

Ad to run 11/28 and 12/5

**TOWN OF LEESBURG  
NOTICE OF PUBLIC HEARING  
TO CONSIDER AMENDMENTS TO ZONING ORDINANCE  
ARTICLES 3, 6, 7, 9, 15, 17, and 18**

Pursuant to Sections 15.2-1427, 15.2-2204, 15.2-2205 and 15.2-2285 of the Code of Virginia, 1950, as amended, the **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, DECEMBER 11, 2012 at 7:30 p.m.** in the Town Council Chambers, 25 West Market Street, Leesburg, Virginia, 20176 to consider the following amendments to the Zoning Ordinance:

1. Sec. 3.1.3 Applications Completeness and Accuracy to establish new regulations pertaining to amendments to application currently under review.
2. Sec. 3.1.7 Proof of Payment of Real Estate Taxes to add the requirement to prove all taxes and other liens against the property are paid prior to application acceptance.
3. Sec. 3.9.1 Certificates Required adding a provision for acceptance of landscape bonds only between specific months outside of acceptable planting seasons. Sec. 12.2.5 Monitoring and Enforcement adding a provision for acceptance of landscape bonds only between specific months outside of acceptable planting seasons.
4. Sec. 3.3.3 Initiation of Application to establish notice requirements when amending a proffered rezoning. Sec. 3.1.9 Public Hearing Notices to specify notice requirements when amending a proffered rezoning.
5. Sec. 15.4.14 Real Estate Signs (Leasing/Sale Information), Temporary to remove the designation “temporary”.
6. Sec. 17.1.1 Civil Violations and Penalties to clarify civil penalties will not be assessed during the 30-day appeal period.
7. Sec. 18.1.126.1 Outdoor Sales (Accessory to Retail Sales Uses) establishing a definition for outdoor sales accessory to a retail sales establishment. Sec. 9.3.17.1 Outdoor Sales (Accessory to Retail Sales Uses) establishing use standards for outdoor sales accessory to retail sales uses.
8. Sec. 18.1.28 Cemetery revising the definition to match the definition found in the Code of Virginia.
9. Sec. 18.1.20.1 Brewpub revising the current definition to more specifically describe the use. Sec. 18.1.104.1 Microbrewery establishing the definition for microbrewery. Sec. 9.2 Use Table establishing Microbrewery as a special exception use in the B-2, B-3 and B-4 Districts and as a permitted use in the I-1 District. Sec. 6.4 B-2, Established Corridor Commercial District establishing Microbrewery as a special exception use in the B-2 District. Sec. 6.5 B-3 Community Retail/Commercial District establishing Microbrewery as a special exception in the B-3 District. Sec 6.6 B-4, Mixed-Use Business District establishing Microbrewery as a special exception in the B-4 District. Sec. 6.7 I-1, Industrial/Research Park District establishing Microbrewery as a permitted use in the I-1 District. Sec. 9.3.13.1 Microbrewery establishing use standards for Microbreweries.
10. Sec. 3.10.1 Applicability amending BAR review to exclude review of murals installed in accordance with Commission on Public Art guidelines. Sec. 7.5.5 Certificate of Appropriateness amending BAR review to exclude review of murals installed in accordance with Commission on Public Art guidelines. Sec. 18.1.110.1 Mural establishing the definition of mural.

Copies of the full text of these proposed Zoning Ordinance amendments are available for inspection in the Office

of the Clerk of Council at 703-771-2733 or by emailing [lgreen@leesburgva.gov](mailto:lgreen@leesburgva.gov), or by visiting the Department of Planning and Zoning located on the second floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia 20176 during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling 703-771-2765 and asking for Christopher Murphy, Zoning Administrator. This zoning ordinance amendment application is identified as case number TLOA-2012-0005.

At this hearing all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.



**Date of Council Meeting:** December 11, 2012

**TOWN OF LEESBURG  
TOWN COUNCIL  
PUBLIC HEARING**

**Subject:** TLOA-2012-0005 Zoning Ordinance Batch Amendment

**Staff Contact:** Christopher Murphy, AICP, Zoning Administrator,

**Issue:** Should the Batch Zoning Ordinance Amendments be adopted as presented?

**Recommendation:** Staff recommends approval of the amendments to the Zoning Ordinance as presented in this report.

**Planning Commission Action:** The Planning Commission held a public hearing on this matter on November 15, 2012. The Commission voted 6-0-1 (absent) to recommend approval with changes to #10 and #11 as shown below in this report highlighted in green.

**Background:** Recall that staff has established a process for the annual review and amendment of the Zoning Ordinance to meet recently adopted state law, to address ease of use and interpretation issues, to correct errors and to be responsive to the changing needs of the community.

Presented below is the list of amendments comprising the 2012 Batch Zoning Ordinance Text Amendments. The list is followed by a brief explanation of the reasons for each amendment along with the proposed text.

