

Regulating Alcohol Sales

City of Waterloo Overview of Amendments



Problems

- Increased calls for police service
- Increased crime and violence
 - Attempted robbery resulting in two deaths
 - Fights on premise and in vicinity of establishments
- Loitering
- Littering
- Decreases in property values and lack of maintenance and upkeep in neighborhoods

Causes

- Density of businesses selling alcohol
- Proximity of alcohol sales uses to each other and to other incompatible uses (residential, day cares, schools, churches, parks, etc.)
- Businesses not responsible or responsive to work with the City to address problems
- Recognize that alcohol sales uses are not the sole cause of problems, but contributing

Code Deficiencies

- Previously no delineation between a liquor store and a convenience store/gas station/grocery store, or between a bar and a restaurant
- No provisions to require business responsibility over their premise & vicinity
- Lenient requirements - little or no setbacks
- State Code amendment allowing gas stations to sell liquor with no separation

Purpose of Amendments

- Avoid undue concentration
- Ensure adequate setbacks from protected uses
- Mitigate adverse secondary effects (crime, violence, littering, loitering, etc.)
- Preserve and protect neighborhoods from deterioration and loss of property value.









Patchwork of Amendments – a Cautionary Tale

- First amendment 2009
- Second amendment in 2011
- Third and most recent amendment in 2012
- Multiple moratoriums used while the amendments were developed
- Problems this “patchwork” has caused
 - Tracking grandfather status (pre-2009, pre-2011)
 - Existing uses never classified before 2012 amendment (was it a liquor store or a C-store)

2009 Amendment

- Alcohol Sales Use defined – provided a two-tiered classification: limited alcohol use, and a non-limited alcohol use
 - Limited defined as having less than 50% gross income and > 75% floor space devoted to other than alcoholic beverages excluding gas.
Restaurant defined as > 50% prepared food
- Prohibited the sale of alcohol via drive up windows (prevented new, but did not address existing sites selling alcohol via a drive-up or similar system)

2009 Amendment cont.

- Limited alcohol sales use allowed in “C-1” Neighborhood Commercial District with a 100’ setback to any protected use
- Non-limited allowed in “C-2” Commercial District upon Special Permit approval and with a 100’ setback to any protected use. Special Permit not required if use is located along a principal arterial or interstate and if setback 250’ to a protected use
- The “C-3” Central Business District (downtown) was exempted from the restrictions (except restrictions on drive-ups)

2009 Amendment cont.

- Standards for issuance of a Special Permit, and a provision for revocation of the Special Permit if a business becomes a nuisance or exhibits a pattern of violating the conditions of their approval
- Provision requiring limited alcohol sales uses to be subject to an audit and for them to provide documentation for such audit to prove that they are meeting the standards as a limited alcohol sales use

Deficiencies of 2009 Amend.

- The 50% sales & 25% floor space for limited was not adequate – liquor stores masquerading as a convenience store
- Prevented non-problem establishments (such as Kwik Star) from expanding due to non-conforming status because they were less than 100' setback to protected uses.
- No provision to ensure business responsibility for activity on the premise and vicinity
- No provisions for atypical alcohol uses (clubs, hotels, open-air events, golf courses, sports complexes, etc.)

2011 Amendment

- Provision added exempting atypical alcohol uses (clubs, hotels, open-air events, golf courses, sports complexes, etc.)
- Limited alcohol sales use percentage left the same (50% sales, 25% floor space), but in addition to gas, the sale of tobacco products and lottery tickets also excluded, and a cap of 25% hard liquor added
- Loss of non-conforming status changed from 1 year to 3 months specifically for alcohol sales uses

2011 Amendment cont.

- 100' setback to protected uses for limited alcohol sales uses removed
- Non-limited setback to protected uses increased from 100' to 250' for those without a Class E license and 600' for those with a Class E license. Special Permit required unless located along a principal arterial or interstate
- Setback of 250' added for non-limited to another non-limited, and 600' setback for non-limited with a Class E license to another Class E license

2011 Amendment cont.

- A “Purpose and Intent” section was added to provide the legal foundation for why the alcohol sales regulations were adopted
- Code of Ordinances amended to add a “Premises Control” section requiring an alcohol sales use to 1) monitor and prevent loitering, littering, violation of noise ordinances, or public consumption, 2) post a sign advising patrons to comply as such, and 3) pick up and dispose of litter on the property and any area within 50’ that is not protected against public entry

Deficiencies of 2011 Amend.

