard, but such facilities are required to be setback 75 feet from a property line. There are no lighting standards for farming.

No lighting standard is proposed for Farm Alcoholic Production facilities in ZTA 18-03.

**The Committee recommended adding a standard that allows no more than 0.1 footcandle of light cast at any property line.**

**6) *Should there be an addition to noise limits?***

Outdoor music could be jarring to the agricultural reserve. ZTA 18-03 as proposed by the Committee would allow 9 events at each alcohol production facility for more than 225 participants. Testimony suggested only allowing indoor amplified music.

Noise limits are the subject of Chapter 31B of the code<sup>19</sup>, with some exemptions.<sup>20</sup> All uses must satisfy those requirements without regard to zoning.

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<sup>19</sup>Sec. 31B-5. Noise level and noise disturbance violations.

(a) Maximum allowable noise levels.

- (1) Except as otherwise provided in Sections 31B-6(a), 31B-6A, and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas

	Daytime	Nighttime
Non-residential noise area	67	62
Residential noise area	65	55

Sec. 31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.

- (a) Each outdoor arts and entertainment activity held at a qualifying performing arts facility must not exceed the following noise decibel limits:
- (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
- (2) at all other times, the maximum allowable noise level set in Section 31B-5.
- (b) A qualifying performing arts facility which has complied with this Section must not cause or permit noise levels from an outdoor arts and entertainment activity to exceed the standards in subsection (a).
- (c) Any outdoor arts and entertainment activity conducted at a qualifying performing arts facility which has complied with this Section must not be cited as causing a noise disturbance.
- (d) The Department must annually advise the Executive and Council, and the operator of each qualifying performing arts facility, whether the noise levels specified in this Section remain appropriate for that facility and the extent of compliance with those levels.

<sup>20</sup>Sec. 31B-10. Exemptions.

(a) This Chapter does not apply to:

- (1) agricultural field machinery used and maintained in accordance with the manufacturer's specifications;
- (2) emergency operations by fire and rescue services, police agencies, or public utilities and their contractors;
- (3) a source or condition expressly subject to any State or federal noise-control law or regulation that is more stringent than this Chapter;

**The Committee did not recommend any change to this requirement.**

### **Montgomery Countryside Alliance (MCA) Recommendations**

Councilmember Leventhal requested staff to review all the MCA's recommendations. A summary of each recommendation is in *italics*. The Committee's response follows each recommendation.

*Retain the provisions for wineries and have new provisions for other producers.*

There are specific current provisions for wineries, including 5 acres of on-site fruit production when it is permitted as a limited use. A conditional use is triggered by more than events. A conditional use requires a minimum lot area of 10 acres and access to a primary road. Staff recommended retaining the requirement for on-site fruit cultivation for wineries in the memorandum of the July 9 Committee meeting. With the intent of treating all Farm Alcohol Production uses the same, the Committee did not recommend any change.

*Include a definition that requires at least 5 acres of agricultural product used in production to be grown on-site within 3 years.*

The connection a Farm Alcohol Production use must have to on-site farming is a topic discussed at the Committee on July 23. As introduced, ZTA 18-03 includes a minimal connection between alcohol production and the farm (some ingredients used in the production process must be grown on-site). The Committee recommended that this text be replaced with 2 standards:

“A majority of the ingredients used in the alcohol production process, if available at competitive prices, must be grown on-site or within the county”; and

“A long-range plan to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.”

*Require site acreage minimums of 20 acres for a limited use and 10 acres for a conditional use.*

The lack of a minimum site or lot requirement was noted by staff in the memorandum of the July 9 Committee meeting. The Committee did not recommend any minimum lot size for farm alcohol production.

*Require road access to be a minimum of a residential primary or better.*

- 
- (4) sound, not electronically amplified, created between 7 a.m. and 11 p.m. by sports, amusements, or entertainment events or other public gatherings operating according to the requirements of the appropriate permit or licensing authority. This includes athletic contests, carnivals, fairgrounds, parades, band and orchestra activities, and public celebrations.
  - (b) The County Executive may issue regulations exempting from Section 31B-5 sources associated with routine residential living during daytime hours, such as home workshops, power tools, and power lawn and garden equipment, when used in accordance with manufacturer specifications. This exception does not apply to repairs or maintenance on a motor vehicle that is not registered for use on public roads.