**AMENDMENTS LIST**

1. **Sec. 3.1.3 Applications Completeness and Accuracy to establish new regulations pertaining to amendments to applications` currently under review.**
2. **Sec. 3.1.7 Proof of Payment of Real Estate Taxes to add the requirement to prove all taxes and other liens against the property are paid prior to application acceptance.**
3. **Sec. 3.9.1 Certificates Required adding a provision for acceptance of landscape bonds only between specific months outside of acceptable planting seasons. Sec. 12.2.5 Monitoring and Enforcement adding a provision for acceptance of landscape bonds only between specific months outside of acceptable planting seasons.**
4. **Sec. 3.3.3 Initiation of Application to establish notice requirements when amending a proffered rezoning. Sec. 3.1.9 Public Hearing Notices to specify notice requirements when amending a proffered rezoning.**
5. **Sec. 15.4.14 Real Estate Signs (Leasing/Sale Information), Temporary to remove the designation "temporary".**

6. Sec. 17.1.1 Civil Violations and Penalties to clarify civil penalties will not be assessed during the 30-day appeal period.
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9. Sec. 18.1.20.1 Brewpub revising the current definition to more specifically describe the use. Sec. 18.1.104.1 Microbrewery establishing the definition for microbrewery. Sec. 9.2 Use Table establishing Microbrewery as a special exception use in the B-2, B-3 and B-4 Districts and as a permitted use in the I-1 District. Sec. 6.4 B-2, Established Corridor Commercial District establishing Microbrewery as a special exception use in the B-2 District. Sec. 6.5 B-3 Community Retail/Commercial District establishing Microbrewery as a special exception in the B-3 District. Sec 6.6 B-4, Mixed-Use Business District establishing Microbrewery as a special exception in the B-4 District. Sec. 6.7 I-1, Industrial/Research Park District establishing Microbrewery as a permitted use in the I-1 District. Sec. 9.3.13.1 Microbrewery establishing use standards for Microbreweries
10. Sec. 3.10.1 Applicability amending BAR review to exclude review of murals installed in accordance with Commission on Public Art guidelines. Sec. 7.5.5 Certificate of Appropriateness amending BAR review to exclude review of murals installed in accordance with Commission on Public Art guidelines. Sec. 18.1.110.1 Mural establishing the definition of mural.

**Key to Text Used in this Report:**

- A brief description of the proposed amendment is *written in italics* at the beginning of each section.
- Text highlighted in yellow and underlined is proposed language.
- Text in ~~red and with strikethrough~~ is existing text proposed to be eliminated.
- Text highlighted in green is text added by the Planning Commission.

## 1.) Section 3.1.3 Application Completeness and Accuracy

### 3.1.3 Application Completeness, ~~and Accuracy~~, and Substantial Amendment

- A. **Required Completeness and Accuracy.** An application will be considered complete if:

1. it is submitted in the required number and form;
2. it includes all mandatory information;
3. it is accompanied by the applicable fee; and
4. all information material to the application is accurate. This provision does not preclude the identification and correction of inaccurate or misleading information submitted by the applicant after an application is accepted.

**B. Acceptance for Processing.** Determination of application completeness shall be made within ten (10) business days of application filing except in the case of Variances and Appeals of Administrative Decisions, which shall be governed by the provisions of Sec. 3.13.5.C and 3.14.3.D. If an application is determined to be incomplete, the Land Development Official shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. The deficiencies must be addressed by the applicant in writing within thirty (30) days of the date of the deficiency notice provided by the Land Development Official. If all of the deficiencies are not addressed, the application shall be considered withdrawn. In the event an application is deemed withdrawn under this provision, the applicant shall be entitled to a refund of 90 percent of the application filing fee.

**C. Substantial changes after acceptance.** During the review of an application, the proposed use, density/intensity or layout is substantially changed such that 1) there is an increase of 5% or more of the total number of residential units proposed; or 2) there is an increase of 5% or more of total floor area for non-residential uses proposed; or 3) there is a re-arrangement/re-location of specified land uses, structures or land bays within the rezoning area; or, 4) there are additional modification requests included after acceptance. When an application is resubmitted for continued review, the Land Development Official shall survey the application within ten (10) business days of receipt and render a finding as to whether the submitted information is deemed a substantial change to the application. If the Land Development Official finds the application has been substantially changed:

1. The Land Development Official shall provide a written determination of their finding.
2. Regardless of the number of prior reviews, the application shall revert to a first submission review, and the Applicant shall request an extension of the application review period prescribed in this Section and such notice shall specify the required extension. The number of submissions shall remain unchanged and the application shall be subject to applicable review fees.
3. Upon receipt of the Land Development Official's written finding, the applicant will then have ten (10) business days to provide the Land Development Official with a written request to withdraw the additional

information. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline

## 2.) Section 3.1.7 Proof of Payment of Real Estate Taxes

### 3.1.7 Proof of Payment of Real Estate Taxes

Prior to initiation of an application by the owner of the subject property, the owner's agent, or any which the owner holds an ownership interest greater than 50 percent. for a Zoning Map Amendment, Zoning Concept Plan or Proffer Amendment, Special Exception, Variance, Site Plan, B.A.R. Permit, ~~or~~ Zoning Permit or prior to the issuance of final approval, applicant shall provide satisfactory evidence from the Director of Finance that any delinquent real estate taxes, nuisance charges, stormwater management utility fees due and any other charges that constitute a lien on the subject property, that are ~~and~~ owed to the Town which have been properly assessed against the property have been paid.

## 3.) Section 3.9.1 Certificates Required, Section 12.2.5 Monitoring and Enforcement

### 3.9.1 Certificates Required

Upon satisfactory completion of all work for which a Loudoun County Building Permit has been issued, including installation of all applicable improvements as required under the Leesburg Zoning Ordinance and Subdivision and Land Development Regulations, the applicant shall request zoning approval for an Occupancy Permit on such certificate as supplied by the County of Loudoun.

- A. In order to better guarantee the success of planted materials required to be installed as part of a site plan, between the months of December – February and June – August, unless conditions allow as determined by the Zoning Administrator, only landscape bonds calculated using the Town of Leesburg Landscape Bond Schedule will be accepted for Zoning approval on Occupancy Permit certificates supplied by Loudoun County.