- Despite excepting tobacco and lottery along with gas, and adding the limitation of 25% hard liquor on top of the 50% sales & 25% floor space requirement, we were still seeing new questionable establishments open by just agreeing to be limited - liquor stores masquerading as a convenience store
- Hard to evaluate percent sales, even if audited
- Unclear how to calculate the 25% floor space

2012 Amendment

- The two-tiered classification system was expanded to a five-tiered system including: incidental alcohol sales use, limited (on-premise), limited (off-premise), non-limited (on-premise) and a non-limited (off-premise)
- Planning staff required to classify every alcohol sales use, excluding those located in the “C-3” Central Business District based on current standards. Where insufficient info is available, the default classification is limited. A business that requests reclassification as non-limited must provide adequate documentation (sales data)

2012 Amendment cont.

- Businesses that had previously agreed to be limited under previous standards shall continue to be limited and shall have until 6/30/13 to conform to the new standards
- Percentage of gross income that must come from other than alcoholic beverages for an off-premise limited alcohol sales use increased from 50% to 60%, and how the 25% floor space is calculated was clarified

2012 Amendment cont.

- Alcohol sales through a drive-up still prohibited, but the amendment requires that any that legally made use of such drive-ups shall cease and desist from use of such window to sell alcohol by 12/31/12
- Ordinance does not prohibit an alcohol sales use from keeping an existing a drive-up to sell other than alcohol, but if any business sells alcohol via a drive-up, upon conviction they are required to permanently close the window. New alcohol sales uses are prohibited from having any drive-up
- Exceptions are provided for drive-ups to a pharmacy or grocery store

2012 Amendment cont.

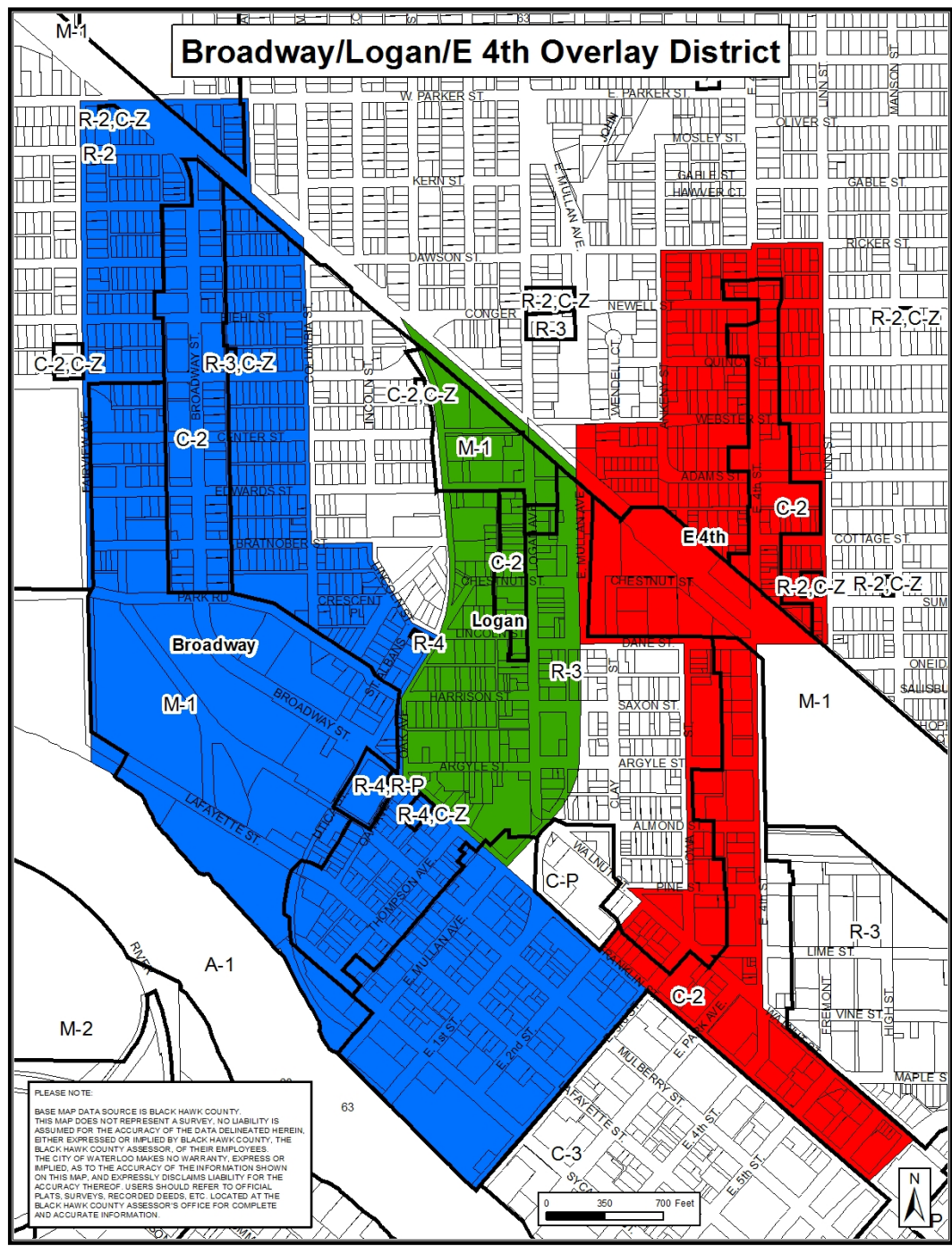
- Off-premise limited alcohol sales uses, excluding a grocery store over 10,000 SF or a pharmacy, are restricted for signage that makes use of the words “alcohol”, “beer”, “wine”, “liquor”, or similar words or images. Existing businesses displaying such signage shall have until 3/31/13 to conform to the requirement
- Limited uses required to annually certify
- Alcohol Sales Use Overlay Districts were created in 4 neighborhoods (see map), in which no new alcohol sales use is allowed except for: 1) incidental uses, 2) pharmacies, and 3) grocery stores over 10,000 SF

