

The Texas Alcoholic Beverage Code expressly pre-empts the authority of cities to adopt regulations regarding the sale of alcoholic beverages; however, a city's zoning ordinance is generally not pre-empted by the Code. Thus, just as with other land uses, the City has authority to adopt reasonable zoning regulations to authorize the sale of alcoholic beverages in appropriate zoning districts where the use will be compatible with surrounding uses and consistent with the City's comprehensive land use plan. The calling of the election typically triggers this action by the City regarding appropriate zoning districts for alcoholic beverage sales. Due to the absence of an Ordinance adopted in 2003 when the local option election for off-premise sale of beer and wine was passed, staff is proposing the following amendments:

1. The sale of alcoholic beverages for on-premises consumption, the sale of alcoholic beverages for off-premises consumption, and the sale of beer and wine for off-premises consumption in various zoning districts, including the C-1, C1-A, C-2, LI and HI Zoning Districts, and other Districts determined appropriate
2. Use Regulations
 - a. Specific Use Permit regulations
 - b. Administrative regulations, including distance measurements
 - c. Permit regulations
 - d. Other appropriate regulations

Sale of alcoholic beverages—Proposed Regulations

(a) Definitions. For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Alcoholic beverage. Alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

Applicant. A person who submits or files an original or renewal application with the city, the county judge, or the Texas Alcoholic Beverage Commission for a license or permit.

Bar/tavern. An establishment that derives 75 percent or more of the establishment's gross revenue from the on-premises sale of alcoholic beverages.

Beer. A malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

Commission. The Texas Alcoholic Beverage Commission.

Licensee. A person who is the holder of a license provided in the Texas Alcoholic Beverage Code, as amended, or any agent, servant, or employee of that person.

Liquor. Any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor,

wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero or barreteago, is prima facie evidence that it is liquor.

Liquor (package) store. A business that sells alcoholic beverages, including liquor as defined herein, for consumption off-premises. For the purposes of this section, the term “liquor store” shall exclude grocery stores or convenience stores in which beer and/or wine is offered for sale as a minor part of an overall larger inventory of goods. It shall also exclude a restaurant that is otherwise operating in accordance with its approved liquor license and all other provisions of this section.

Mixed beverage. One or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer’s permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

Off-premises. Refers to the site of consumption rather than the site of sale and refers to the sale of alcoholic beverages for off-premises consumption.

On-premises. Refers to the site of consumption rather than the site of sale and refers to the sale of alcoholic beverages for on-premises consumption.

Permittee. A person who is the holder of a permit provided for in the Texas Alcoholic Beverage Code, as amended, or an agent, servant, or employee of that person.

Person. A natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

Premises. The grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

Private school. A school maintained by private individuals, religious organizations or corporations, not at public expense, and open only to pupils selected and admitted by the proprietors or governors, or to pupils of a certain religion or possessing certain qualifications, and generally supported, in part at least, by tuition, fees, or charges.

Public school. A school established under the laws of the state (and usually regulated in matters of detail by local authorities), in the various districts, counties, or cities, maintained at the public expense by taxation, and open, usually without charge, to the children of all the residents of the city, city or other district. Schools belonging to the public and established and conducted under public authority.

Restaurant or cafe. An establishment building or portion of a building, where the primary business is the on-premises sale of prepared food, with adequate facilities for the preparation of

the food to be sold, the adequacy of said kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered. Said establishment may serve alcohol with a valid Texas Alcoholic Beverage Commission License as long as the establishment derives less than 75 percent of its gross revenues from alcohol sales and includes all indoor and outdoor seating areas, kitchen, bar area, restrooms and lobby.

Wine and vinous liquor. The product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.

(b) Prohibited sales. The sale of alcoholic beverages is not allowed in areas zoned for residential use, including but not limited to PD planned development districts approved exclusively for residential uses. Except as otherwise specifically allowed by the Texas Alcoholic Beverage Commission or as otherwise provided herein, no alcoholic beverages may be sold within three hundred feet (300') of a church, public school or private school, or public hospital. Measurement of such distance shall be in accordance with the terms of this section and the Texas Alcoholic Beverage Code, as amended.

(c) Permits.

(1) Fees established. The annual permit fee for issuing a license or permit to operate, conduct, and maintain a business establishment selling alcoholic beverages in the city is:

(A) For stores with beer and wine sales for off-premises consumption only, and, except as specifically exempted herein, for locations with mixed beverage permits, the permit holder shall pay a fee equal to one-half (1/2) of the state fee for such license and permit in effect at the time of the initial permit application or renewal for the annual permit, as applicable. Such fee shall be in addition to any applicable fee for a food and beverage certificate.

(B) Exemption. A mixed beverage permit is exempt from the payment of the fee imposed by this subsection during the three-year period following the issuance of the permit as specified in the Texas Alcoholic Beverage Code.

(C) Payment of fees.

