

# MEMO

**FOR:** Farmers Branch City Council  
**FROM:** Peter G. Smith, City Attorney  
**DATE:** July 28, 2016  
**SUBJECT:** Local Regulation of Establishments Which Sale or Serve Alcoholic Beverages for On-Premise Consumption,

---

Pursuant to the request of the City Council we provide the following memorandum which contains background information and options for the City Council to consider in lessening the current regulations or enacting new regulations regarding establishments that serve alcoholic beverages for on-site consumption. In particular the City Council expressed interest in allowing “neighborhood bars”. This memorandum is only intended to provide background information and list of possible options which are not all inclusive so the city council can conduct a specific work session to discuss the matter at a later date. The work session of a city council meeting may not allow sufficient time for City Council to discuss, ask questions and provide direction to city staff.

## **Background**

In 1972 the City prohibited the sale of alcoholic beverages in all zoning districts except the Light Industrial (“LI”) districts (which required an SUP) and Heavy Industrial (“HI”) districts (where sales were permitted by right). Presently, there are is no HI zoning district in the City. Subsequent to that time period the city has had two local option elections regarding the sale of alcoholic beverages and enacted several ordinance regarding the same.

In summary as result of the two local option elections approved by the voters of Farmers Branch the City is wet for the retail sale of beer and wine for off premise consumption; and for establishments that sell mixed beverages, beer and wine for on premise consumption (essentially bars since no food service is required). However the regulations and ordinances adopted prior to the local option elections restrict and limit the locations of such establishments.

## ***Where alcoholic beverages may be sold in Farmers Branch***

Before 1986, Farmers Branch was completely dry. The City passed its first local option election in 1986.

## **1986 Local Option Election:**

**Generally:** The City conducted a local option election on October 25, 1986, in which voters approved a proposition authorizing mixed beverage sales for on-premises consumption. Approval of such a proposition authorizes the sale of mixed beverages, beer, and wine for on-premises consumption. The ballot proposition was **not** limited to sales in restaurants with a food and

beverage. This proposition allowed establishments which may be commonly referred to as bars since no food service is required.

However, the City, through the Comprehensive Zoning Ordinance (“CZO”), limits the location of the sale of alcoholic beverages for on-premises consumption to “qualifying restaurants” and “private clubs.”

“Qualifying Restaurant,” as defined in CZO Sec. 8-400-1, means “an existing or proposed eating establishment whose gross sale of food and non-alcoholic beverages shall constitute at least 60% of the establishment’s combined gross food, non-alcoholic, and alcoholic beverages for each quarterly reporting period”. “Restaurant” in CZO Sec 8-400 means a Qualifying Restaurant where the operator is the holder of a mixed beverage permit or a private club permit.

As a general premise, regardless of whether or not the sale of alcoholic beverages has been approved, restaurants without drive-in or drive through windows are allowed by right only in the Local Retail 1 (“LR-1”) and Local Retail 2 (“LR-2”) districts and upon approval of an SUP in the following zoning districts:

- Office (“O”)
- Commercial (“C”)
- Light Industrial (“LI”)
- Heavy Industrial (“HI”)
- Planned Development (“PD”)

A specific use permit for a Qualifying Restaurant (i.e. allowed to serve alcohol) may be issued only in an area zoned:

- Office (“O”)
- Local Retail 1 (“LR-1”)
- Local Retail 2 (“LR-2”);
- Commercial (“C”)
- Light Industrial (“LI”)
- Heavy Industrial (“HI”)
- Planned Development (“PD”)
- “any other zoning district where restaurants are a permitted use...” (Presently, there are no other zoning districts other than the ones listed above where restaurants are permitted by either by right or by SUP. City would need to review specific PD ordinances to determine whether restaurant use is allowed in the particular PD.)

No SUP can be issued for a Qualifying Restaurant located within 300 feet of a:

- detached single family residence
- single family zoned district
- church
- school (public or denominational)

- hospital, or
- developed city park (which parameters are to be determined by the city council).

