

CHARTER TOWNSHIP OF ELMWOOD
Leelanau County, Michigan

Ordinance No. _____
ZO 2017-04-23

AN ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE, IN ACCORANCE WITH THE PROVISIONS OF THE MICHIGAN ZONING ENABLING ACT, ACT 110 OF THE PUBLIC ACTS OF 2006, AS AMENDED [MCL 125.3101 ET SEQ.], TO AMEND SECTION 2.2 TO ADD DEFINITIONS FOR ALCOHOL, BEER, BREWER, BREWERY, DISTILLER, MICRO BREWER, SMALL DISTILLER, SMALL WINE MAKER, SPIRITS, TASTING ROOM, WINE MAKER, REVISE DEFINITIONS FOR DISTILLERY, WINE, WINERY, AND ELIMINATE DEFINITIONS FOR DISTILLERY TASTING ROOM, WINE, BRANDY, WINE DRINK, MIXED, WINE RELATED BEVERAGES, AND WINE TASTING ROOM; AMEND SECTION 5.4 TO ELIMINATE DISTILLERY TASTING ROOMS, MICROBREWRIES/DISTILLERIES, AND WINE TASTING ROOM, ADD 'DISTILLERY AND/OR BREWERY' AND 'TASTING ROOM' AS PERMITTED USES UNDER SITE PLAN REVIEW OR SPECIAL USE PERMIT IN CERTAIN ZONING DISTRICTS, ALLOW WINERY AS A USE WITHIN THE GENERAL COMMERCIAL AND LIGHT INDUSTRIAL DISTRICTS UNDER SITE PLAN REVIEW, RENUMBER USES; AMEND SECTION 5.5.K TO ELIMINATE TWO REQUIREMENTS FOR TEMPORARY PRODUCE STANDS AND RENUMBER SUBSEQUENT REQUIREMENTS; ADD SECTION 5.5.N TO CONTAIN REQUIREMENTS FOR WINERIES, DISTILLERIES, AND BREWERIES; AMEND SECTION 6.1.3 TO LIST PARKING REQUIREMENTS FOR WINERIES, DISTILLERIES, AND BREWERIES; AMEND SECTION 9.8.J TO CONTAIN REQUIREMENTS FOR TASTING ROOMS FOR WINERIES, DISTILLERIES, AND BREWERIES; ELIMINATE SECTION 9.8.L DISTILLERY TASTING ROOM AND ITS REQUIREMENTS AND RESERVE SECTION 9.8.L FOR FUTURE USE.

The Charter Township of Elmwood Ordains:

Section 1: Amendment.

1. Amend Section 2.2, specifically to add the following definitions:

Alcohol. The product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

Beer. A beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, sugar, or other cereal in potable water.

Brewer. A person located in this state that is licensed by the Michigan Liquor Control Commission to manufacture beer and sell at retail and to licensed wholesalers the beer manufactured by the person.

Brewery. A facility licensed by the Michigan Liquor Control Commission where agriculture products are grown and/or maintained and used by brewers and/or micro brewers to manufacture beer and sell at retail and to licensed wholesalers the beer manufactured by the brewer or micro brewer.

Distiller. A person licensed by the Michigan Liquor Control Commission to manufacture and sell spirits or alcohol, or both, of any kind.

Micro Brewer. A brewer that manufactures in total less than 60,000 barrels of beer per year and that may sell the beer manufactured to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises and to retailers. In determining the 60,000-barrel threshold, all brands and labels of a brewer, whether manufactured in this state or outside this state, must be combined and all breweries for the manufacturing of beer that are owned or controlled by the same person must be treated as a single facility.

Small Distiller. A manufacturer of spirits annually manufacturing in this state not more than 60,000 gallons of spirits, of all brands combined.

Small Wine Maker. A wine maker manufacturing or bottling not more than 50,000 gallons of wine in 1 calendar year. A small wine maker is not required to bottle wine it manufactures.

Spirits. A beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

Tasting Room. A location on or off the manufacturing premises of a brewer, micro brewer, wine maker, small wine maker, distiller, or small distiller where the brewer, micro brewer, wine maker, small wine maker, distiller, or small distiller may provide samples of or sell at retail for consumption on or off the premises, or both, the beer, wine, or spirits it manufactures. A small wine maker, however, may only sell wine it bottled.

Wine Maker. A person licensed by the Michigan Liquor Control Commission to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, and to sell that wine to a retailer.

2. Amend Section 2.2, specifically to modify the below definitions to read as follows:

Distillery. A facility licensed by the Michigan Liquor Control Commission where agriculture products are grown and/or maintained and used by distillers and/or small distillers to manufacture spirits or alcohol and to sell the spirits and/or alcohol manufactured by the distiller or small distiller.