(i) Term. The permit fee shall be collected when the application for such permit is submitted. This permit shall be valid only for one year (365 days) from the date of its issuance, and if issued during the calendar year, the fee shall be collected in full without reduction and shall be renewed by the applicant annually thereafter during the time that such applicant is engaged in the business of selling alcoholic beverages within the city. Permit applications shall be filed with the planning and zoning coordinator.

(d) Zoning compliance required. No permit shall be granted under the terms of this section unless the location at which the business is sought to be established and maintained is a permitted use under the comprehensive zoning ordinance of the city as of or after the effective date thereof.

(e) Business hours. It is unlawful for any person to sell, offer for sale, or deliver any beer, wine, or liquor, except within those hours as prescribed in the Texas Alcoholic Beverage Code, as amended, including but not limited to chapter 105 of the Texas Alcoholic Beverage Code, as amended.

(f) Specific use permit (SUP).

(1) SUP required. Except as specifically provided herein, no persons shall manufacture, sell, offer for sale, distribute or engage in any other activity for which a permit or license is required by the Texas Alcoholic Beverage Code within the city without first obtaining a specific use permit to do so from the city. All of the provisions of the specific use permit procedure shall apply as per the city's comprehensive zoning ordinance, as amended. In the event of a conflict between the general regulations governing specific use permits and the provisions contained in this section, the provisions of this section shall control.

(2) SUP application. In order for a person to engage in the sale of alcoholic beverages, a formal application for a SUP shall be filed with the planning and zoning coordinator with the appropriate fee established by the city. The planning and zoning coordinator shall process the application by submitting to the planning and zoning commission for their review and recommendation to the city council for approval or disapproval. The city council will consider and approve or disapprove the granting of a SUP for the sale of alcoholic beverages.

(3) Compliance required. Compliance with city codes and ordinances is required for on-premises sale and consumption of alcoholic beverages as follows:

(A) Alcoholic beverage sales for off-premises consumption (beer & wine only). A building utilized for the retail sale of beer and/or wine for off-premises consumption only shall be inspected and shall comply with all applicable local regulations, including but not limited to building codes, fire codes, plumbing codes, electrical codes and ordinances.

(B) Alcoholic beverage sales for off-premises consumption - liquor (package) store. The following provisions shall be required for liquor (package) stores:

(i) A liquor (package) store shall not have walk-up window access, and shall not have drive-through or drive-up access.

(ii) A liquor (package) store shall operate in premises that are not physically completely separate from any other business and the exterior design of the store shall show evidence of coordination with contextual influences of neighboring properties in regard to building setbacks, orientation, and relationship of structures to each other and to the street. The layout of the site shall respect and build upon the arrangement of buildings, open spaces and landscape elements of adjacent sites.

(C) Alcoholic beverage sales for on-premises consumption in conjunction with a restaurant use. A restaurant utilized for the retail sale of alcoholic beverages for on-premises consumption shall be inspected and shall comply with all

applicable local regulations, including but not limited to building codes, fire codes, plumbing codes, electrical codes and ordinances.

(D) Alcoholic beverages for on-premises consumption - bar or tavern. A bar or tavern shall be inspected and shall comply with all applicable local regulations, including but not limited to building codes, fire codes, plumbing codes, electrical codes and ordinances. The following additional provisions shall be required for bars or taverns:

(i) A bar or tavern shall not be located closer than 300 feet to any property used exclusively for religious or educational purposes. The method of measurement shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. A hotel shall not be considered a residential use for the purpose of this section.

(ii) The city council shall have full discretion to approve or deny an SUP application for a bar or tavern and may impose any reasonable condition deemed necessary by the council, including SUP expiration provisions, business name and signage, and change of ownership requirements to ensure community health, safety and welfare in approving a bar or tavern.

(E) Procedures prior to issuance of permit. Before any certification from the Texas Alcoholic Beverage Commission or other documentation of approval is signed by the city representative, such certificate or documentation shall be submitted to the planning and zoning coordinator to assure:

(i) That the application complies with all provisions of this and all applicable ordinances;

(ii) That a SUP application is officially filed with the payment of applicable fees;

(iii) That proof is submitted that a representative of the Texas Alcoholic Beverage Commission has approved the submittal of an application for license; and

(iv) That the chief of police/director of public safety has reviewed the SUP application.

(4) Additional development conditions/waivers. The council may attach additional development conditions, or grant specific waivers to applicable code requirements, to the specific use permit that the council, in its discretion, determines are appropriate for buffering, safety, security, and compatibility for and to adjacent properties.

(5) Criteria and processing of SUP. The following general conditions apply to all specific use permits (SUP) allowing the sale of any alcoholic beverages:

(A) The applicant must design and operate the establishment for which an SUP is sought in such a manner that the proposed use or actual use of the

premises shall not substantially increase traffic congestion or create overcrowding in the establishment or in the immediately surrounding area.

(B) The applicant must comply with applicable licensing and permit provisions of the Texas Alcoholic Beverage Code, as amended from the date of the issuance of the SUP by the city council.

