

THE CITY OF FREDERICK  
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-16-08

LEGISLATIVE HISTORY

PLANNING COMMISSION

HEARING: January 11, 2016

RESOLUTION SUBMITTED  
TO MAYOR & BOARD: January 19, 2016

MAYOR & BOARD OF ALDERMEN

WORKSHOP: November 18, 2015

PUBLIC HEARING: February 4, 2016

**AN ORDINANCE** concerning restaurants with entertainment

**FOR** the purpose of eliminating a certain requirement relating to adaptive reuse; eliminating a certain requirement relating to reception facilities; modifying certain conditions relating to restaurants with entertainment; establishing a posting requirement; creating a provision relating to the transfer of restaurants with entertainment; allowing for the immediate issuance of citations for certain violations; amending a certain definition; deleting a certain definition; and generally relating to restaurants with entertainment in The City of Frederick.

**BY** repealing and reenacting, with amendments,

Section 804  
Appendix A, "Land Management Code"  
The Code of the City of Frederick, 1966 (as amended)

**BY** repealing and reenacting, with amendments,

Section 853  
Appendix A, "Land Management Code"  
The Code of the City of Frederick, 1966 (as amended)

**BY** repealing

Section 856  
Appendix A  
The Code of the City of Frederick, 1966 (as amended)

BY adding

Section 856  
Appendix A  
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,

Section 1002  
Appendix A  
The Code of the City of Frederick, 1966 (as amended)

**SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that Section 804 of the Land Management Code, Appendix A of The Code of The City of Frederick, 1966 (as amended), be repealed and reenacted, with amendments, as follows:

**Sec. 804 ADAPTIVE REUSE**

**Purpose: \*\*\***

- (a) **Applicability. \*\*\***
- (b) **Standards. \*\*\***
- (c) **Permitted Uses.**

[[1]] The following uses are permitted in any building designated pursuant to subsection [(a), above:] **(a) of this section:**

**Table 804-1. Permitted Adaptive Reuse Uses \*\*\***

[[2]] [Live entertainment may be permitted in conjunction with a commercial use of such a property provided the entertainment is permitted by the granting of a conditional use by the Zoning Board of Appeals.]

- (d) **Reuse incentives. \*\*\***

**Table 804-2. Adaptive Reuse Incentives \*\*\***

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that Section 853 of the Land Management Code, Appendix A of The Code of The City of Frederick, 1966 (as amended) be repealed and reenacted, with amendments, as follows:

**Sec. 853 RECEPTION FACILITY**

Reception facilities are permitted as a permitted principal use in the GC, M1, DB, MU, and MXE Districts providing the operation is in compliance with the City building code and with the following conditions:

(a) \*\*\*

(b) \*\*\*

[(c)] [Entertainment may be permitted, if the use also receives a "Restaurant with Entertainment" conditional use, provided such entertainment does not qualify as "adult entertainment" as defined in Article 10.]

[(d)] (c) Noise emissions shall comply with § 15-21 et seq. of the City Code.

[(e)] (d) As part of the Planning Commission review of the site plan, the applicant shall document what provisions have been taken for traffic and crowd control and disbursement for all scheduled functions.

[(f)] (e) The applicant shall provide guarantees as deemed necessary by the Planning Commission during the final site plan review process that the use of the property for a reception facility will not constitute a nuisance because of noise or other activities associated with the use.

**SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that Section 856 of the Land Management Code, Appendix A of The Code of The City of Frederick, 1966 (as amended) be repealed and a new Section 856 be added to read as follows:

**Sec. 856 RESTAURANT WITH ENTERTAINMENT**

(a) **Generally.** In accordance with the use matrix (Section 404 of this LMC), "restaurant with entertainment" is a conditional use in the GC, MU, MXE, and DB zoning districts. Approval of the conditional use allows, but does not require, the provision of entertainment as described in this section. The Board will grant conditional use approval if the applicant demonstrates, and the Board concludes, that the proposed restaurant with entertainment will be compatible with the types of uses permitted in the surrounding properties and will not constitute a nuisance. In reaching such a conclusion, the Board shall consider, in addition to the criteria established in Section 308 of this LMC, the following factors:

- (1) the availability of parking on site;
- (2) the distance of the proposed restaurant with entertainment from residential lots;
- (3) the days and hours during which entertainment is proposed to be offered;
- (4) the floor plan, including the location of entertainment within the building;
- (5) the hours during which meals will be served; and
- (6) whether or not alcohol will be served during such times as entertainment will be offered.