### 12.2.5 Monitoring and Enforcement

- A. Responsibility.** The enforcement of the provisions of this article shall be the responsibility of the Zoning Administrator. Any violation of this article is a civil misdemeanor as described in Sec. 17.3.1.
- B. Occupancy Permits.** No occupancy permit shall be signed until the trees, plants and other screening materials required by this article have been installed to the satisfaction of the Zoning Administrator. In order to better guarantee the success of planted materials required to be installed as part of a site plan, between the months of December – February and June – August only landscape bonds calculated using the Town of Leesburg Landscape Bond Schedule will be accepted for Zoning approval on Occupancy Permit certificates supplied by Loudoun County.
- C. Bonds**
1. **Occupancy Permits.** If, between the months of December – February and June – August, or in the opinion of the Zoning Administrator, the weather prohibits the installation of the required trees, plants or screening materials at the time of occupancy, the applicant ~~may, at the applicant's option,~~ **shall** post a cash bond for the installation of the required plants and installation costs. The bond shall be supported by (1) an estimate prepared by a landscape contractor of the cost of installing such landscaping, which amount must be determined to be sufficient by the Land Development Official, and (2) a letter expressing the intent of the contractor to install the required plants. If the required landscaping is not installed within six (6) months, the bond shall be forfeited to the town to use for the planting of the required materials.

## 4.) Section 3.3.3 Initiation of Application, Section 3.1.9 Public Hearing Notices

### 3.3.3 Initiation of Application

Where the public necessity, convenience, general welfare and good zoning practice require it, amendments to the zoning boundaries or classification of property shown on the Zoning Map may be initiated (1) by resolution of the governing body or (2) by motion of the local planning commission.

Amendments may also be initiated by (3) petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore,

of the property which is the subject of the proposed zoning map amendment ~~The application must contain the consent of those with a legal ownership interest in the property under consideration.~~

- A.** Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 of the Code of Virginia, 1950, as amended, may apply to the Town Council for amendments to or variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by Sec. 3.1.9 Public Hearing Notices to any landowner subject to such existing proffered conditions. Further, the approval of such an amendment or variation by the Town Council shall not in itself cause the use of any other property to be determined a nonconforming use.
- B.** There shall be no such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 of the Code of Virginia, 1950, as amended, until after a public hearing before the Town Council advertised pursuant to the provisions of Sec. 3.1.9 Public Hearing Notices. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, the Town Council may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.
- C.** Once amended pursuant to this section, the proffered conditions shall continue to be an amendment to the Zoning Ordinance and may be enforced by the Zoning Administrator pursuant to the applicable provisions of this chapter.
- D.** Notwithstanding any other provision of law, no claim of any right derived from any condition proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 of the Code of Virginia, 1950, as amended, shall impair the right of any landowner subject to such a proffered condition to secure amendments to or variations of such proffered conditions.

### 3.1.9. Public Hearing Notices

#### .F. Written Notice.

1. Landowner Initiated Cases. In any case involving a zoning map amendment, special exception or variance which is initiated at the request of a landowner, such landowner shall be designated by the Planning Commission, Town Council or Board of Zoning Appeals as the appropriate and responsible party for sending any written notice required by this section and Section 15.2-2204 of the Code of Virginia, 1950, as amended.
2. Cases Involving 25 or Fewer Tax Map Parcels. For a zoning map amendment, special exception or variance that involves 25

or fewer tax map parcels, the Planning Commission, Town Council, Board of Zoning Appeals, or designee as appropriate shall provide written notice of the public hearing to:

- a. The owner or owners, their agent or the occupant, of each parcel involved and to the owner or owners, their agent or the occupant, of all abutting property and property immediately and diagonally across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth.
  - b. In addition, if any portion of property that is the subject of a proffered zoning map amendment and/or is within a planned development district, then written notice of a public hearing shall be provided to any landowner subject to such existing proffered conditions in accordance with § 15.2-2302 of the Code of Virginia, 1950, as amended. ~~shall also be given to such incorporated property owners' association within the planned development district that has members owning property within 2,000 feet of the subject property.~~
  - c. Notice shall be sent at least ten (10) calendar days before the hearing by registered or certified mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment records or current real estate tax assessment books.
  - d. If the hearing is continued, notice shall be re-mailed.
3. Cases Involving More Than 25 Tax Map Parcels. For a zoning map amendment, special exception or variance application that involves more than 25 tax map parcels, the Planning Commission, Town Council, Board of Zoning Appeals, or designee as appropriate shall provide written notice of the public hearing to:
- a. The owner, owners, or their agent of each parcel involved and to the owner or owners, or their agent of all abutting property and property immediately and diagonally across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth.
  - b. In addition, if any portion of property that is the subject of a proffered zoning map amendment and/or is within a planned development district, then written notice of a public hearing shall be provided to any landowner subject to such existing proffered conditions in accordance with § 15.2-2302 of the Code of Virginia, 1950, as amended. ~~shall also be given to such incorporated property owners' association within the planned development district that has members owning property within 2,000 feet of the subject property.~~
  - c. Notice shall be sent at least ten (10) calendar days before the hearing by first class mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment

records or current real estate tax assessment books. If the hearing is continued, notice shall be re-mailed.

