

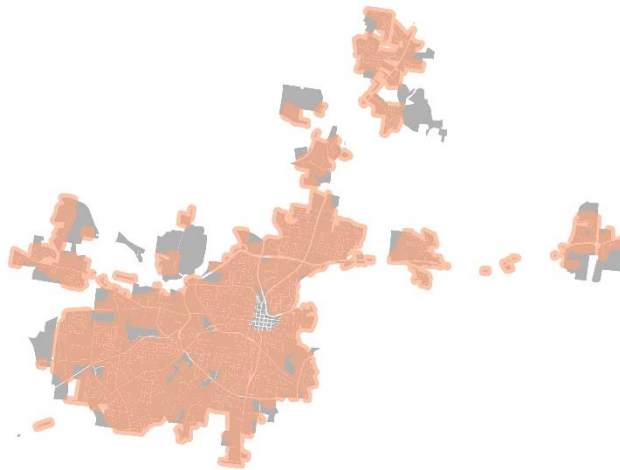


Distinguishing between a Restaurant and a Bar, Tavern, or Nightclub

Note: As authorized by § 8.5.2.C.1 (p. 401), this interpretation is provided at the initiative of the Zoning Administrator for the purpose of providing clarification to property owners and improving administration of the Ordinance. Capitalized terms are defined in § 9.3 of the Ordinance. This interpretation may be appealed to the Board of Zoning Appeals per § 8.5.17 of the Ordinance.

Summary

A Restaurant is an establishment whose principal activity is preparing and selling food; the primary activity of a Bar, Tavern, or Nightclub is the sale of alcohol for on premises consumption. A Bar, Tavern or Nightclub is Permitted in some character districts Subject to Limited Use Standards. Restaurants and Bars are generally Permitted in the same areas (Table 4.3.9.A-1. Critically, the limited use standards in the Ordinance proscribe the latter use within 500 feet of churches and “residentially zoned or residentially used” property (§ 4.3.9.D.6.e(2)).¹ Nearly all properties in the city are located within 500 feet of a residential property. Consequently, a business primarily engaged in the sale of alcohol for on-site consumption is prohibited in much of the city. Restaurants engaged primarily in the sale of food and non-alcoholic beverages are permitted. Many restaurants sell alcohol for on-site consumption as an accessory and subordinate activity. For this reason, it is critical to establish criteria which differentiate the two principal uses.



PROPERTIES WHERE A NEW “BAR, TAVERN, OR NIGHTCLUB” USE IS PROHIBITED

¹ The Ordinance exempts properties within the CD-5 (Urban Center) district from this limitation (§ 4.3.9.E.6(e)(1)).

Definitions in the Ordinance

The Zoning Ordinance distinguishes between the two land uses but does not list specific attributes which separate a Restaurant from a Bar Tavern or Nightclub. Section 9.3 of the Ordinance defines a Restaurant as “an establishment engaged in preparing, serving, and selling food at Retail for on- or off- premises consumption” (p. 518). The definition goes on to state that “Bars, Taverns, and Nightclubs are not Restaurants.” The Ordinance defines a Bar or Tavern as “an establishment serving Alcoholic Beverages to be consumed on the premises” and (§ 9.3, p. 481). Finally, the Ordinance defines a Nightclub as “an establishment for nighttime entertainment, typically serving Alcoholic Beverages for consumption on-site and offering music, dancing, or other entertainment” (§ 9.3, p. 509). From these definitions it is clear that a Restaurant is an establishment whose principal activity is preparing and selling food; the service of alcohol may be an accessory and incidental use. Similarly, although food may be served, the primary activity of a Bar, Tavern, or Nightclub is the sale of alcohol for on premises consumption. The Ordinance does not establish a clear threshold when the sale of alcohol becomes the primary activity.

Best Practices Defining the Land Use²

Most regulators rely on the percentage of revenue derived from alcohol as the decisive criterion. The Planners’ Dictionary, published by the American Planning Association compiles land use definitions from jurisdictions across the United States. The Dictionary indicates that the best practice is to use the percentage of sales derived from food as the criterion for distinguishing among these land uses. The distinctions made by state licensing agencies is another indicator of best practices relevant distinguishing the two principal uses.

In Tennessee, the Alcoholic Beverage Commission (ABC) uses the definition of a Restaurant codified in the Tennessee Code.³ The ABC definition utilized seven criteria to classify a business serving liquor by the drink as a restaurant. For purposes of this analysis, the most important criterion is “more than fifty percent of the gross revenue of the restaurant is generated from serving meals.” Other criteria used by ABC include the presence of kitchen equipment and sufficient seating for patrons. ABC classifies other businesses as Limited Service Restaurants, an apparent euphemism for an operation primarily engaged in the sale of wine and spirits for on-site consumption.

Conclusion

The Zoning Administrator classifies businesses primarily engaged in the preparation and sale of food, with accessory and incidental sales of alcohol for on-site consumption, as Restaurants. In general, this means that the operation generates the preponderance of its revenue from the sale of food and non-alcoholic beverages. Although not determinative, being licensed by ABC as a Restaurant is a strong indication that the primary activity of the business is selling food. Other indicators include the classification of the property by the City of Columbia Fire Marshall and Building Official, as well as registration with the Wastewater Department’s Fats Oils and Grease (FOG) program.

Conversely, the Zoning Administrator classifies businesses primarily engaged in the sale of alcohol for on-site consumption as Bars, Taverns or Nightclubs, regardless of whether food is also provided. This

² This interpretation makes reference to authorities outside the Zoning Ordinance only as an aide to defining the terms in the Ordinance. No direction or advice is offered related to any topic outside the City of Columbia Zoning Ordinance. The proposed use of any property in the city must comply with all other applicable regulations.

³ <https://www.tn.gov/abc/licensing/liquor-by-the-drink/licenses/restaurant-licensure-lbd.html>

includes businesses which derive most of their revenue from the sale of alcohol for on-site consumption. Licensure by ABC as a Limited Service Restaurant is a strong indication that the primary activity of the business is selling alcohol.

The determination ultimately depends on the operation's primary source of revenue as well as how the business is classified by other regulators, including the Tennessee Alcoholic Beverage Commission.