Measurement of 300 foot rule is to be in accordance with state law (but CZO does not cite the applicable state law). The 300 foot rule does not apply to a Planned Development zoning district.

The 1986 Local Option Election did not authorize the sale of any alcoholic beverages for off-premises consumption.

### **May 2014 Local Option Election**

Farmers Branch voters approved the sale of beer and wine for off-premises consumption in May 2014. Prior to the election, it was clarified that the City had since 1972 prohibited the sale of alcoholic beverages in all zoning districts except the Light Industrial (“LI”) districts (which required an SUP) and Heavy Industrial (“HI”) districts (where sales were permitted by right). Presently, there are no HI zoning districts in the City.

Subsequent to the May 2014 election, the City Council approved Ordinance No. 3283 establishing several beer and wine overlay districts in which retail establishments may sell beer and wine for off-premises consumption by right. The original restrictions regarding the LI and HI districts were, however, preserved.

Though the 300 foot distance rule is included in the CZO relating to SUP’s for qualifying restaurants, the City has not done the same for beer and wine off-premise retailers located in the beer and wine overlay zones.

### **TABC Chart**

For informational purposes, below is how the TABC presently shows the City of Farmers Branch as far as its wet/dry status. As you can see, for on premise mixed beverage sales, it is showing the City as “all wet”. In other words, no new election would be required to allow establishments in the City that are not restaurants to serve mixed drinks, beer and wine for on premise consumption. Only a change in the City’s zoning regulations would be required to loosen up the current regulations requiring an SUP.

Dallas County: Farmers Branch W: B-Off, W-Off; PW: MB

**Definitions:**

**Wet (W):** The term "wet" when used with respect to a particular type of beverage sale respect in a given jurisdiction means that the entire jurisdiction, every square inch of it, is wet for that type of sale.

**Partly Wet (PW):** The term "partly wet" means that there are one or more parts of the jurisdiction in which a particular type of beverage sale is legal but there are other parts in that jurisdiction where that type of sale is not legal.

**Dry:** The term "dry" means the jurisdiction is dry throughout. No type of alcoholic beverage sales is permitted.

**B-On:** Sale of Beer for on premises consumption authorized. Not used to describe areas where sales for on-premises consumption can only take place under the authority of a MB or RM.

**B-Off:** Sale of Beer for off-premises consumption authorized

**W-On:** Sale of Wine for on-premises consumption authorized. Not used to describe areas where sales for on-premises consumption can only take place under the authority of a MB or RM.

**W-Off:** Sale of wine for off-premises consumption authorized.

**DS-Off:** Sale of distilled spirits for off-premises consumption authorized.

**MB:** Sale of mixed beverages authorized. Not used to describe areas where sale of mixed beverages only authorized in restaurants.

**RM:** Sale of mixed beverages authorized but only in restaurants.

**Types of Permits:**

Below is a chart showing various types of permits/licenses that could be issued in Farmers Branch and a brief summary of where establishments holding those permits/licenses may locate. Note that this table is limited to retail-type permits and does not include warehouse, manufacturing, or distilling permits/licenses:

