



## Legislation Text

**File #:** O-1718-46, **Version:** 1

CONSIDERATION OF ORDINANCE O-0718-46 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AMENDING ARTICLE I, SECTION 13-108, ARTICLE XIII, SECTIONS 13-1301, 13-1302 AND 13-1303; ARTICLE XVIII, SECTIONS 13-1801, 13-1802, AND 13-1804; AND ARTICLE XXI, SECTIONS 13-2101, 13-2102, 13-2103, 13-2105, AND 13-2106, ALL IN CHAPTER 13 OF THE CODE OF THE CITY OF NORMAN, OKLAHOMA, CONCERNING LICENSURE AND OCCUPATIONAL TAX PERMITS FOR ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES AND CONSISTENCY WITH STATE LAWS AND REGULATIONS EFFECTIVE OCTOBER 1, 2018; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**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. effects on current low point beer establishments, such as Norman's Old No. 9. Tavern).

This staff report 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 report outlines the additional effect of legislation signed into law since SQ 792 passed, and which will also be effective October 1, 2018. Finally, this report forecasts the potential effect of legislation currently introduced but not yet signed into law, and which could ultimately become effective on October 1, 2018.

### **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 4<sup>th</sup>.

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.).

## **II. Alcoholic Beverage Sales for On Premises Consumption**

Licensure requirements for establishments selling alcohol for on premises consumption are not dramatically altered on the effective date. One change that will impact Norman’s requirements is brewpubs will now be required to purchase a separate license with the Alcohol Beverage Laws Enforcement (ABLE) Commission in addition to any other license they may already have, e.g., mixed beverage, beer/wine, etc. Additionally SB 1336, signed by the Governor, allows various licensees selling alcohol for on-premises consumption, including breweries, brewpubs and wineries, to open and sell alcoholic beverages as early as 8 a.m., plus grant municipalities the authority to pass ordinances allowing an opening time as early as 6 a.m.

House Bill (“HB”) 2186, signed by the Governor on 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. This law requires amendments to certain zoning ordinances to allow for the sale of alcohol in theatres in compliance with State law, which amendments are intended to proceed as concurrently as possible with amendments to this ordinance. Additionally, wineries are now permitted to sell wine by the full glass within designated sampling areas at their licensed location or at trade shows or similar exhibitions.

SB 1332, which was also approved by the Governor, 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 after September 30, 2018, must pay the occupational fee for either a mixed beverage permit or a beer and wine permit.

Further, for consistency between the City’s Code and new state law, proposed amendments (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,” “retail beer,” and “brewpubs”; (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 to conform City Code to state statutes and regulations concerning these licensees.

Should additional applicable legislation pass prior to October 1, 2018, additional recommendations will be made to Council in conformance with that legislation.

**RECOMMENDATION:** Staff recommends adoption of Ordinance O-1718-46.