

CITY COUNCIL OVERSIGHT COMMITTEE MEETING

**MUNICIPAL BUILDING CONFERENCE ROOM
201 WEST GRAY**

THURSDAY, APRIL 19, 2018

8:30 A.M.

- 1. DISCUSSION REGARDING PROPOSED ORDINANCE AMENDMENTS TO COMPLY WITH THE NEW STATE LIQUOR LAW CHANGES - ESTABLISHING RETAIL WINE AND RETAIL BEER OCCUPATIONAL TAX PERMITS.**



To: City Council Oversight Committee

From: Brenda Hall, City Clerk
Jeff Bryant, City Attorney
Beth Muckala, Assistant City Attorney

Date: April 12, 2018

Subject: Effect of State Liquor Law Changes on Norman's City Code

BACKGROUND:

Senate Bill ("SB") 383 was approved by Governor Mary Fallin and signed into law on June 6, 2016. On November 8, 2016, Oklahoma State Question ("SQ") 792 passed with a voter approval of more than 65%. These items accomplished several changes to Oklahoma's liquor licensure and other laws, all of which will be effective October 1, 2018, including:

- Abolishment of the Oklahoma Constitution's exclusion of low point beer from ABLE regulation;
- Allowing retail spirits stores (formerly called "package stores") as much as 20% monthly revenue from sales of items other than alcoholic beverages;
- Allowing beer and wine of all strengths to be sold at room temperature or chilled;
- Allowing retail spirits stores owners to own as many as two locations;
- Raising the minimum age to sell beer from 16 to 18;
- Allowing interstate shipments of wine directly to private persons over 21; and
- Extending retail spirits stores' hours to midnight.

Following passage of SQ 792, the state legislature has introduced several additional bills regarding alcoholic beverage licensure, many of which are aimed to level the playing field between traditional retail spirits stores and stores (including grocery, convenience, and drug store chains) that will now be permitted to sell wine and beer, including strong beer, at an unlimited number of locations. Other bills seek to correct inconsistencies created by SB 383 and SQ 792, or otherwise avoid unintended consequences to existing business (e.g. game day beer sales and effects on current low point beer establishments, such as Norman's Old No. 9. Tavern).

This memorandum summarizes the effect of SB 383 and SQ 792 on Norman's City Code regarding licensing or taxing of establishments selling alcoholic beverages. Additionally, this memorandum outlines the additional effect of legislation signed into law since SQ 792 passed and which will also be effective October 1, 2018. Finally, this memorandum forecasts the potential effect of legislation currently introduced but not yet signed into law, and which could ultimately become effective on October 1, 2018.

office memorandum

DISCUSSION:

I. Alcoholic Beverage Sales for Off Premises Consumption

The largest effect of recent state legislation is felt by those holding licenses for the sale of alcoholic beverages for off premises consumption. Under state law, which will be codified in Title 37A of Oklahoma Statutes on the effective date, three general types of licenses relating to off premises consumption are available: (1) a retail spirits license; (2) a retail wine license; and (3) a retail beer license.

Retail spirits licenses may not be issued to a corporation, LLC or “similar” entity; and individual owners (or their spouse) may now own one additional licensed location (for a total of two licensed locations). Retail spirits stores may now sell lottery and scratch off tickets, as well as items sold at grocery or convenience stores so long as those sales do not exceed 20% of the store’s monthly revenue. Retail spirits stores are permitted to operate Monday through Saturday between 8 a.m. and midnight on all days except Christmas Day and Thanksgiving Day (note: these hours are significantly extended and these stores are now permitted to operate on election days and all other holidays). Deliveries to retail spirits stores may also now occur on those same days with the exception of New Year’s Day and July 4th.

Retail beer and wine licenses may be issued to corporate or similar entities and there is no limit to the number that may be held by any one entity. Retail wine licenses allow the sale of wine containing no more than 14.99% alcohol by volume. Retail beer licenses allow the sale of beer, including both low point beer and strong beer, so long as the beer contains no more than 8.99% alcohol by volume. Retail wine and beer licensees are permitted to sell these items Monday through Sunday between 6 a.m. and 2 a.m. the next morning (or all hours *except* those between 2 a.m. and 6 a.m.).

Finally, currently engrossed SB 1571 addresses the potential effect the series of law changes could have on establishments that previously sold low point beer in university towns on home game days. If SB 1571 passes, establishments which hold a mixed beverage license (which traditionally permits only on premises consumption), if located in a municipality in which a university is located” to sell beer (defined in Title 37A to include both low point and strong beer) in original packages “on the day of any regularly scheduled football game of the university” for off premises consumption.