## 5.) Section 15.4.14 Real Estate Signs (Leasing/Sale Information), Temporary

### 15.4.14 Real Estate Signs (Leasing/Sale Information), ~~Temporary~~

- a. ~~On-Site, Temporary~~ Real estate signs located on the premises as a wall or window sign, which shall not exceed twelve (12) square feet in area for single-family residential uses, or thirty-two (32) square feet in area for non-residential uses. Freestanding ~~temporary~~ real estate signs may not exceed four (4) square feet in area for single-family residential uses or twenty-four (24) square feet in area for non-residential uses. No real estate sign shall exceed a height of six (6) feet. One real estate sign shall be permitted per property, except for corner lots, which may have two (2) such signs. ~~Temporary~~ Real estate signs shall be removed within five (5) days of the settlement or full lease of the property.

## 6.) Section 17.1.1 Civil Violations and Penalties

### 17.1.1 Civil Violations and Penalties

- B All civil violations shall be punishable by a fine of \$200.00 for the initial violation and \$500.00 for each additional violation of the same ordinance section.

Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten (10) day period.

Any such civil penalty shall not be assessed during the pendency of the 30-day appeal period provided in accordance with §15.2-2311 of the Code of Virginia, 1950, as amended

## 7.) Establishing Sections 9.3.17.1 and 18.1.126.1 Regulations Pertaining to Outdoor Sales (Accessory to Retail Sales Uses)

### 18.1.126.1 Outdoor Sales (Accessory to Retail Sales Uses)

Clearly incidental and subordinate to the permitted principal retail sales use, the temporary display and sale of goods outside of the building where those same goods are also available for retail sale, ("sidewalk sales") exclusive of Wayside Stands, Christmas Tree Sales, Outdoor Retail Sales Events, Farmers Markets, or similar temporary uses regulated by Sec. 9.5 Temporary Uses.

### 18.1.127 Outdoor Storage Area

An unroofed area, or a roofed structure enclosed on not more than three sides, for the keeping of any goods, materials, or merchandise in the same place for more than twenty-four (24) hours. All outdoor storage shall be required to be enclosed by a fence, wall, landscaped berm, or other suitable and appropriate method. This definition shall not apply to Outdoor Sales (Accessory to Sales Uses) as defined in Sec 18.1.126.1.

### 9.3.17.1 Outdoor Sales (Accessory to Retail Sales Uses)

- A. Within the H-1 Overlay District and within the public right-of-way shall comply with the requirements of Town Code Chapter 30 Streets, Sidewalks and Other Public Places.
- B. Outside of the H-1 Overlay District the Outdoor Sales Area (Accessory to Retail Sales Uses) shall not be located within a public right-of-way, within required parking spaces, landscaping or travel aisles.
- C. The area of the Outdoor Sales Area (Accessory to Retail Sales Use) shall not exceed 25% of the gross floor area of the sales area of the principal retail sales use or 200 square feet whichever is less and shall not extend beyond the extent of the building, or part of the building, that houses the principal retail sales use unless otherwise approved by special exception.

### 9.3.17.4 2 Pad Site (Use Standards)

## 8.) Section 18.1.28 Cemetery

### 18.1.28 Cemetery

~~A graveyard or place for burial of the dead.~~ Any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in

a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

**9.) Establishing Microbrewery as a special exception use in the B-2, B-3 and B-4 Districts and a permitted use in the I-1 District**

**18.1.20.1 Brewpub**

~~An eating establishment brewery that sells 25% or more of its beer on site and no more than 75% of its beer off-site.~~ A restaurant that prepares handcrafted beer, and/or other malt beverages, as an accessory use intended for consumption on the premises or sold for consumption off premises in hand-capped or sealed containers in quantities up to one-half barrel (or 15.5 gallons), up to a maximum total of 5,000 barrels (31 gallons/barrel) per year. The area used for brewing, including bottling and kegging, shall not exceed 25 percent of the total floor area of the use.

**18.1.104.1 Microbrewery**

A facility for the production and packaging of beer, and/or other malt beverages, for distribution, retail or wholesale, on or off premises, with a maximum capacity of not more than 15,000 barrels (31 gallons/barrel) per year. A microbrewery may include, as an accessory use, a restaurant or bar not to exceed more than 25 percent of the total floor area of the use.

**Sec 9.2 Use Table**

Use Type	R E	R 1	R 2	R 4	R 6	R H D	R 8	R 1 6	R 2 2	O 1	B 1	B 2	B 3	B 4	I 1	Use Standard
P = Permitted by Right S = Special Exception Approval Required (Sec. 3.4)																
<b>Commercial Uses</b>																
Brewpub											P	P	P	P		Sec. 9.3.2.1
Brewpub with Silo											S	S	S	S		Sec. 9.3.2.1
<u>Microbrewery</u>												<u>S</u>	<u>S</u>	<u>S</u>	<u>P</u>	<u>Sec. 9.3.13.1</u>

**Sec. 6.4 B-2, Established Corridor Commercial District**

**6.4.2 Use Regulations**

B-2 Uses			
Use		Use Standards	Definition
Commercial Uses			
Brewpub	P	Sec.9.3.2.1	Sec. 18.1.20.1
Brewpub with Silo	S	Sec. 9.3.2.1	Sec. 18.1.20.1
Microbrewery	S	Sec. 9.3.13.1	Sec. 18.1.104.1

**Sec. 6.5 B-3, Community Retail/Commercial District**

**6.5.2 Use Regulations**

B-2 Uses			
Use		Use Standards	Definition
Commercial Uses			
Brewpub	P	Sec.9.3.2.1	Sec. 18.1.20.1
Brewpub with Silo	S	Sec. 9.3.2.1	Sec. 18.1.20.1
Microbrewery	S	Sec. 9.3.13.1	Sec. 18.1.104.1