Church Row Neighborhood Overlay District

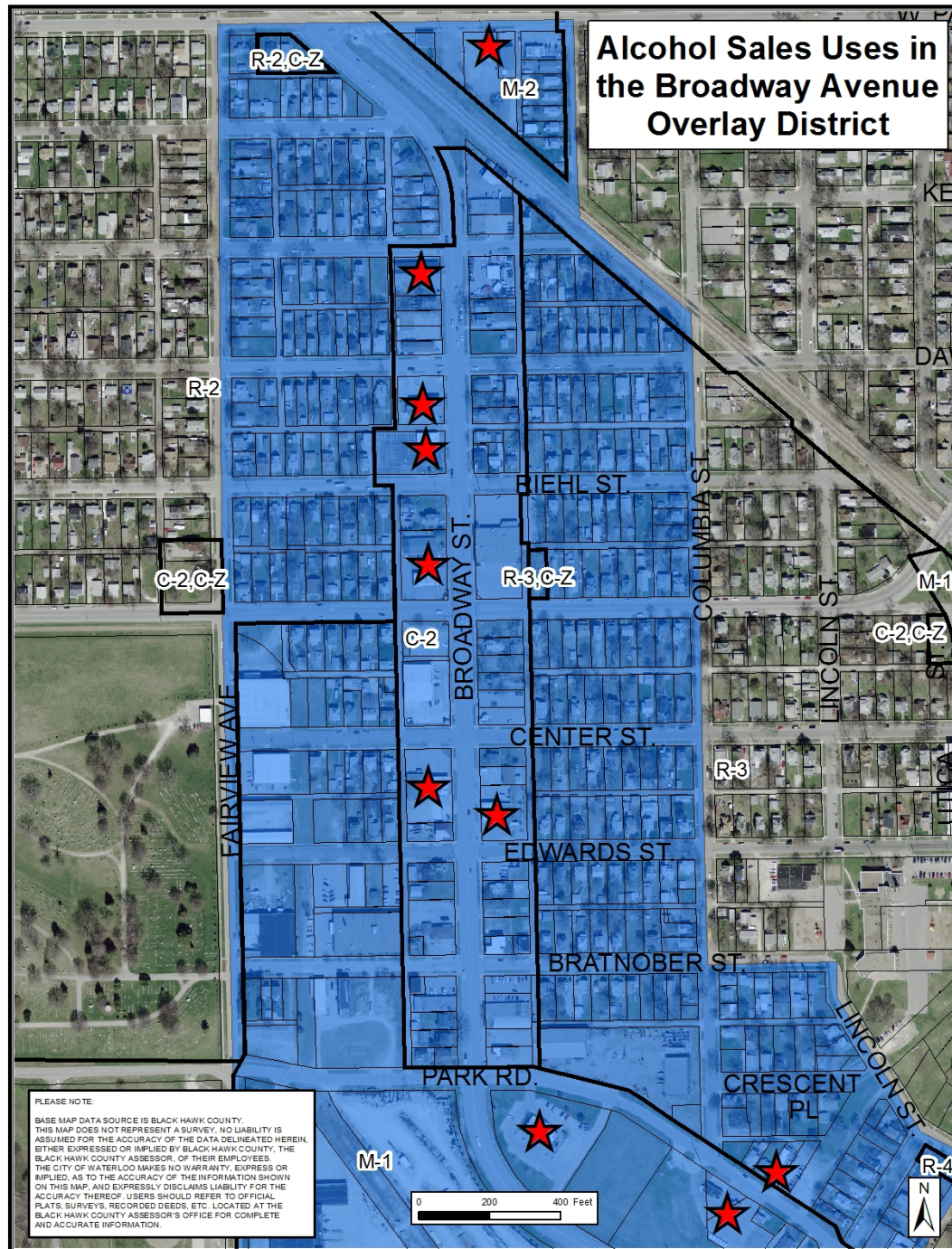
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Broadway/Logan/E 4th Overlay District