II. Alcoholic Beverage Sales for On Premises Consumption

With the exception of the potential change in SB 1571, licensure requirements for establishments selling alcohol for on premises consumption are not dramatically altered on the effective date. Engrossed SB 1336, if passed, would allow various licensees selling alcohol for on-premises consumption to open as early as 8 a.m., plus grant municipalities the authority to pass ordinances allowing an opening time as early as 6 a.m.

To: City Council Oversight Committee
Re: City of Norman Licensure Ordinance Amendments to align with State Liquor Law Changes
Date: April 12, 2018

Under currently enrolled legislation, holders of mixed beverages licenses have expanded hours for pickup of alcoholic beverage orders. Also, House Bill (“HB”) 2186 allows “motion pictures theatres” with mixed beverage licenses to sell alcoholic beverages for on premises consumption. To be served alcohol in such an establishment, HB 2186 requires that a person: (1) present identification exhibiting they are of the legal drinking age; and (2) wear a wrist bracelet or have their hand stamped. Additionally, wineries are now permitted sell wine by the full glass within designated sampling areas at their licensed location or at trade shows or similar exhibitions.

Finally, engrossed SB 1332 attempts to lessen the impact of the recent changes to liquor laws on establishments that sell only low point beer and were previously permitted at a location within 300 feet of public or private schools or churches. Under this bill, “any license in effect” on October 1, 2018 will be eligible to be “transferred to a mixed beverage license.” However, the bill provides that this grandfathered status enabling mixed beverage licensure will not survive a change in the establishment’s ownership.

III. Recommended Amendments to Norman City Code

Pursuant to 37A O.S. § 4-104 permits a municipality to impose an occupational tax upon licensed locations “not to exceed the state license fee for such licenses.” It is first recommended that the fee schedule set forth in Section 13-108 of Norman’s City Code be amended to mirror the amounts charged by the state for those licenses, as is done by other major Oklahoma municipalities.

With low point beer subject to ABLE regulation, Norman’s Class I and Class II beer licenses will no longer be available. Establishments currently holding these licenses who wish to continue operations past October 1, 2018 must pay the occupational fee for either a mixed beverage license or a beer and wine license. If SB 1571 passes, the City should consider an amendment clarifying that holders of mixed beverage licenses are permitted to sell beer in original packaging for off-premises consumption on days where the University of Oklahoma has a regularly scheduled football game.

Further, for consistency between the City’s Code and new state law, amendments should also: (1) refer to “retail spirits stores” and/or “retail spirits licenses” and applicable occupation taxes; (2) define and establish applicable occupational tax for sellers of “retail wine” and “retail beer”; (3) address the interim treatment of the applicants and holders of affected licenses/occupational taxes in the months prior to October 1, 2018; (4) update the days and times of permissible alcoholic beverages sales and operations; and (5) otherwise remove superfluous or inactive language or conform City Code to state statutes and regulations concerning these licensees.

CONCLUSION:

Attached to this memorandum is a draft ordinance representing the current recommended amendments to the Norman City Code. Should additional applicable legislation pass prior to October 1, 2018, additional recommendations will be made to this Committee or to Council in conformance with that legislation.

To: City Council Oversight Committee
Re: City of Norman Licensure Ordinance Amendments to align with State Liquor Law Changes
Date: April 12, 2018

Reviewed By: Steve Lewis, City Manager
Brenda Hall, City Clerk
Jeff Bryant, City Attorney
Beth Muckala, Assistant City Attorney

Attachments: Draft Ordinance No. 1718-46.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AMENDING ARTICLE I, SECTION 13-108, ARTICLE XVIII, SECTIONS 13-1801 13-1802, AND 13-1804 AND ARTICLE XXI, SECTIONS 13-2101, 13-2103, AND 13-2105, AND STRIKING ARTICLE XVIII, SECTION 13-1806, ALL IN CHAPTER 13 OF THE CODE OF THE CITY OF NORMAN, CONCERNING LICENSURE AND OCCUPATIONAL TAX FOR ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES AND CONSISTENT WITH STATE LAWS AND REGULATIONS EFFECTIVE OCTOBER 1, 2018; AND PROVIDING FOR THE SEVERABILITY THEREOF.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

§ 1. That Article I, Section 13-108 of Chapter 13 of the Code of the City of Norman shall be amended to read as follows:

Sec. 13-108. Fee schedules for licenses and permits and occupational taxes.