Wine. A product manufactured by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not

more than 21% of alcohol by volume, including cider made from apples or pears, or both, that contains at least ½ of 1% of alcohol by volume, or mead, or honey wine made from honey, fermented fruit juices other than grapes, and mixed wine drinks.

Winery. A facility licensed by the Michigan Liquor Control Commission where agriculture products are grown and/or maintained and used by wine makers and/or small wine makers to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, and to sell that wine to a retailer.

3. Amend Section 2.2, specifically to eliminate the following definitions:

Distillery Tasting Room. A Michigan licensed room used in conjunction, as an accessory use, with a distillery where a spirit is produced on-site, may be consumed or purchased.

(Amendment ZO 2017-04-03, Ordinance #2018-04, Effective November 9, 2018)

Wine, Brandy. An alcoholic liquor as defined in Federal Standards of Identity for Distilled Spirits, 27 CFR 5.22 (d) 1980.

Wine Drink, Mixed. A drink or similar product containing less than seven percent (7%) alcohol by volume, consisting of wine and sparkling or carbonated or water and/or containing one (1) or more of the following: non-alcoholic beverages; flavorings; fruit juices; coloring materials; fruit adjuncts; sugar; preservatives; and carbon dioxide .

Wine-Related Beverages. Fortified wines, wine brandy, other mixed wine drinks, and drinks related to or inclusive of wines.

Wine Tasting Room. A Michigan licensed room used in conjunction with a winery where the tasting of wine, fruit wines, and non-alcoholic fruit juices takes place at a charge or at no charge to the individual, and the retail sales of winery and cheese products, incidental wine-related non food items, products by the bottle, container, or case for off-premises consumption, and wine-related packaged food items are allowed as provided herein.

4. Amend Section 5.4 to eliminate Use #49 (Distillery Tasting Rooms), Use #60 (Microbreweries/Distilleries regulated by Michigan Liquor Control Commission) Use #78 (Wine Tasting Room); create new Use #49 (Distillery and/or Brewery), Use #74 (Tasting Room); change permitting process for Use #79 (Winery); renumber the table as needed. Uses #49, #74, and #79 will read as follows:

Applicable to Multiple Districts	A-R	R-1	R-2	R-3	MH P	M C	NC	G C	LI	SC	R R
49. Distillery and/or Brewery	SUP						Psp	Psp	Psp		
74. Tasting Room	SUP						Psp	Psp	Psp		

5. Amend Section 5.5.K containing requirements for ‘Temporary produce stands,’ specifically to eliminate existing requirements 5 and 6 and then renumber subsequent requirements. The requirements that will be eliminated are:

- ~~5. Additional agricultural products may be sold at the produce stand provided it is grown or produced (e.g., honey, syrup, etc) in Elmwood Township.~~
- ~~6. Sale of craft items is limited to those produced on the property.~~

6. Amend Section 5.5 to create 5.5.N to contain requirements for Wineries, Distilleries, and Breweries. This new Section 5.5.N will read as follows:

N. Winery, Distillery, Brewery

1. **Intent.** It is the intent of this ordinance to allow construction of Breweries, Distilleries, and Wineries for beer, wine, spirits and other alcoholic beverages regulated by the Michigan Liquor Control Code of 1998, being Public Act 58 of 1998 [MCL 436.1101 et seq] (the “Code”) on lands where the ingredients for such products are raised or grown. Such facilities are permitted with or without tasting rooms (See Section 9.8.J).

The growing of wine fruit and production of wine, the growing of the ingredients for making beer and the growing of crops to be used in distilling spirits are recognized as an integral component of the rural and agricultural ambiance of the agricultural areas within Elmwood Township if regulated appropriately. The growing of these crops do not require Planning Commission review, but without site plan review, production facilities could industrialize the agricultural district. It is, therefore, the intent of this section to maintain the viability of growing agricultural products by providing for the value added processing and direct sales of such beverages and other end products of such processing.