The staff memorandum for the July 9 Committee meeting included the following commentary:

Wineries and Agricultural Processing uses are each allowed only as a conditional use where the site has access to a road built to primary residential road or higher standards; however, Agricultural Processing may be on a road built to lower standards if the process materials are produced on-site. Farming does not have any road access standards. One existing brewery is on an exceptional rustic road and there have been no complaints.

The Committee did not recommend adding a street access requirement. The Committee did not find any problems with the existing brewery on an exceptional rustic road.

*Establish a maximum tasting room occupancy of 85 participants.*

Agricultural buildings do not require a structural building permit. An alcohol production facility and tasting room are currently allowed within the definition of an agricultural building (and farming), but it is limited to a tasting room for 49 participants. ZTA 18-03 as introduced does not limit the size of a tasting room, except insofar as the entirety of the Farm Alcohol Production use must be accessory to a farm.

The Committee did not recommend a limit on the size of a tasting room to limit the intensity of use at a single site.

*Limit the maximum participation of non-ticketed special events, such as weddings, to 150 participants with a limit of 9 use events per year, but also allow 3 annual ticketed events for more than 150 participants.*

ZTA 18-03 does not limit the size of any event. It does limit the number of “large” events. As introduced, 9 events with more than 300 participants could occur in any calendar year. More events than that would require conditional use approval. On July 9, the Committee recommended limiting the number of participants that trigger “an event” to 225 instead of 300. As the Committee recommended the change, there would be no limit to the number of “events” with less than 225 participants attending.

Currently, wineries are limited to 9 ticketed events. ZTA 18-03 uses that limit. The Committee has not recommended a different number of events.

*Add lighting limits, as recommended by Council President Riemer.*

The amended ZTA proposed by the Committee includes a provision that illumination at the property line must be limited to 0.1 footcandle or less. This standard is already used in the code for other land uses, including wineries.

*Add amplified sound amendments, as recommended by Council President Riemer.*

ZTA 18-03 includes a provision that noise levels must satisfy Chapter 31B standards. The Committee did not recommend any additional text.

*Require that parking does not disrupt prime farm soils.*

The need for parking will be determined by the size of the tasting room. ZTA 18-03 does not limit where parking may be located on a farm site. There is a complication if the Committee recommends avoiding “prime farm soils”. Wineries prefer grapes grown on soils that stress the plant. Prime soils for grapes are not prime for other crops.

The Committee did not recommend additional restriction on the location of parking.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 18-03 as recommended by PHED Committee	1 – 9
Class 1 license provision	10
Class 4 license provision	11 – 12
Class 8 license provision	13 – 15

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Zoning Text Amendment No.: 18-03  
Concerning: Farm Alcohol Production  
– Standards  
Draft No. & Date: 4 – 7/24/18  
Introduced: April 10, 2018  
Public Hearing: May 15, 2018  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

---

Lead Sponsor: Council President Riemer and Councilmember Rice  
Co-sponsors: Councilmembers Leventhal, Katz, Floreen, Navarro, and Hucker

---

**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- add Farm Alcohol Production as a use allowed in certain zones; and
- establish the standards for Farm Alcohol Production

By amending the following sections of the Montgomery County Zoning Ordinance,  
Chapter 59 of the Montgomery County Code:

Division 1.4.	“Defined Terms”
Section 1.4.2.	“Specific Terms and Phrases Defined”
Division 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
Division 3.2.	“Agricultural Uses”
Section 3.2.10.	“Winery”
Section 3.2.11.	“Accessory Agricultural Uses”
Section 3.2.12.	“Temporary Agricultural Uses”
Division 8.2.	“Residential Floating Zones”
Section 8.2.3.	“Use Table for the RT and R-H Zones”

**EXPLANATION:** *Boldface indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

### ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*



1           **Sec. 1. Division 1.4 is amended as follows:**

2   **Division 1.4. Defined Terms**

3   **Section 1.4.2. Specific Terms and Phrases Defined**

4   \*   \*   \*

5   **Agricultural Vending:** See Section [3.2.12.A.1] 3.2.11.A.1

6   \*   \*   \*

7   **Farm Airstrip, Helistop:** See Section [3.2.11.A.1] 3.2.10.A.1

8   **Farm Alcohol Production:** See Section 3.2.10.B.1

9   **Farm Market, On-site:** See Section [3.2.11.B.1] 3.2.10.C.1

10   \*   \*   \*

11   Regionally Grown Products: Grains, fruits, vegetables, flowers, or honey harvested  
12   within the 5 state area of Maryland, Virginia, West Virginia, Delaware, and  
13   Pennsylvania and the city of Washington, DC.