- (a) The fee schedule, hereinafter set forth, shall be levied and collected by the Clerk, or ~~his~~ the Clerk's representatives, for the applicable license, fees, permits, or occupational tax levies, prior to the issuance of any such license permit or conducting of the business of serving ~~mixed~~ alcoholic beverages.
- (b) Occupational Taxes relating to the Sale of Alcoholic beverages (definitions in 37 O.S. § 506 through September 30, 2018, and found in 37A § 1-103 thereafter) are set forth as follows:
- (1) Brewer, per year \$1,000.00
 - (2) Brewer, Oklahoma, per year 50.00
 - (3) Distiller, per year 35.00
 - (4) Package store or "Retail spirits store" ~~900.00~~ 905.00
 - (5) ~~Occupational tax for the sale of m~~Mixed beverages, first year 1,000.00
Renewals, per year 900.00
 - (6) ~~Occupational tax for the sale of~~ On premises beer or wine, first year 500.00

- Renewals, per year 450.00
- (7) ~~Occupational tax for the sale of m~~Mixed beverage/caterer combination 1,250.00
- Renewals, per year 1,250.00
- (8) Rectifier, per year 2,500.00
- (9) “Class I” beer license, § 13-1802(1) (available and effective only through September 30, 2018) 20.00
- (10) “Class II” beer license, § 13-1802(2) (available and effective only through September 30, 2018).... 10.00
- (11) Winemaker, per year 500.00
- (12) Winemaker, Oklahoma, per year 50.00
- (13) Wholesaler, and effective October 1, 2018, “Wine and Spirits Wholesaler,” per year 2,000.00
- (14) Wholesaler, class B, and effective October 1, 2018, “Beer Distributer,” per year 500.00
- ~~(15) Special event 3.2 Class I beer license (available and effective only through September 30, 2018) 25.00~~
- (15) Retail beer (available beginning July 1, 2018 and effective beginning October 1, 2018) 500.00
- (16) Retail wine (available beginning July 1, 2018 and effective beginning October 1, 2018) 1,000.00

* * *

§ 2. That Article XVIII, Sections 13-1801, 13-1802, and 13-1804 of Chapter 13 of the Code of the City of Norman, Oklahoma, shall be amended, and that Section 13-1806 be stricken, to read as follows:

ARTICLE XVIII. – BEER LICENSES AND OCCUPATIONAL TAX FOR WINE, BEER AND MIXED BEVERAGE SALES FOR ON PREMISES CONSUMPTION

Sec. 13-1801. ~~Licenses required or o~~Occupational tax levied.

- ~~(a) No person shall operate or maintain any business serving mixed beverages or beer or wine without having previously paid the occupational tax as provided in this chapter.~~
- ~~(b) No person shall sell or offer for sale low point beer without having previously obtained a license as provided in this chapter. No person who has been convicted of a felony shall be issued a beer license.~~

Sec. 13-1802. – Definitions.

The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except when the context otherwise requires:

On premises Bbeer and wine license: An occupational tax permit license for the retail sale of beer containing more than three and two-tenths (3.2) percent of alcohol by weight and wine which means and includes any beverage containing more than one-half (½) of one (1) percent of alcohol by volume and not more than twenty-four (24) percent alcohol by volume. Effective October 1, 2018, this occupational tax permit will apply to the sale of both low point and strong beer, as those terms are defined in 37A O.S. § 1-103.

“Class I” beer license: A license for the retail sale of a beverage containing more than one-half (½) of one (1) percent alcohol by volume and not more than three and two-tenths (3.2) percent alcohol by weight, sold for consumption on the premises, or sold not in the original containers for consumption on or off the premises. “Class I” beer licenses are only available and effective through September 30, 2018.

“Class II” beer license: A license for the retail sale of a beverage containing more than one-half (½) of one (1) percent alcohol by volume and not more than three and two-tenths (3.2) percent alcohol by weight, sold in the original containers for consumption off the premises. “Class II” beer licenses are only available and effective through September 30, 2018.

Mixed beverage/caterer license: An occupational tax permit license for sale of mixed beverages as specifically provided by state law for the holder of a mixed beverage license or a caterer license.

* * *

Sec. 13-1804. – Hours of operation.

- (a) ~~No person who holds a establishment to which the mixed beverage or on premises beer and wine license occupational tax is applicable, nor any agent, servant or employee of such establishment licensee, shall sell, dispense,~~

serve or allow to be consumed any mixed beverages, beer or wine on the premises between the hours of 2:00 a.m. and 10:00 a.m.