Alcohol Sales Uses in the Broadway Avenue Overlay District



Alcohol Sales Use – Overview of Regulations

	Incidental	Limited	
	Incidental	Limited (off-premise consumption)	Limited (on-premise consumption)
Premise Consumption	On (presumed)	Off	On
Examples	club or hotel/motel, open-air event, golf courses, public sports complexes/facilities	convenience store, gas station, grocery store, or pharmacy	restaurant, bowling alley
Gross Income Minimum - sales of goods, services, food, and beverages other than alcohol (and excluding tobacco, lottery, and fuel)	N/A	>60% (sites that previously agreed to be limited under different standards shall comply with new standards by 6/30/13)	>50%
Gross Income Maximum for liquor (and excluding tobacco, lottery, and fuel)	N/A	25% liquor (i.e., not including beer or wine)	N/A
Retail Floor Space Minimum for sale of goods, on-premise services, food and beverages other than alcohol (and excluding tobacco, lottery, and fuel)	N/A	>75%	N/A
Images or verbiage that makes use of the words "alcohol", "beer", "wine", "liquor", or any variant or synonym	Allowed	Prohibited in all but C-3 District, except for banners, portable, and temporary signs. Existing non-compliant signs to be removed by 3/31/13	Allowed
Drive-Up Window alcohol sales	N/A	New prohibited & existing shall cease and desist by 12/31/2012	New prohibited & existing shall cease and desist by 12/31/2012
Separation from a protected use	N/A	N/A	N/A
Separation - Class E from Class E	N/A	N/A	N/A
Separation from another non-limited alcohol use	N/A	N/A	N/A

Alcohol Sales Use – Overview of Regulations

	Non-Limited	
	Non-Limited (off-premise consumption)	Non-Limited (on-premise consumption)
Premise Consumption	Off	On
Examples	liquor store	bar, tavern, night club, dance hall
Gross Income Minimum - sales of goods, services, food, and beverages other than alcohol (and excluding tobacco, lottery, and fuel)	N/A	N/A
Gross Income Maximum for liquor (and excluding tobacco, lottery, and fuel)	N/A	N/A
Retail Floor Space Minimum for sale of goods, on-premise services, food and beverages other than alcohol (and excluding tobacco, lottery, and fuel)	N/A	N/A
Images or verbiage that makes use of the words "alcohol", "beer", "wine", "liquor", or any variant or synonym	Allowed	Allowed
Drive-Up Window alcohol sales	New prohibited & existing shall cease and desist by 12/31/2012	New prohibited & existing shall cease and desist by 12/31/2012
Separation from a protected use	600 ft for Class E licenses	250 ft for non-Class E licenses
Separation - Class E from Class E	600 ft	N/A
Separation from another non-limited alcohol use	250 ft	250 ft

Implementation and Next Steps

- Classification of all alcohol sales uses
 - Change from 50% to 60% may work good for new uses, but has made it easier for existing uses to be considered grandfathered as non-limited
- Fines for violations pertaining to alcohol sales uses increased from \$200 first offense, \$500 second offense, \$750 subsequent to \$750 first offense and \$1,000 subsequent (highest allowed by State Code)

Implementation and Next Steps

- Evaluation – is it working? May be a little early to tell, but it was clear the previous regulations were not working, and a better regulatory structure was needed to set standards to give the City a basis to take action
- Further amendments needed? We will continue to monitor how the regulations are working and make additional changes as deemed necessary

Comments or Questions?

If you have comments or questions, please contact
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