14   \*   \*   \*

15   **Seasonal Outdoor Sales:** See Section [3.2.12.B.1] 3.2.11.B.1

16   \*   \*   \*

17   **[Winery: See Section 3.2.10.A]**

18   \*   \*   \*

19           **Sec. 2. Division 3.1 is amended as follows:**

20   **Division 3.1. Use Table**

21   \*   \*   \*

22   **Section 3.1.6. Use Table**

23   The following Use Table identifies uses allowed in each zone. Uses may be  
24   modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag		Rural Residential				Residential										Commercial/ Residential			Employment				Industrial			
								Residential Detached					Residential Townhouse			Residential Multi-Unit												
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	I M	IH
AGRICULTURAL																												
* * *																												
[Winery]	[3.2.10]	[L/C]	[L/C]	[L/C]	[C]																							
Accessory Agricultural Uses	[3.2.11] 3.2.10																											
Farm Airstrip, Helistop	[3.2.11.A] 3.2.10.A	C		C																								
Farm Alcohol Production	3.2.10.B	L/C	L/C	L/C	L/C																							
Farm Market, On-site	[3.2.11.B] 3.2.10.C	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Temporary Agricultural Uses	[3.2.12] 3.2.11																											
Agricultural Vending	[3.2.12.A] 3.2.11.A					L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Seasonal Outdoor Sales	[3.2.12.B] 3.2.11.B	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
* * *																												

25 Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

26           **Sec. 3. Division 3.2 is amended as follows:**

27   **Division 3.2. Agricultural Uses**

28   \*   \*   \*

29   **[Section 3.2.10. Winery**

30   A.   Defined

31           Winery means any structure and land for processing grapes or other fruit  
32           into wine for sale on-site or through wholesale or retail outlets where a  
33           minimum of 5 acres of grapes or other fruit must be grown on the same  
34           parcel or lot as the processing facility.

35   B.   Use Standards

36           1.   Where a Winery is allowed as a limited use, it must satisfy the  
37           following standards:

38           a.   In the AR zone:

39                   i.   A maximum of 9 days of events that require an entrance  
40                   ticket or a cover charge is allowed each calendar year.  
41                   Additional events require conditional use approval by the  
42                   Hearing Examiner under Section 7.3.1.

43                   ii.   The maximum lighting level at any lot line is 0.1  
44                   footcandle.

45           b.   In the R and RC zone, a maximum of 2 special events such as a  
46           wedding, festival, or other similar event are allowed each  
47           calendar year. Additional events require conditional use  
48           approval by the Hearing Examiner under Section 7.3.1.

49           2.   Where a Winery is allowed as a conditional use, it may be permitted  
50           by the Hearing Examiner under Section 7.3.1, Conditional Use, and  
51           the following standards:

52           a.   The minimum lot area is 10 acres.

- b. The minimum setback for any structure from any lot line is 75 feet, except that the minimum front setback may be reduced to 50 feet if the Hearing Examiner finds the reduced setback is compatible with abutting and confronting agricultural uses.
- c. The lot must front on and have access to a road built to primary residential or higher standards.]

**Section [3.2.11] 3.2.10. Accessory Agricultural Uses**

\* \* \*

**B. Farm Alcohol Production**

**1. Defined**

Farm Alcohol Production means the transformation of agricultural products into alcoholic beverages. Farm Alcohol Production includes wineries, cideries, breweries, or distilleries on farms. Farm Alcohol Production may include other activities unrelated to the production and sale of alcohol or farming under certain circumstances.

**2. Use Standards**

a. Where Farm Alcohol Production is allowed as a limited use, it must satisfy the following standards:

i. The production capacity and associated activities of the alcoholic beverage must comply with the license issued by the State of Maryland Comptroller's Office.

(a) A brewery must have a Class 8 Farm Brewery License;

(b) A winery must have a Class 4 Limited Winery License; and

(c) A distillery must have a Class 1 Distillery License.

