UDC INTERPRETATION: Section 5.01.030 Determination of Unlisted Use

PROPOSED USE: Micro-Distillery

EFFECTIVE DATE: The Director’s determination of the unlisted use shall become effective after 30 days unless appealed in accordance with UDC Section 3.14 within that timeframe (June 1, 2018).

Unified Development Code (UDC) Section 5.01.030 outlines a process for addressing unlisted uses. Any land use that is not listed as a Specific Use in the Chapter 5 Use Tables is reviewed by the Planning Director to determine whether it falls within the parameters of a listed Specific Use or requires consideration as a separate Specific Use. The Director shall then determine the appropriate classification of any unlisted use that warrants a separate Specific Use. The Director may determine that the use is permitted by right, permitted with limitations, permitted with approval of a Special Use Permit (SUP) by the City Council, or not permitted in a zoning district. UDC Section 5.01.030 sets out criteria to be used in making this determination as well as determining whether or not a use is a primary or accessory use.

DESCRIPTION OF UNLISTED USE
A micro-distillery is proposed consisting of a distilled spirits operation of approximately 1,000 square feet, a small barrel storage of 700 square feet, and the following associated uses: tasting room, event space (750 additional square feet for a total of floor area of approximately 2,500 square feet). This use is proposed on a property that is currently zoned Mixed Use Downtown (MU-DT) and Downtown Overlay districts.

STAFF ANALYSIS
The proposed use includes the production and sale of distilled spirits for in-house consumption and sale. Food sales are also proposed as well as associated retail sales. Similar specific uses include Microbrewery, Micro-Winery, and Manufacturing, Processing and Assembly, General.

Staff reviewed the criteria of UDC Section 5.01.030 in determining the appropriate zoning districts for the “Micro-Distillery” described use, and made the following findings:

1. The definitions of similar primary uses - Per UDC Section 16.02, the following definitions are provided for similar uses:

   **Microbrewery.** A retail establishment where beer is produced on the premises for in-house consumption and sale. Food sales or a restaurant may also be included, as well as associated retail sales. A microbrewery typically produces less than 15,000 barrels annually.

   **Micro Winery.** A retail establishment where wine is produced on premises for in-house consumption and sale. Food sales or a restaurant may also be included, as well as associated retail sales. A micro winery is typically a small wine producer that generates up to 15,000 gallons of wine annually.
Microbreweries and Micro wineries are permitted with limitations in the Commercial Neighborhood (CN), Local Commercial (C-1), General Commercial (C-3) and Mixed-Use Downtown (MU-DT) zoning districts.

**Manufacturing, Processing and Assembly, General.** The general mass producing, processing or manufacturing of goods, materials, or products, predominately from extracted or raw materials, using mechanical power and machinery, and usually for sale to wholesalers or other industrial or manufacturing uses. This use includes procedures such as milling of grain; manufacturing, processing or assembly of wood products including cabinet and furniture production; processing of animals and animal products including slaughtering, meat packing and hide tanning; production of animal food; production of large durable goods such as motorcycles, cars, manufactured homes, or airplanes; canning or bottling of food or beverage for human consumption including brewery and distillery plants; manufacturing of paint, oils, pharmaceuticals, cosmetics, solvents, and other chemical products; production or fabrication of metals or metal products including enameling, plating, galvanizing, and use of a foundry, welding or machining; processing of recyclable materials, production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials; clothing or textile manufacturing; tire recapping or retreading; and the production of items by means of the chemical processing of materials.

Manufacturing, Processing and Assembly, General is permitted by right in the Industrial (IN) zoning district.

2. **The definitions of the use categories that include similar uses** – The definitions of Microbrewer and Micro Winery best fit the proposed use and activities as the services provided are the same with the exception of product to be produced (spirits as opposed to beer or wine).

3. **The actual or projected characteristics of the activity in relationship to the stated characteristics:** Micro-distilleries share similar characteristics with Microbreweries and Micro-wineries in terms of facility size, production levels, and artisanal marketing and branding. Micro alcohol producers function in downtown areas as tourist attractions linked to the local identity of the area and the artisan, “craft” nature of their small-scale production. These micro alcohol producers are usually co-located with a tasting room and have retail sales of tastings, mixed drinks and limited package; as permitted by Texas Alcoholic Beverage Commission regulations.

4. **The relative amount of site area or floor space and equipment devoted to the activity** - The production activity area for the distilled spirits operation is roughly 1,000 square feet with a small barrel storage encompassing approximately 700 square feet (1,700 SF total). The remainder of the space will be tasting room and event space (750 additional square feet for a total floor area of approximately 2,500 square feet).