**Sec. 6.6 B-4, Mixed-Use Business District**

**6.6.2 Use Regulations**

B-2 Uses			
Use		Use Standards	Definition
Commercial Uses			
Brewpub	P	Sec.9.3.2.1	Sec. 18.1.20.1
Brewpub with Silo	S	Sec. 9.3.2.1	Sec. 18.1.20.1
Microbrewery	S	Sec. 9.3.13.1	Sec. 18.1.104.1

**Sec. 6.7 I-1, Industrial/Research Park District**

**6.7.2 Use Regulations**

I-1 Uses			
Use		Use Standards	Definition
Commercial Uses			
Microbrewery	P	Sec. 9.3.13.1	Sec. 18.1.104.1

## Sec. 9.3 Use Standards

### 9.3.13.1 Microbrewery

- a. All brewing ingredients shall be stored indoors, in sealed containers, off of the floor, and in accordance with all applicable Health Department regulations.
- b. All exhaust from the brewing process shall be collected in a non-venting, stack condenser-type system and not vented directly into the atmosphere.
- c. Any spent grains intended for pick-up or delivery for use as feed shall be stored in sealed containers and kept indoors prior to pick-up/delivery.
- d. Any dumpsters where spent grains or other bi-product of the brewing process are disposed of shall be secured so as to block odors and prevent rodent infiltration.
- e. Storage silos may only be permitted by special exception.

## 10.) Sections 7.5.5 Certificate of Appropriateness and 3.10.1 Applicability and establishing Section 18.1.110.1 Murals

## Sec. 7.5 H-1, Overlay, Old and Historic District

### 7.5.5 Certificate of Appropriateness

- B. Exterior Modification of Existing Buildings and Structures.** Including, but not limited to: the removal, replacement, or addition of windows, doors, and chimneys; the alteration of porches and decks; the alteration or addition of commercial storefronts on existing buildings and changes to exterior paint and color. Exterior paint and color shall not include painted murals as reviewed by the Leesburg Commission on Public Art under the Public Art Policy in accordance with the Leesburg Public Art Guidelines. Not to include routine maintenance as defined in Sec. 7.5.9.A Routine Maintenance Exclusion.

## Sec. 3.10 Certificate of Appropriateness (H-1 Overlay: Old and Historic District)

### 3.10.1 Applicability

- B. Exterior Modification of Existing Buildings and Structures.** Including, but not limited to: the removal, replacement, or addition of windows, doors, and

chimneys; the alteration of porches and decks; the alteration or addition of commercial storefronts on existing buildings and changes to exterior paint and color. Exterior paint and color shall not include painted murals as reviewed by the Leesburg Commission on Public Art under the Public Art Policy in accordance with the Leesburg Public Art Guidelines. Not to include routine maintenance as defined in Sec. 7.5.9.A Routine Maintenance Exclusion.

## **Sec. 18.1 Terms Defined**

### **18.1.110.1 Mural**

A graphic affixed to the exterior of a public building or wall generally for the purposes of decoration or artistic expression, including but not limited to painting, fresco, or mosaic not interpreted by the Zoning Administrator to contain a commercial message.

PRESENTED: \_\_\_\_\_

ORDINANCE NO: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

AN ORDINANCE: AMENDING ARTICLE 3 REVIEW AND APPROVAL PROCEDURES, ARTICLE 6 NONRESIDENTIAL ZONING DISTRICTS, ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS, ARTICLE 9 USE REGULATIONS, ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING, ARTICLE 15 SIGNS, ARTICLE 17 ENFORCEMENT AND PENALTIES AND ARTICLE 18 DEFINITIONS.

The Town Council of Leesburg, Virginia, ordains:

SECTION I. That the following sections of the Zoning Ordinance of the Town of Leesburg, Virginia, 2003, as amended, be and the same are hereby amended to read as follows:

## 1.) Section 3.1.3 Application Completeness and Accuracy

### 3.1.3 Application Completeness, ~~and~~ Accuracy, and Substantial Amendment

- A. Required Completeness and Accuracy.** An application will be considered complete if:
1. it is submitted in the required number and form;
  2. it includes all mandatory information;
  3. it is accompanied by the applicable fee; and
  4. all information material to the application is accurate. This provision does not preclude the identification and correction of inaccurate or misleading information submitted by the applicant after an application is accepted.
- B. Acceptance for Processing.** Determination of application completeness shall be made within ten (10) business days of application filing except in the case of Variances and Appeals of Administrative Decisions, which shall be governed by the provisions of Sec. 3.13.5.C and 3.14.3.D. If an application is determined to be incomplete, the Land Development Official shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. The deficiencies must be addressed by the applicant in writing within thirty (30) days of the date of the deficiency notice provided by the Land Development Official. If all of the deficiencies are not addressed, the application shall be considered withdrawn. In the event an application is deemed withdrawn under this provision, the applicant shall be entitled to a refund of 90 percent of the application filing fee.