- 79                   ii.     Some ingredients used in the production process must be  
80                             grown on-site
- 81                   iii.     A majority of the ingredients used in the alcohol  
82                             production process, if available at competitive prices,  
83                             must be grown on site within the county or sourced from  
84                             Regionally Grown Products.
- 85                   iv.     The underlying land must be classified as agricultural by  
86                             the State Department of Assessments and Taxation and  
87                             the facility must be an accessory use of the farm.
- 88                   v.     Subject to all licensing requirements, the facility may:  
89                             (a)    operate an on-site tasting room for its products;  
90   and  
91                             (b)    prepare and sell food to the extent allowed by the  
92   State alcohol manufacturing license.
- 93                   vi.     Events and activities that are normal and customary to  
94                             the regular operations of a winery, cidery, brewery, and  
95                             distillery are allowed.
- 96                   vii.    Weddings, corporate retreats, and other events accessory  
97                             to the production of alcohol are allowed:  
98                             (a)    A maximum number of 9 events or activities with  
99   more than [[300]] 225 participants is allowed in a  
100                                        calendar year. Additional events with more than  
101                                        [[300]] 225 participants require conditional use  
102                                        approval by the Hearing Examiner under Section  
103                                        7.3.1.
- 104                             (b)    All parking must be accommodated on site.
- 105                             (c)    Noise levels must satisfy Chapter 31B standards.

106 viii. If any structure is used for activities under subsection iv,  
107 v, or vi, the structure must satisfy all building, life safety,  
108 fire, and sanitation code requirements.

109 viii. A long-range plan to increase the use of local  
110 Montgomery County agricultural products in the  
111 production process must be submitted to the Department  
112 of Permitting Services.

113 ix. Illumination at the property line must be limited to 0.1  
114 footcandles or less.

115 b. Where Farm Alcohol Production is allowed as a conditional  
116 use, it must satisfy the standards under Section 7.3.1.

117 C. Farm Market, On-site

118 \* \* \*

119 **Section [3.2.12] 3.2.11. Temporary Agricultural Uses**

120 \* \* \*

121 **B. Seasonal Outdoor Sales**

122 \* \* \*

123 **2. Use Standards**

124 Where Seasonal Outdoor Sales is allowed as a limited use, it must  
125 satisfy the following standards:

126 \* \* \*

127 d. Evergreen trees may only be sold beginning the first Saturday  
128 following Thanksgiving Day through December 24<sup>th</sup>, and are  
129 exempt from Section [3.2.12.B.2.b] 3.2.11.B.2.b and Section  
130 [3.2.12.B.2.e.ii] 3.2.11.B.2.e.ii.

131 \* \* \*

132 **Sec. 4. Division 8.2 is amended as follows:**

133 **Division 8.2. Residential Floating Zones**

134 **Section 8.2.3. Use Table for the RT and R-H Zones**

135 A. Section 3.1.1 through Section 3.1.4 apply to the Use Table in Section 8.2.3.

136 B. The following Use Table identifies uses allowed in each zone. Uses may be  
 137 modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	RT-6.0	RT-8.0	RT-10.0	RT-12.5	RT-15.0	R-H
AGRICULTURAL							
* * *							
Temporary Agricultural Uses	[3.2.12] <u>3.2.11</u>						
Seasonal Outdoor Sales	[3.2.12.B] <u>3.2.11.B</u>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	

138 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not  
 139 Allowed

140 **1** Limited to the sale of Christmas trees between December 5 and December 25.

141 \* \* \*

142 **Sec. 5. Effective date.** This ordinance becomes effective 20 days after the  
 143 date of Council adoption.