5. **Relative amounts of sales from each activity** - Sales in the micro-distillery shall consist of distinct activities: 1) “tastings” of the products to include 0.5 oz samples and mixed drink sales; 2) limited bottle sales of the product produced on site; 3) private event room rental; and 4) merchandise sales from the tasting room area. The applicant projects the tastings and merchandise sales initially to be the majority of the sales (60%) with bottle sales becoming more
prevalent as the product becomes more recognizable (10% initially). Event space rental is projected to account for 30% of revenues. The proposed micro-distillery may eventually produce a more robust distribution sales model but this growth would not be anticipated within the first five years and, if distribution demand increases, the operation would require a second off-site location due to space and economic scale limitations in the downtown area.

6. **The type of customer for each activity** – Micro alcohol producers with associated restaurants promote alcohol sales primarily through restaurant patrons and special events.

7. **The relative number of employees in each activity** - This small distillery operation proposes to employ less than four (4) associates; a production manager, a retail/service employee (1-2) and a manager for the upstairs rental event space. During production hours, the applicant suggests that the number of employees may be fewer.

8. **Hours of operation** - The hours of operation, as proposed for this use, are similar to those for micro wineries and microbreweries.

9. **Building and site arrangement** - The proposed use will be subject to the development standards for the MU-DT zoning districts including setbacks, building height, and building design requirements. Additionally, any outdoor display or storage areas will be subject to the additional standards outlined in UDC Section 5.09.

10. **Vehicles used and their parking requirements** – Employee and customer parking as well as supply delivery are expected to be similar to those brought about micro wineries and microbreweries.

11. **The relative number of vehicle trips generated** - Using revenue data from comparable venues (micro-winery and microbrewery), the applicant anticipates the average number of daily customer driven trips would be 60-80 in the latter part of the week and weekend (Thursday – Sunday). We believe a portion of these trips would be “destination” to our operation but a large number would also be incidental trips meaning the customer was coming to the Downtown area anyway and happened to commerce in our facility.

12. **Typical number of daily deliveries** - It is anticipated that the number of daily deliveries will be similar to that of a microbrewery or micro winery.

13. **Noise levels generated** - It is anticipated that the noise generated will be similar to that of a microbrewery or micro winery.

14. **Lighting required for the activity** - It is anticipated that the lighting required will be similar to that of a microbrewery or micro winery. The proposed use will be subject to the development standards for non-residential uses.

15. **The likely impact on surrounding properties** - It is anticipated that the impact to surrounding facilities will be similar to that of a microbrewery or micro winery; no more burdensome than any restaurant or retail facility. Odor, noise, etc. will be equal to and likely less than restaurant operations due to the design and small scale of this operation. Odor from the production is minimal, contained to production areas, alleviated with ventilation design. Finished product smell should be no more noticeable than in a similar sized bar/restaurant.
16. Whether the activity is likely to be found independent of the other activities on the site - Microdistilling is generally an independent production process, although there are examples of shared space with other Microbreweries, Micro wineries, or restaurants.

DETERMINATION
Pursuant to UDC Section 5.01.020.C, the proposed Micro distillery use warrants a new use to be listed in Chapter 5 as this use is not included in the definition of exiting listed Specific Uses. The new use will be defined and listed in the UDC as shown below:

Table 5.04.010 Commercial Uses

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Section 5.04.020 Commercial Use Limitations

A. Building Size Limitation.

Commercial, retail, service, and office buildings are limited to the following maximum building size:

1. In the CN District, the floor-to-area ratio shall not exceed 0.3. The maximum building size of each building on an individual lot or parcel shall be 7,500 square feet.

2. In the C-1 District, the floor-to-area ratio shall not exceed 0.5

G. Micro Brewery or Micro Winery or Micro Distillery.

A microbrewery, micro winery or micro-distillery is permitted in accordance with Table 5.04.010 and subject to the following standards and limitations:

1. A microbrewery, micro winery or micro-distillery shall be located no less than 300 feet from a church, public or private school or public hospital subject to the measurements of the City Code of Ordinances.

2. A microbrewery, micro winery or micro-distillery is subject to the provisions of Chapter 6.40, Alcoholic Beverages, of the City Code of Ordinances.

Section 16.02 Definitions
Micro-distillery. A retail establishment where alcohol is produced on the premises for in-house consumption and sale. Food sales or a restaurant may also be included, as well as associated retail sales. A micro-distillery typically produces less than 15,000 barrels annually.

Determined By:                      Date: May 9, 2018

Sofia Nelson, CNU-A
Planning Director