- C. Substantial changes after acceptance.** During the review of an application, the proposed use, density/intensity or layout is substantially changed such that 1) there is an increase of 5% or more of the total number of residential units proposed; or 2) there is an increase of 5% or more of total floor area for non-residential uses proposed; or 3) there is a re-arrangement/re-location of specified land uses, structures or land bays within the rezoning area; or, 4) there are additional modification requests included after acceptance. When an application is resubmitted for continued review, the Land Development Official shall survey the application within ten (10) business days of receipt and render a finding as to whether the submitted information is deemed a substantial change to the application. If the Land Development Official finds the application has been substantially changed:
1. The Land Development Official shall provide a written determination of their finding.
  2. Regardless of the number of prior reviews, the application shall revert to a first submission review, and the Applicant shall request an extension of the application review period prescribed in this Section and such notice shall specify the required extension. The number of submissions shall remain unchanged and the application shall be subject to applicable review fees.
  3. Upon receipt of the Land Development Official's written finding, the applicant will then have ten (10) business days to provide the Land Development Official with a written request to withdraw the additional information. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline

## 2.) Section 3.1.7 Proof of Payment of Real Estate Taxes

### 3.1.7 Proof of Payment of Real Estate Taxes

Prior to initiation of an application by the owner of the subject property, the owner's agent, or any which the owner holds an ownership interest greater than 50 percent, for a Zoning Map Amendment, Zoning Concept Plan or Proffer Amendment, Special Exception, Variance, Site Plan, B.A.R. Permit, ~~or~~ Zoning Permit or prior to the issuance of final approval, applicant shall provide satisfactory evidence from the Director of Finance that any delinquent real estate taxes, nuisance charges, stormwater management utility fees due and any other charges that constitute a lien on the subject property, that are and owed to the Town which have been properly assessed against the property have been paid.

### 3.) Section 3.9.1 Certificates Required, Section 12.2.5 Monitoring and Enforcement

#### 3.9.1 Certificates Required

Upon satisfactory completion of all work for which a Loudoun County Building Permit has been issued, including installation of all applicable improvements as required under the Leesburg Zoning Ordinance and Subdivision and Land Development Regulations, the applicant shall request zoning approval for an Occupancy Permit on such certificate as supplied by the County of Loudoun.

- A. In order to better guarantee the success of planted materials required to be installed as part of a site plan, between the months of December – February and June – August, unless conditions allow as determined by the Zoning Administrator, only landscape bonds calculated using the Town of Leesburg Landscape Bond Schedule will be accepted for Zoning approval on Occupancy Permit certificates supplied by Loudoun County.

#### 12.2.5 Monitoring and Enforcement

- A. **Responsibility.** The enforcement of the provisions of this article shall be the responsibility of the Zoning Administrator. Any violation of this article is a civil misdemeanor as described in Sec. 17.3.1.
- B. **Occupancy Permits.** No occupancy permit shall be signed until the trees, plants and other screening materials required by this article have been installed to the satisfaction of the Zoning Administrator. In order to better guarantee the success of planted materials required to be installed as part of a site plan, between the months of December – February and June – August only landscape bonds calculated using the Town of Leesburg Landscape Bond Schedule will be accepted for Zoning approval on Occupancy Permit certificates supplied by Loudoun County.
- C. **Bonds**
1. **Occupancy Permits.** If, between the months of December – February and June – August, or in the opinion of the Zoning Administrator, the weather prohibits the installation of the required trees, plants or screening materials at the time of occupancy, the applicant ~~may, at the applicant's option,~~ shall post a cash bond for the installation of the required plants and installation costs. The bond shall be supported by (1) an estimate prepared by a landscape contractor of the cost of installing such landscaping, which amount must be determined to be sufficient by the Land Development Official, and (2) a letter expressing the intent of the contractor to install the required plants. If the required landscaping is not installed

within six (6) months, the bond shall be forfeited to the town to use for the planting of the required materials.

#### **4.) Section 3.3.3 Initiation of Application, Section 3.1.9 Public Hearing Notices**

##### **3.3.3 Initiation of Application**

Where the public necessity, convenience, general welfare and good zoning practice require it, amendments to the zoning boundaries or classification of property shown on the Zoning Map may be initiated (1) by resolution of the governing body or (2) by motion of the local planning commission.

Amendments may also be initiated by (3) petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment ~~The application must contain the consent of those with a legal ownership interest in the property under consideration.~~

- A.** Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 of the Code of Virginia, 1950, as amended, may apply to the Town Council for amendments to or variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by Sec. 3.1.9 Public Hearing Notices to any landowner subject to such existing proffered conditions. Further, the approval of such an amendment or variation by the Town Council shall not in itself cause the use of any other property to be determined a nonconforming use.
- B.** There shall be no such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 of the Code of Virginia, 1950, as amended, until after a public hearing before the Town Council advertised pursuant to the provisions of Sec. 3.1.9 Public Hearing Notices. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, the Town Council may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.
- C.** Once amended pursuant to this section, the proffered conditions shall continue to be an amendment to the Zoning Ordinance and may be enforced by the Zoning Administrator pursuant to the applicable provisions of this chapter.
- D.** Notwithstanding any other provision of law, no claim of any right derived from any condition proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 of the Code of Virginia, 1950, as amended, shall impair the right

of any landowner subject to such a proffered condition to secure amendments to or variations of such proffered conditions.