**(b) Entertainment.**

(1) For the purposes of this section, "entertainment" means any single event, series of events, or ongoing activity, to which the public is invited or allowed to watch, listen, or participate in, or that is conducted for the purpose of diverting or amusing patrons, including but not limited to:

(A) live musical performances;

(B) the playing of recorded music by a disc jockey or other agent or employee of the restaurant; or

(C) presentations by single or multiple performers, such as actors, dancers, comedians, hypnotists, or mimes.

(2) "Entertainment" does not include activities relating to specified sexual activities, specified anatomical areas, private performances, or straddle dances, as those terms are defined in this LMC.

(3) "Entertainment" does not include temporary special entertainment at restaurants approved in accordance with Section 867 of this LMC.

**(c) Conditions.** The approval of a restaurant with entertainment as a conditional use is subject to the following conditions:

(1) that, apart from providing entertainment, the proposed use constitutes a "restaurant, general", as that term is defined in Section 1002 of this LMC;

(2) that the sound levels associated with any entertainment conform to the noise regulations established in the City Code;

(3) that, except as otherwise provided in subsection (d) of this section, at least 80% of the total seating provided must be at tables (rather than seats at counters or bars); and

(4) that the person granted the approval comply with any other condition imposed by the Board in accordance with Section 308(e) of this LMC. Conditions may include, but are not limited to, the specification of certain days or times during which entertainment may or may not be offered.

**(d) Special events.** No more than four times each calendar year, a restaurant with entertainment may conduct special events at which there is no minimum seating capacity requirement. The owner of a restaurant with entertainment must obtain a temporary zoning certificate for each such event.

**(e) Transfer.**

(1) Prior to the transfer of ownership of a restaurant with entertainment or the property on which it is located, the seller shall issue to the buyer a notice in accordance with this subsection.

- (2) The notice must be in writing and must inform the buyer that the restaurant with entertainment was approved as a conditional use.
- (3) The notice must state that the buyer should contact the Department to obtain information on conditions of approval.
- (4) The seller shall deliver a copy of the notice to the buyer or send it via first class mail and shall submit a copy of the notice to the Department.
- (5) Any failure or deficiency relating to the notice required by this section will not be considered a defense to any enforcement action.

(f) **Enforcement.**

- (1) This subsection applies to restaurants with entertainment whether existing as of the effective date of this Code or approved thereafter.
- (2) A written notice provided by the Department, describing any conditions specified by the Board under subsection (c)(4) of this section, must be posted on the property such as to be clearly visible from each entrance to the restaurant with entertainment.
- (3) Violation of this section or any condition imposed under this section is a municipal infraction punishable by a fine not to exceed \$1,000. Every day a violation continues is a separate offense. The ordinance enforcement procedures set forth in Section 317(c) of this LMC do not apply to violations of this section or any condition imposed under this section.
- (4) Conditional use approval may be revoked in accordance with Section 308 of this LMC.

**SECTION IV. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that Section 1002 of the Land Management Code, Appendix A of The Code of The City of Frederick, 1966 (as amended) be repealed and reenacted, with amendments, by (A) deleting the definition of "restaurant, with entertainment"; and (B) deleting the definition of "restaurant, general" and replacing it with a new definition, as follows:

**Restaurant, General**

An establishment which accommodates the public; which is equipped with a dining room with facilities for preparing and serving regular meals; and in which the average daily receipts from the sale of foods exceed the average daily receipts from the sale of alcoholic beverages.

**SECTION V. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

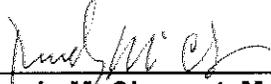
**SECTION VI. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that this ordinance shall take effect on February 14, 2016, and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

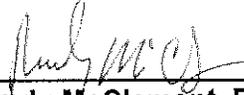
**NOTE:**

= material added.  
**[ ]** = material deleted.  
\*\*\* = no change.

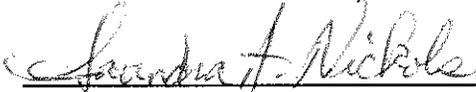
**APPROVED: February 4, 2016**

**PASSED: February 4, 2016**

  
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**Randy McClement, Mayor**

  
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**Randy McClement, President,  
Board of Aldermen**

**Approved for Legal Sufficiency:**

  
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**City Attorney**