144

145 This is a correct copy of Council action.

146

147

148 Megan Davey Limarzi, Esq.  
 149 Clerk of the Council



**§ 2-202. Class 1 distillery license.**

- (a) Established. -- There is a Class 1 distillery license.
- (b) Required licensure. -- The license shall be obtained for each trade name and each distillery in the State.
- (c) Scope of authorization. -- A license holder may:
  - (1) establish and operate a plant for distilling, rectifying, blending, and bottling, at the location described in the license:
    - (i) brandy; (ii) rum; (iii) whiskey; (iv) alcohol; and (v) neutral spirits;
  - (2) sell and deliver the alcoholic beverages:
    - (i) in bulk to a person in the State that is authorized to acquire them; and
    - (ii) to a person outside the State that is authorized to acquire them;
  - (3) manufacture an alcoholic beverage listed in item (1) of this subsection in the name of another person or under a trade name if the other person or trade name also holds a Class 1 distillery license;
  - (4) acquire alcoholic beverages from the holder of a manufacturer's license or wholesaler's license or nonresident dealer's permit for use in manufacturing; and
  - (5)
    - (i) conduct guided tours of the licensed premises;
    - (ii) at no cost or for a fee, serve to an individual who has attained the legal drinking age and participated in a guided tour of the licensed premises, not more than 2 ounces of products, with each product sample consisting of not more than one-half ounce from a single product manufactured by the license holder;
    - (iii) serve samples blended with other products manufactured by the license holder or nonalcoholic ingredients; and
    - (iv) sell not more than 2.25 liters of products manufactured on the licensed premises, for off-premises consumption, and related merchandise to an individual who has attained the legal drinking age and participated in a guided tour of the licensed premises.
- (d) Acting as caterer of food -- Prohibited. -- A license holder or entity in which a license holder has a pecuniary interest may not act as a caterer of food.
- (e) Time limits. -- Subject to subsection (f) of this section, a license holder may conduct the activities specified in subsection (c)(5) of this section from 10 a.m. to 10 p.m. each day.
- (f) Days of operation. -- A Class 1 distillery license allows the license holder to operate 7 days a week.
- (g) Filing of notice required. -- At least 14 days before holding a planned promotional event after 6 p.m., a license holder shall file a notice of the promotional event with the Comptroller on the form that the Comptroller provides.
- (h) Unauthorized products. -- A holder of a caterer's license or privilege under Subtitle 5 of this title or Subtitle 12 of various titles of Division II of this article may exercise the privileges of the license or privilege on the licensed premises of the license holder.
- (i) Effect of section. -- Nothing in this section limits the application of relevant provisions of Title 21 of the Health - General Article, and regulations adopted under that title, to a license holder.
- (j) Fee. -- The annual license fee is \$ 2,000.



**§ 2-206. Class 4 limited winery license**

(a) Established. -- There is a Class 4 limited winery license.

(b) Scope of authorization. --

- (1) A license holder may:
  - (i) subject to paragraph (2) of this subsection, from available Maryland agricultural products:
    1. ferment and bottle wine; and 2. distill and bottle pomace brandy; and
  - (ii) sell and deliver the wine and pomace brandy to:
    1. a holder of a wholesaler's license;
    2. a holder of a permit that is authorized to acquire wine or pomace brandy; or
    3. a person outside the State that is authorized to acquire wine or pomace brandy.
- (2) (i) On or before January 31 of each year, the Maryland Department of Agriculture shall determine if an insufficient supply of Maryland agricultural products exists.  
(ii) If an insufficient supply is determined to exist, a license holder may use agricultural products from outside the State to manufacture wine and pomace brandy during the period covered by the determination of the Department.
- (3) Except as provided in Subtitle 3 of this title, a license holder need not obtain any other license to possess, manufacture, sell, or transport wine or pomace brandy.
- (4) A license holder may:
  - (i) sell wine and pomace brandy produced by the license holder for consumption;
  - (ii) in an amount not exceeding 2 fluid ounces per brand, provide samples of wine and pomace brandy that the license holder produces to a consumer:
    1. at no charge; or 2. for a fee; and
  - (iii) subject to paragraph (5) of this subsection, sell or serve only:
    1. bread and other baked goods; 2. chili; 3. chocolate; 4. crackers;
    5. cured meat; 6. fruits (whole and cut); 7. hard and soft cheese (whole and cut); 8. salads and vegetables (whole and cut); 9. the following items made with Maryland wine:
      - A. ice cream; B. jam; C. jelly; and D. vinegar;
    10. pizza; 11. prepackaged sandwiches and other prepackaged foods ready to be eaten; 12. soup; and 13. condiments.
- (5) (i) A caterer is not limited to selling or serving only the foods specified in paragraph (4)(iii) of this subsection.  
(ii) A license holder or entity in which the license holder has a pecuniary interest may not act as a caterer of food.
- (6) Subject to paragraph (7) of this subsection, a license holder may conduct the activities specified in paragraph (4) of this subsection:
  - (i) for off-premises consumption of wine and pomace brandy and for sampling, from 10 a.m. to 10 p.m. each day; and
  - (ii) for on-premises consumption of wine and pomace brandy and sales and service of food on the licensed premises: 1. from 10 a.m. to 6 p.m. each day; or 2. if guests are attending a planned promotional event or other organized activity on the licensed premises, from 10 a.m. to 10 p.m. each day.