### 3.1.9. Public Hearing Notices

#### .F. Written Notice.

1. Landowner Initiated Cases. In any case involving a zoning map amendment, special exception or variance which is initiated at the request of a landowner, such landowner shall be designated by the Planning Commission, Town Council or Board of Zoning Appeals as the appropriate and responsible party for sending any written notice required by this section and Section 15.2-2204 of the Code of Virginia, 1950, as amended.
2. Cases Involving 25 or Fewer Tax Map Parcels. For a zoning map amendment, special exception or variance that involves 25 or fewer tax map parcels, the Planning Commission, Town Council, Board of Zoning Appeals, or designee as appropriate shall provide written notice of the public hearing to:
  - a. The owner or owners, their agent or the occupant, of each parcel involved and to the owner or owners, their agent or the occupant, of all abutting property and property immediately and diagonally across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth.
  - b. In addition, if any portion of property that is the subject of a proffered zoning map amendment and/or is within a planned development district, then written notice of a public hearing shall be provided to any landowner subject to such existing proffered conditions in accordance with § 15.2-2302 of the Code of Virginia, 1950, as amended. ~~shall also be given to such incorporated property owners' association within the planned development district that has members owning property within 2,000 feet of the subject property.~~
  - c. Notice shall be sent at least ten (10) calendar days before the hearing by registered or certified mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment records or current real estate tax assessment books.
  - d. If the hearing is continued, notice shall be re-mailed.
3. Cases Involving More Than 25 Tax Map Parcels. For a zoning map amendment, special exception or variance application that involves more than 25 tax map parcels, the Planning Commission, Town Council, Board of Zoning Appeals, or designee as appropriate shall provide written notice of the public hearing to:
  - a. The owner, owners, or their agent of each parcel involved and to the owner or owners, or their agent of all abutting property and property

immediately and diagonally across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth.

- b. In addition, if any portion of property that is the subject of a **proffered** zoning map amendment **and/or** is within a planned development district, then written notice of a public hearing **shall be provided to any landowner subject to such existing proffered conditions in accordance with § 15.2-2302 of the Code of Virginia, 1950, as amended.** ~~shall also be given to such incorporated property owners' association within the planned development district that has members owning property within 2,000 feet of the subject property.~~
- c. Notice shall be sent at least ten (10) calendar days before the hearing by first class mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment records or current real estate tax assessment books. If the hearing is continued, notice shall be re-mailed.

## 5.) Section 15.4.14 Real Estate Signs (Leasing/Sale Information), Temporary

### 15.4.14 Real Estate Signs (Leasing/Sale Information), ~~Temporary~~

- a. **On-Site.** ~~Temporary~~ **R**Real estate signs located on the premises as a wall or window sign, which shall not exceed twelve (12) square feet in area for single-family residential uses, or thirty-two (32) square feet in area for non-residential uses. Freestanding ~~temporary~~ real estate signs may not exceed four (4) square feet in area for single-family residential uses or twenty-four (24) square feet in area for non-residential uses. No real estate sign shall exceed a height of six (6) feet. One real estate sign shall be permitted per property, except for corner lots, which may have two (2) such signs. ~~Temporary~~ **R**Real estate signs shall be removed within five (5) days of the settlement or full lease of the property.

## 6.) Section 17.1.1 Civil Violations and Penalties

### 17.1.1 Civil Violations and Penalties

- B** All civil violations shall be punishable by a fine of \$200.00 for the initial violation and \$500.00 for each additional violation of the same ordinance section.

Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten (10) day period.

Any such civil penalty shall not be assessed during the pendency of the 30-day appeal period provided in accordance with §15.2-2311 of the Code of Virginia, 1950, as amended

## **7.) Establishing Sections 9.3.17.1 and 18.1.126.1 Regulations Pertaining to Outdoor Sales (Accessory to Retail Sales Uses)**

### **18.1.126.1 Outdoor Sales (Accessory to Retail Sales Uses)**

Clearly incidental and subordinate to the permitted principal retail sales use, the temporary display and sale of goods outside of the building where those same goods are also available for retail sale, ("sidewalk sales") exclusive of Wayside Stands, Christmas Tree Sales, Outdoor Retail Sales Events, Farmers Markets, or similar temporary uses regulated by Sec. 9.5 Temporary Uses.

### **18.1.127 Outdoor Storage Area**

An unroofed area, or a roofed structure enclosed on not more than three sides, for the keeping of any goods, materials, or merchandise in the same place for more than twenty-four (24) hours. All outdoor storage shall be required to be enclosed by a fence, wall, landscaped berm, or other suitable and appropriate method. This definition shall not apply to Outdoor Sales (Accessory to Sales Uses) as defined in Sec 18.1.126.1.

### **9.3.17.1 Outdoor Sales (Accessory to Retail Sales Uses)**

- A.** Within the H-1 Overlay District and within the public right-of-way shall comply with the requirements of Town Code Chapter 30 Streets, Sidewalks and Other Public Places.
- B.** Outside of the H-1 Overlay District the Outdoor Sales Area (Accessory to Retail Sales Uses) shall not be located within a public right-of-way, within required parking spaces, landscaping or travel aisles.
- C.** The area of the Outdoor Sales Area (Accessory to Retail Sales Use) shall not exceed 25% of the gross floor area of the sales area of the principal retail sales use or 200 square feet whichever is less and shall not extend beyond the extent of the building, or part of the building, that houses the principal retail sales use unless otherwise approved by special exception.

### **9.3.17.4 2 Pad Site (Use Standards)**

## 8.) Section 18.1.28 Cemetery

### 18.1.28 Cemetery

~~A graveyard or place for burial of the dead.~~ Any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

## 9.) Establishing Microbrewery as a special exception use in the B-2, B-3 and B-4 Districts and a permitted use in the I-1 District

### 18.1.20.1 Brewpub

~~An eating establishment brewery that sells 25% or more of its beer on site and no more than 75% of its beer off-site.~~ A restaurant that prepares handcrafted beer, and/or other malt beverages, as an accessory use intended for consumption on the premises or sold for consumption off premises in hand-capped or sealed containers in quantities up to one-half barrel (or 15.5 gallons), up to a maximum total of 5,000 barrels (31 gallons/barrel) per year. The area used for brewing, including bottling and kegging, shall not exceed 25 percent of the total floor area of the use.