- (b) Effective through September 30, 2018, No person who holds a “Class I” beer license, nor any agent, servant or employee of said licensee, shall sell, dispense, serve or allow to be consumed any low-point beer on the premises between the hours of 2:00 a.m. and 7:00 a.m., Monday through Saturday, and between 2:00 a.m. and 12:00 noon on Sunday.
- (c) Effective through September 30, 2018, and except as herein provided, no person who owns, manages or operates any business serving mixed beverages, beer or wine or a “Class I” establishment zones as a bar, club, or tavern licensed under the authority of this chapter shall permit any person to remain on the premises past the applicable closing time; provided that a maximum of eight (8) persons shall be permitted to remain for two (2) hours past the applicable closing time, so long as they are employed by the business serving mixed beverages, beer or wine or the “Class I” establishment and are involved in cleaning, closing or otherwise securing the premises.

* * *

~~Sec. 13-1806. — Special event 3.2 Class I beer license.~~

~~A Special Event 3.2 Class I Beer License may be issued to an organization, association, or nonprofit organization organized for political, fraternal, charitable, or religious or social purposes. The holder of the Special Event 3.2 Class I Beer License is authorized to sell and distribute 3.2 beer on the premises for which the license is issued. No Special Event License may be issued for any premises already licensed by the City. A Special Event License shall be valid for a period not to exceed (3) consecutive days and no qualified organization may obtain more than one (1) such license in a ninety (90) day period. The applicant must have all county and state licenses prior to obtaining the City’s approval.~~

- § 3. That Article XXI, Sections 13-2101, 2103, and 2105 of Chapter 13 of the Code of the City of Norman shall be amended to read as follows:

ARTICLE XXI – RETAIL LIQUOR SPIRITS STORES AND RETAIL STORES SELLING WINE OR BEER FOR OFF PREMISES CONSUMPTION

Sec. 13-2101. - ~~License r~~ Required occupational tax.

No person shall operate, manage or work in any retail establishment that sells, for off premises consumption only, any type of alcoholic beverage, as that term is found in 37 O.S. § 506 through September 30, 2018, and as found in 37A

§ 1-103 thereafter store, also known as retail liquor store or package store, without having previously obtained an occupational tax permit for that store as provided in this chapter.

* * *

Sec. 13-2103. – Deliveries.

No wholesale dealer in alcoholic beverages shall sell or deliver to any to any retail ~~liquor~~ spirits store any alcoholic beverages on ~~Saturdays, Sundays, New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day, or Christmas Day,~~ or while the polls are open on the day of any general, primary, runoff primary or special election.

* * *

Sec. 13-2105 – Hours of ~~business~~ for selling alcoholic beverages.

(a) Retail Spirits Stores. Now and through September 30, 2018, no person shall open or operate a retail ~~liquor~~ spirits store except between the hours of 10:00 a.m. and 9:00 p.m. Effective October 1, 2018, retail spirits stores will be permitted to remain open and operational from 8:00 a.m. through midnight. Further, no person shall open or operate a retail ~~liquor~~ spirits store at any time on the following days:

(1) Sunday;

~~(2) New Year's Day;~~

~~(3) Memorial Day;~~

~~(4) Fourth of July 4, 2018;~~

~~(5) Labor Day September 3, 2018;~~

~~(6) Veterans Day;~~

~~(7) Thanksgiving Day; or~~

~~(8) Christmas Day.~~

(b) Retail beer or retail wine stores. Effective October 1, 2018, a retail wine or retail beer establishment may offer wine or beer for retail sale on Monday through Sunday between the hours of 6:00 a.m. and 2:00 a.m. the following day.

* * *

§ 4. WHEREAS it is acknowledged that qualified retail spirits, wine and spirits wholesaler, beer distributor, retail beer, and retail wine state licensees are permitted to perform interim activities that will be permissible under these licenses as fully effective on October 1, 2018, *except* for the actual sale of wine and beer to the public. These interim activities include, but are not limited to, the purchasing, stocking, and storing of wine and/or beer on the licensed premises. In order to qualify for these interim activities, the state licensee must satisfy all the requirements set forth in Article XXVIII A of the Oklahoma Constitution and state law.

§ 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day of _____, 2018.

NOT ADOPTED this _____ day of _____, 2018.

Lynne Miller, Mayor

Lynne Miller, Mayor

ATTEST:

Brenda Hall, City Clerk