- (7) Except as provided in Division II of this article, the license allows the license holder to operate 7 days a week.
  - (8) At least 14 days before holding a planned promotional event after 6 p.m., a license holder shall file a notice of the promotional event with the Comptroller on the form that the Comptroller provides.
  - (9) Nothing in this subsection limits the application of relevant provisions of Title 21 of the Health - General Article, and regulations adopted under that title, to a license holder.
- (c) Place listed on license to be in compliance. -- The place listed on the license shall be in compliance with § 1-405(b) of this article.
  - (d) Scope of license. -- A license holder may:
    - (1) store on its licensed premises, in a segregated area approved by the Comptroller, the product of other Class 4 limited wineries to be used at Maryland Wineries Association promotional activities, provided records are maintained and reports filed regarding the storage under this item as may be required by the Comptroller;
    - (2) distill and bottle not more than 1,900 gallons of pomace brandy made from available Maryland agricultural products;
    - (3) purchase bulk wine fermented by a manufacturer licensed under this article and blend the wine with the license holder's wine and pomace brandy if the aggregate purchase does not exceed 25% of the license holder's annual wine and pomace brandy production;
    - (4) purchase pomace brandy only for blending with wine;
    - (5) import, export, and transport its wine and pomace brandy in accordance with this section; and
    - (6) produce wine and pomace brandy at a warehouse for which the license holder has been issued an individual storage permit, if:
      - (i) the license holder does not serve or sell wine or pomace brandy at a warehouse to the public; and
      - (ii) the Comptroller has full access at all times to the warehouse to enforce this article.
  - (e) Location. -- A Class 4 limited winery may be located only at the place stated on the license.
  - (f) Acts allowed with proper records and reports. -- If a license holder maintains the records and files the reports that the Comptroller requires, the license holder may:
    - (1) in the State, conduct winemaking and packaging activities at another federally bonded winery or limited winery; or
    - (2) outside the State, conduct winemaking and packaging activities, other than fermentation, at another federally bonded winery.
  - (g) Additional duties of license holder. -- Throughout the winemaking process, the license holder shall:
    - (1) maintain ownership of the wine or pomace brandy; and
    - (2) ensure that the wine or pomace brandy returns to the location of the limited winery.
  - (h) Fee. -- The annual license fee is \$ 200.

**§ 2-210. Class 8 farm brewery license**

- (a) Established. -- There is a Class 8 farm brewery license.
- (b) Scope of authorization -- In general. --
  - (1) Subject to paragraph (2) of this subsection, a license holder may sell and deliver beer manufactured in a facility on the licensed farm or in a facility other than one on the licensed farm to:
    - (i) a wholesaler licensed to sell and deliver beer in the State; or
    - (ii) a person in another state authorized to acquire beer.
  - (2) The beer to be sold and delivered under paragraph (1) of this subsection shall be manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed farm.
- (c) Scope of authorization -- Specific acts. -- A license holder may:
  - (1)
    - (i) sell beer produced by the license holder for on-premises consumption;
    - (ii) in an amount not exceeding 6 fluid ounces per brand, provide samples of beer that the license holder produces to a consumer:
      - 1. at no charge; or 2. for a fee;
    - (iii) sell or serve:
      - 1. bread and other baked goods; 2. chili; 3. chocolate; 4. crackers;
      - 5. cured meat; 6. fruits (whole and cut); 7. hard and soft cheese (whole and cut); 8. salads and vegetables (whole and cut); 9. ice cream; 10. jam;
      - 11. jelly; 12. vinegar; 13. pizza; 14. prepackaged sandwiches and other prepackaged foods ready to be eaten; 15. soup; and 16. condiments; and
    - (iv) subject to subsection (e)(2) of this section, sell or serve any food if the license holder is licensed to operate a food establishment under Title 21, Subtitle 3 of the Health - General Article;
  - (2) store on its licensed farm, in a segregated area approved by the Comptroller, beer produced at the licensed farm for sale and delivery to a wholesaler licensed in the State or a person outside the State authorized to acquire the beer;
  - (3) brew, bottle, or contract for not more than 15,000 barrels of beer each calendar year;
  - (4) contract with the holder of a Class 2 rectifying license, a Class 5 brewery license, or a Class 7 micro-brewery license to brew and bottle beer from ingredients produced on the licensed farm;
  - (5) import, export, and transport its beer in accordance with this section;
  - (6) store beer at a warehouse for which the license holder has been issued an individual storage permit, for sale and delivery to a wholesaler licensed in the State or a person outside the State authorized to acquire the beer, or shipment back to the licensed farm, if:
    - (i) the license holder does not serve or sell beer at the warehouse; and
    - (ii) the Comptroller has full access at all times to the warehouse to enforce this article; and
  - (7) enter into a temporary delivery agreement with a distributor only for delivery of beer to a beer festival or a wine and beer festival, and the return of any unused beer, if:
    - (i) the festival is in a sales territory for which the license holder does not have a franchise with a distributor under the Beer Franchise Fair Dealing Act in Title 5, Subtitle 1 of this article; and
    - (ii) the temporary delivery agreement is in writing.