2. **Conditions.** Wineries, Distilleries, and Breweries may be permitted in accordance with Article 8 (Site Plan Review) and subject to the following conditions:
- a. Every winery, brewery, and distillery, is subject to the development review requirements as provided in Article 8 (Site Plan Review) of this ordinance.
 - b. Monthly retail sales of the beverages produced on the site are permitted along with retail sales of related products (i.e. branding merchandise for the facility). However, no tasting is permitted unless a permit for a Tasting Room is obtained onsite.
 - c. To ensure that production facilities within the A-R Zoning District do not industrialize the district, the following standards shall be met:
 - i. The parcel must be at least ten (10) acres.
 - ii. The winery, distillery, or brewery is operated according to generally accepted agricultural management principles and for every winery, distillery, and brewery, the parcel shall have a minimum of five (5) planted acres of mature crop that is used for

the on-site production of alcohol for production facilities selling directly to the consumer. Ten (10) planted acres of mature crop that is used for the on-site production of alcohol for production facilities selling directly to the consumer is required for selling wholesale. For purposes of this section, ‘mature crop’ shall mean crops that are of an age where they can be harvested and used in the production of alcohol.

- iii. The total land area covered by buildings and structures used for the processing, storage and sales of wine, beer, and spirits may not exceed fifteen percent (15%) of the lot area. In order to encourage the reuse of historic buildings, the Planning Commission may consider a larger land cover percentage, while considering the impact of the use on neighboring properties. If the parcel contains a dwelling, the dwelling and the dwelling’s associated accessory structures shall not be incorporated in this calculation. Any building or structure used for agricultural use (i.e. silos, animal husbandry, storage of traditional agricultural machinery (i.e. tractors, plows, etc.) shall not be incorporated in this calculation.
- d. All winery, brewery, or distillery structures and/or permitted outdoor tasting areas (if permitted shall be set back at least 100 feet from any lot line as well as any wetlands and/or any water’s edge. This setback shall not apply to any building or structure used for agricultural use (i.e. silos, animal husbandry, storage of traditional agricultural machinery (i.e. tractors, plows, etc.).

7. Amend Section 6.1.3, specifically to add minimum required parking spaces for Wineries, Distilleries, and Breweries to the existing table as follows:

USE	MINIMUM NUMBER OF SPACES REQUIRED
Winery, Distillery, and/or Brewery	5 spaces plus 1 per employee on largest shift

8. Remove Section 9.8.J (Requirements for Wine Tasting Rooms) and replace with a new Section 9.8.J (Requirements for Tasting Rooms for Wineries, Breweries, and Distilleries) to read as follows:

J. Tasting Rooms for Wineries, Breweries, and Distilleries

The Township would like to encourage agriculturally related uses while preserving neighboring property owners’ enjoyment of their land. Tasting Rooms are permitted as accessory uses at permitted Wineries, Breweries and Distilleries or within other zoning districts, as permitted provided that the proposed tasting room complies with the following requirements:

- 1. Every tasting room for a winery, brewery, and distillery within the Agricultural-Rural (A-R) Zoning District is subject to the development

review and requirements for a winery, brewery and distillery as provided in Article 5.5.N of this ordinance.

2. The tasting area may be located inside or outside a building, but at no time shall the tasting area exceed 2,500 sq ft.
3. A tasting room and/or an authorized outdoor tasting area shall not be located closer than 100 feet from any lot line of a lot containing a dwelling or from any lot that is zoned residential (R-1, R-2, or R-3).
4. If a tasting room is located within 500 feet from any lot line of a lot containing a dwelling or from any lot that is zoned residential (R-1, R-2, or R-3), then a fence or buffer, meeting the requirements of Section 6.4.4 of this Ordinance, shall be placed along the lot line of that adjacent lot to discourage trespass.
5. The hours of operation shall be between the hours of 10 am and 10 pm unless the Planning Commission determines that different and more restrictive hours are more appropriate to meet the standards of Section 9.3.
6. Amplified sound (including amplified music) shall be contained indoors and shall not produce sound that because of its volume or frequency annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivities.
7. A Tasting Room is not intended to be a restaurant; restaurants are a use that is permitted in certain zoning districts. Therefore, a tasting room may offer limited food service provided:
 - a. Any retail sales and food service must be clearly accessory to the tasting room. This shall be evidenced by:
 - i. The area for serving food shall seat no more than twenty (20) patrons at one time.
 - ii. Monthly sale of food shall not exceed 10% of gross sales of licensed products. At the request of the Township, the business shall provide supporting documentation to the Township verifying compliance with this section.
 - iii. Food service items shall be limited to appetizers and small plates. Carry-in or carry-out foods are prohibited.
 - b. Any food service shall be licensed to prepare and serve food by the appropriate Health Agency.

9. Remove Section 9.8.L (Requirements for Distillery Tasting Rooms) and replace as follows:

L. RESERVED

Section 2: Severability.

If any sections, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The Township Board hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

Section 3: Effective Date.

This Ordinance shall become effective eight (8) days following publication.

Public Hearing: _____

Adopted: _____

Effective: _____