<b>Temporary Permits</b>	
<b>Caterer's Permit (CB):</b>	Permit authorizes Mixed Beverage Permittee to sell mixed beverages on a temporary place other than the premises for which the Mixed Beverage Permit is issued but only in "wet" areas for the sale of mixed beverages
<b>Daily Temporary Mixed Beverage Permit (TB)</b>	Permit authorizes the sale of mixed beverages for consumption on the premises for which the permit is issued and may be issued to the holder of a Mixed Beverage Permit for a picnic, celebration, or similar event. May also be issued to a political party or political association supporting a candidate for public office or a proposed amendment to the Texas Constitution or other ballot measure, to an organization formed for a specific charitable or civic purpose, to a fraternal organization in existence for over five years with a regular membership, or to a religious organization (organization limited to 10 temporary permits per calendar year)
<b>Off-Premise Permits/Licenses</b>	
<b>Beer Retailer's Off-Premise License (BF)</b>	Restricted to Beer and Wine Overlay District by right; no on-premise consumption; sell beer to-go; can also sell wine 17% or less alcohol content
<b>Wine &amp; Beer Retailer's Off-Premise Permit (BQ)</b>	Restricted to Beer and Wine Overlay District by right; no on-premise consumption except during authorized tasting; sell beer, ale, malt liquor, and wine up to 17% alcohol content
<b>Wine Only Package Store Permit (Q)</b>	Restricted to Beer and Wine Overlay District by right; requires additional permit to hold tastings (Package Store Testing Permit – PS); no beer tasting; no on-premise consumption except for authorized tastings; sell only wine up to 24% alcohol content, malt liquor, and ale; can sell beer if also holding a BF.
<b>On-Premise Permits/Licenses</b>	
<b>Beer Retailer's On-Premises License (BE)</b>	Allows sale of beer only for on-premise or off-premise consumption; because it allows on-premise consumption, CZO requires SUP and be conducted in association with a qualifying restaurants
<b>Brewpub License (BP)</b>	Must also hold a BG, MB, RM, or BE license/permit; because it allows on-premises consumption, CZO will require SUP and be conducted in qualifying restaurant
<b>Wine &amp; Beer Retailer's Permit (BG)<sup>1</sup></b>	May sell beer, ale, malt liquor, traditional port and sherry, wine not to exceed 14%; because it allows both off-premise and on-premise consumption, CZO will require SUP and be conducted in qualifying restaurant
<b>Private Club Permits (N, NB, NE)</b>	Requires SUP for any new Private Clubs. Private Clubs existing as of 10/6/86 are grandfathered, but must comply with 60% food service requirement under CZO §8-400-18.
<b>Mixed Beverage Permit (MB) and Mixed Beverage Permit with Food and Beverage (RM)</b>	Even with only an MB, CZO §8-400-10 requires SUP for service in qualifying restaurant and 60% or greater in sales of food and non-alcoholic beverages; may sell distilled spirits, beer, malt liquor, ale and wine for on-premise consumption only

<sup>1</sup> BG permit (beer and wine retailer's permit which allows sale for on or off premise consumption) can fill growlers and customers may either drink it there or take it home. The growlers can be filled with any beer they carry not just the establishments beer.

### **Options and Considerations**

In deciding what actions the city council may take the city council needs to decide and provide direction to staff as to: (i) what type of establishments are desired; (ii) when and where such establishments should be allowed; (iii) by what process whether by right or SUP; and (iv) any restrictions such a separation requirements from like establishments or schools, churches, hospitals, parks or other desired protected areas.

Consideration should also be given to whether there will be a proliferation of such establishments, and any undesired effects or unintended consequences. Remember once city grants zoning to allow a “bar” at a location it should be considered permanent unless the city rezones the area or changes the regulations in which case and existing use will continued until abandoned.

A specific work session or meeting could be conducted for city council to discuss, at which staff can answer questions and city council can provide direction.

List of possible actions (not all inclusive list).

1. City could lessen the percentage of non-alcoholic sales for qualifying restaurants.
2. City could enact overlay district in which “bars” may be located without regard to food service or with a lesser percentage of non-alcoholic beverage sales. Will need to add definition of “bars”.
3. Identify target areas or properties at which bars are allowed without regard to food service or with a lesser percentage of non-alcoholic beverage sales.
4. Enact regulation to allow location of establishments that derive more than 75% of its gross revenue from the sale of alcoholic beverages for on premise consumption. These regulations could be restricted to certain zoning districts or geographical areas, require a specific use permit and include separation requirements from other like establishments, churches, hospitals, schools, city parks or other protected areas. Texas Alcoholic Beverage Code allows city to enact regulations governing the location of bars. Will need to add definition of the qualifying establishment (“Bar”).
5. Allow establishments that derive more than 75% of its gross revenue from the sale of alcoholic beverages for on premise consumption in PD districts by right or by SUP.

*Peter J Smith*