### 18.1.104.1 Microbrewery

A facility for the production and packaging of beer, and/or other malt beverages, for distribution, retail or wholesale, on or off premises, with a maximum capacity of not more than 15,000 barrels (31 gallons/barrel) per year. A microbrewery may include, as an accessory use, a restaurant or bar not to exceed more than 25 percent of the total floor area of the use.

## Sec 9.2 Use Table

Use Type	R E	R 1	R 2	R 4	R 6	R H D	R 8	R 1 6	R 2 2	O 1	B 1	B 2	B 3	B 4	I 1	Use Standard
P = Permitted by Right S = Special Exception Approval Required (Sec. 3.4)																
Commercial Uses																

Use Type	R E	R 1	R 2	R 4	R 6	R H D	R 8	R 1 6	R 2 2	O 1	B 1	B 2	B 3	B 4	I 1	Use Standard
Brewpub											P	P	P	P		Sec. 9.3.2.1
Brewpub with Silo											S	S	S	S		Sec. 9.3.2.1
<b>Microbrewery</b>												<b>S</b>	<b>S</b>	<b>S</b>	<b>P</b>	<b>Sec. 9.3.13.1</b>

## Sec. 6.4 B-2, Established Corridor Commercial District

### 6.4.2 Use Regulations

B-2 Uses			
Use		Use Standards	Definition
Commercial Uses			
Brewpub	P	Sec.9.3.2.1	Sec. 18.1.20.1
Brewpub with Silo	S	Sec. 9.3.2.1	Sec. 18.1.20.1
<b>Microbrewery</b>	<b>S</b>	<b>Sec. 9.3.13.1</b>	<b>Sec. 18.1.104.1</b>

## Sec. 6.5 B-3, Community Retail/Commercial District

### 6.5.2 Use Regulations

B-2 Uses			
Use		Use Standards	Definition
Commercial Uses			
Brewpub	P	Sec.9.3.2.1	Sec. 18.1.20.1
Brewpub with Silo	S	Sec. 9.3.2.1	Sec. 18.1.20.1
<b>Microbrewery</b>	<b>S</b>	<b>Sec. 9.3.13.1</b>	<b>Sec. 18.1.104.1</b>

## Sec. 6.6 B-4, Mixed-Use Business District

### 6.6.2 Use Regulations

B-2 Uses			
Use		Use Standards	Definition
Commercial Uses			
Brewpub	P	Sec.9.3.2.1	Sec. 18.1.20.1
Brewpub with Silo	S	Sec. 9.3.2.1	Sec. 18.1.20.1
<b>Microbrewery</b>	<b>S</b>	<b>Sec. 9.3.13.1</b>	<b>Sec. 18.1.104.1</b>

## Sec. 6.7 I-1, Industrial/Research Park District

### 6.7.2 Use Regulations

I-1 Uses			
Use		Use Standards	Definition
Commercial Uses			
Microbrewery	P	Sec. 9.3.13.1	Sec. 18.1.104.1

## Sec. 9.3 Use Standards

### 9.3.13.1 Microbrewery

- a. All brewing ingredients shall be stored indoors, in sealed containers, off of the floor, and in accordance with all applicable Health Department regulations.
- b. All exhaust from the brewing process shall be collected in a non-venting, stack condenser-type system and not vented directly into the atmosphere.
- c. Any spent grains intended for pick-up or delivery for use as feed shall be stored in sealed containers and kept indoors prior to pick-up/delivery.
- d. Any dumpsters where spent grains or other bi-product of the brewing process are disposed of shall be secured so as to block odors and prevent rodent infiltration.
- e. Storage silos may only be permitted by special exception.

**10.) Sections 7.5.5 Certificate of Appropriateness and 3.10.1 Applicability and establishing Section 18.1.110.1 Murals**

## Sec. 7.5 H-1, Overlay, Old and Historic District

### 7.5.5 Certificate of Appropriateness

- B. Exterior Modification of Existing Buildings and Structures.** Including, but not limited to: the removal, replacement, or addition of windows, doors, and chimneys; the alteration of porches and decks; the alteration or addition of commercial storefronts on existing buildings and changes to exterior paint and color. Exterior paint and color shall not include painted murals as reviewed by the Leesburg Commission on Public Art under the Public Art Policy in accordance with the Leesburg Public Art Guidelines. Not to include routine maintenance as defined in Sec. 7.5.9.A Routine Maintenance Exclusion.

## Sec. 3.10 Certificate of Appropriateness (H-1 Overlay: Old and Historic District)

### 3.10.1 Applicability

- B. Exterior Modification of Existing Buildings and Structures.** Including, but not limited to: the removal, replacement, or addition of windows, doors, and chimneys; the alteration of porches and decks; the alteration or addition of commercial storefronts on existing buildings and changes to exterior paint and color. Exterior paint and color shall not include painted murals as reviewed by the Leesburg Commission on Public Art under the Public Art Policy in accordance with the Leesburg Public Art Guidelines. Not to include routine maintenance as defined in Sec. 7.5.9.A Routine Maintenance Exclusion.

## Sec. 18.1 Terms Defined

### 18.1.110.1 Mural

A graphic affixed to the exterior of a public building or wall generally for the purposes of decoration or artistic expression, including but not limited to painting, fresco, or mosaic not interpreted by the Zoning Administrator to contain a commercial message.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council