



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2020-223, **Version:** 1

An ordinance amending Section 7.16.110 of the Metropolitan Code to provide a mechanism for retail liquor establishments to obtain an exemption from the minimum distance requirements for obtaining a certificate of compliance upon approval of the Metropolitan Council by resolution.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 7.16.110 of the Metropolitan Code is hereby amended by adding the following new subsection H.:

H. Exemption by resolution after public hearing.

1. Notwithstanding any other provision of this section to the contrary, any retail liquor store shall be exempt from the minimum distance requirements set forth in subsection A. of the section upon the adoption of a resolution, after a public hearing, by the metropolitan council receiving twenty-one affirmative votes approving the exemption of the retail liquor store from said minimum distance requirements. In determining whether to adopt such a resolution, the Council shall take into consideration (a) the unique characteristics of the property at issue, (b) whether the granting of an exemption will be injurious to other property or improvements in the area, and (c) whether the granting of an exemption will be detrimental to the public welfare. The metropolitan clerk shall notify the Department of Law in writing upon the adoption of a resolution approving an exemption from the minimum distance requirements.

2. The applicant shall notify the councilmember for the district in which the applicant establishment is located in writing within five business days from the date the application is filed requesting the waiver of distance requirements.

3. The public hearing required by this subsection shall be conducted by the council at a regular meeting of the council. Public notification of the hearing shall be conducted pursuant to the public notification requirements for amendments to the official zoning map in accordance with Article XV of Chapter 17.40 of the metropolitan code, provided that notice by mail shall be sent to all property owners within six hundred feet of the establishment seeking the exemption from the minimum distance requirements not later than fourteen days prior to the scheduled public hearing on the resolution. Further, a public notice sign meeting the general requirements of Section 17.40.730 of the metropolitan code shall be posted on the property of the applicant seeking the exemption from the minimum distance requirements at least fourteen days prior to the scheduled public hearing. The costs for the public notification requirements shall be paid by the applicant. The applicant shall coordinate the scheduling of the public hearing with the metropolitan clerk's office prior to the filing of the resolution for purposes of including the date and time of the public hearing in the public notice to be mailed.

Section 2. Be it further enacted, that this Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

This ordinance, as amended, amends section 7.16.110 of the Metro Code to provide a mechanism for retail liquor establishments to obtain an exemption from the minimum distance requirements for obtaining a certificate of compliance upon approval of the Council by resolution. Although retail liquor stores are primarily regulated under state law, T.C.A. § 57-3-208 requires liquor store applicants to obtain a certificate of compliance signed by the mayor stating that the applicant hasn't been convicted of a felony within the past ten years and that the store complies with local location restrictions. Section 7.16.110 of the Metro Code generally prohibits liquor stores from being located within 50 yards of a private residence or a branch of the Nashville Public Library on the same side of the street as the proposed retail store, within 100 yards of any place of worship, or within 200 yards of a school or college campus.

This ordinance would allow a waiver from these location restrictions upon approval of a Council resolution after a public hearing in the same manner that waivers of the beer permit distance requirements for restaurants are approved. The Council is to take into consideration (a) the unique characteristics of the property at issue, (b) whether the granting of an exemption will be injurious to other property or improvements in the area, and (c) whether the granting of an exemption will be detrimental to the public welfare. Notice of the public hearing must be sent by mail to all property owners within 600 feet of the proposed liquor store seeking the exemption from the minimum distance requirements not later than 14 days prior to the scheduled public hearing on the resolution. Further, posting of a public notice sign meeting the general requirements of Section 17.40.730 of the Metropolitan Code must be posted on the property at least 14 days prior to the scheduled public hearing. The costs for the public notification requirements are to be paid by the applicant. The applicant would coordinate the scheduling of the public hearing with the metropolitan clerk's office prior to the filing of the resolution and notify the district Councilmember within five days of submitting the request for a distance waiver.

The Council Office would note that while Metro has had a mechanism for providing a waiver of beer distance requirements for many years, court decisions have called into question whether allowing exceptions to a distance requirement could compromise enforcement of the distance requirements against future applicants. The Tennessee Court of Appeals has stated "discriminatory enforcement of a distance rule, once established, prohibits reliance upon the rule as a valid ground for the denial of a beer permit." *Boyd's Creek Enterprises, LLC v. Sevier Cty.*, 362 S.W.3d 600, 604 (Tenn. Ct. App. 2010).