(C) As required, the applicant shall bear the burden of showing that the establishment does not exceed the limitation on gross receipts from the sales of alcoholic beverages applicable to its license and SUP. The applicant shall maintain accounting records of the sources of its gross revenue and allow the city to inspect such records during reasonable business hours.

(D) The applicant shall demonstrate that the granting of the SUP would not be detrimental to the public health, safety and/or welfare of the citizens of the city.

(E) The applicant shall, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The applicant shall consult with the chief of police/director of public safety who shall act in an advisory capacity to determine the number of qualified employees necessary to meet his/her obligation hereunder.

(F) The establishment shall provide adequate parking spaces to accommodate its employees and patrons. Provided however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.

(G) The applicant shall operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment and in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners and in compliance with all applicable city ordinances and state laws.

(H) Unless specified as a condition of approval by the city council for an SUP, a specific use permit issued for any alcoholic beverage sales under this section shall automatically expire upon a change in use of the property, change of ownership to the property and/or business and/or upon the revocation, termination or expiration of the certificate of occupancy.

(I) All specific use permits issued under this section shall be further conditioned that the same may be discontinued if the use for which the SUP was granted ceases to be operated at the permitted location for a minimum period of six (6) continuous months, or as otherwise provided for the revocation of SUPs, as outlined in the comprehensive zoning ordinance, as amended.

(6) Denial of SUP. The city council may deny an SUP if it affirmatively determines that the issuance of such SUP:

(A) Is incompatible with the surrounding uses or property; or

(B) Is detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the city and its inhabitants; or

(C) Is found to be in noncompliance with any city ordinances, including without limitation failure to comply with any one or more of the provisions of this section.

(g) Methods for determining distance measurement.

(1) Church or public hospital. The measurement of the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.

(2) Public or private school. The measurement of distance between the place of business where alcoholic beverages are sold and a public or private school shall be:

(A) In a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or

(B) If the permit or license holder is located on or above the fifth (5th) story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(h) Exception to distance requirements. Upon receipt of a request, the planning and zoning commission will consider and make a recommendation to the city council to consider an exception to reduce the distance requirement contained in this section and the city council shall take final action on such recommendation based upon the criteria specified herein below:

(1) A planning and zoning commission recommendation to reduce the distance requirement and final action of the city council to allow such reduction shall be based upon the following. The city council may allow an exception upon proof by the applicant that he/she meets the following criteria: documented approval from surrounding property owners within the distance requirements for which the exception is sought; proof of preliminary approval from the Texas Alcoholic Beverage Commission; a determination by council that the enforcement of the regulations in a particular instance is not in the best interest of the public; and after consideration of the health, safety and welfare of the public and the equities of such regulation, the council determines that the exception is in the best interest of the community.

(2) The city council shall have the authority to grant an exception under this section for temporary special events after review and recommendation by the planning and zoning commission. For such events, both the planning and zoning commission and the city council shall consider: hours of the event, impact on surrounding area; estimated number of participants; personal and property security; duration and other health, safety and welfare considerations as deemed appropriate and necessary by the city council.

(3) No exception may be granted hereunder except after a public hearing for which notice has been given to owners of real property within 300 feet (or 1,000 feet if applicable) of the location of the proposed business or of the proposed location for temporary special event. Such notice must be given not less than ten (10) days before the date set for hearing.

(i) Specific use permits and applications in existence as of October 11, 2016. Any existing SUP for the sale of alcoholic beverages for on-premises consumption for which the SUP was either issued, or for which an application was received, prior to October 11, 2016 and said SUP has not expired, or said application has not been approved by the city council, said establishment shall not sell alcoholic beverages such that the gross receipts from alcohol sales exceed 50 percent all gross receipts from all sales by the establishment. A new SUP must be granted by the city council in compliance with the requirements of this section in order to increase any alcohol-to-food-sales ratio for on-premises alcohol sales for any existing establishment and for any unapproved SUP where an active application has been submitted.

(j) Possession or consumption prohibited in certain areas.

(1) Athletic fields, parks, or public areas. It shall be unlawful for any person to possess an open alcoholic beverage container or consume any alcoholic beverage in any city-owned or controlled athletic field and all parking lots servicing such athletic fields except as specifically approved by the city council, ordinance, or city council approved policy which governs such conduct. It shall be unlawful for any person to possess an open alcoholic beverage container or consume any alcoholic beverage, as defined by the Texas Alcoholic Beverage Code in any city-owned or controlled park, including reserved area(s) within any park, playground, recreation center or any other area in the city-owned or used by the city and devoted to active or passive recreation, including all planted expressways, all parking lots servicing parks and public areas, parkways, triangles, and traffic islands maintained by the city except as specifically approved by the city council, ordinance, or city council approved policy which governs such conduct.

(2) Schools and school activities. It shall be unlawful for any person to possess an open container or consume any alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a facility that is a public or private school, including a parochial school, that provides all or any part of pre-kindergarten through twelfth grade in the buildings or on the grounds of any public school in the city limits or at any school-related activity conducted within the city limits.