- (d) Limitation on brewery location. --
  - (1) A Class 8 farm brewery may be located only at the place stated on the license.
  - (2) The place listed on the license shall be in compliance with § 1-405(b) of this article.
- (e) Preemption of local law; gross receipts ratio requirements. --
  - (1) Except as provided in paragraph (2) of this subsection and notwithstanding any local law, a license holder may exercise the privileges of a Class 8 farm brewery license.
  - (2) A license holder who sells foods under subsection (c)(1)(iv) of this section shall meet the same ratio of gross receipts between food and alcoholic beverages sales as a holder of a Class D beer and wine license or an equivalent license in the jurisdiction, as the local licensing board determines.
- (f) Hours of operation. -- Subject to subsections (i) and (j) of this section, a license holder may exercise the privileges of the license each day:
  - (1) from 10 a.m. to 6 p.m., for consumption of beer and sales and service of food at the licensed farm; and
  - (2) from 10 a.m. to 10 p.m., for:
    - (i) sampling of beer;
    - (ii) consumption of beer off the licensed farm if the beer is packaged in sealed or resealable containers, such as growlers; and
    - (iii) guests who attend a planned promotional event or other organized activity at the licensed farm.
- (g) Days of operation. -- Except as provided in Division II of this article, a Class 8 farm brewery license allows the license holder to operate 7 days a week.
- (h) Section not to limit application of Health - General Article. -- Nothing in this section limits the application of relevant provisions of Title 21 of the Health - General Article, and regulations adopted under that title, to a license holder.
- (i) Multibrewery activity. --
  - (1) A license holder may sponsor a multibrewery activity at the licensed farm that:
    - (i) includes the products of other Maryland breweries; and
    - (ii) provides for the sale of beer by the glass for on-premises consumption only.
  - (2) In a segregated area approved by the Comptroller on the licensed farm, a license holder may store the products of other Maryland breweries for the multi brewery activity.
  - (3) The multibrewery activity:
    - (i) may be held from 10 a.m. to 10 p.m. each day; and
    - (ii) may not exceed 3 consecutive days.
- (j) Brewery promotional event permit. --
  - (1) The Comptroller may issue a brewery promotional event permit to a license holder.
  - (2) At least 15 days before holding a planned promotional event, the license holder shall obtain a permit from the Comptroller by filing a notice of the promotional event on the form that the Comptroller provides.
  - (3) The permit authorizes the license holder to conduct at the licensed farm a promotional event at which the license holder may:
    - (i) provide samples of not more than 6 fluid ounces per brand to consumers; and
    - (ii) sell beer produced by the license holder to persons who participate in the event.
  - (4) The beer at the event shall be sold by the glass and for on-premises consumption only.

- (5) The license holder may not be issued more than 12 permits in a calendar year.
- (6) A single promotional event:
  - (i) may be held from 10 a.m. to 10 p.m. each day; and
  - (ii) may not exceed 3 consecutive days.
- (7) The permit fee is \$ 25 per event.
- (k) Fee. -- The annual license fee is \$ 200.