

Frequently Asked Questions

Regarding Proposed Unified Development Code Amendments:

Alcoholic Beverage Establishments

1. What are the main differences between the existing regulations and the proposed amendments?

- The existing regulations allow restaurants to serve alcohol to their customers only after receiving special R-AB zoning approval. The proposed amendments would allow restaurants to serve alcohol as an incidental part of their business without requiring special zoning approval.
- The existing regulations limit the ratio of food to alcohol sales in restaurants to 30%-to-70% in the Las Colinas Urban Center and 50%-to-50% in all other areas of the City. The proposed amendments would limit the maximum allowable percentage of alcohol sales for on-premises consumption in restaurants and other businesses to no more than 75% of gross sales in all areas of the City.
- The existing regulations do not allow any businesses to sell alcohol for on-premises consumption above a 30%-to-70% ratio of food to alcohol sales. The proposed amendments would allow a business to request a special permit (Conditional Use Permit) from the City Council to sell alcohol for on-premises consumption above the 75% of gross sales threshold established for other businesses. Businesses in the Las Colinas Urban Center and the area around the old stadium site (PUD #6) would not need to receive a Conditional Use Permit to sell alcohol above the 75% of gross sales threshold.
- The existing regulations require businesses that sell alcohol for on-premises consumption to report their ratio of food to alcohol sales to the City twice per year. The proposed amendments would not require businesses to file semi-annual reports with the City, however the City would retain the ability to audit any business at any time. Businesses would still be required to file monthly reports with the Texas Alcoholic Beverage Commission (TABC).

2. What is the R-AB zoning requirement?

“R-AB” is an abbreviation for “Restaurant with attendant accessory use of the sale of alcoholic beverages for on-premises consumption”. The S-P-1/R-AB district was created in 1981 as a unique zoning district to regulate the on-premises sale and consumption of alcohol in a restaurant. Additional regulations related to R-AB zoning include maximum allowable percentages for food vs. alcohol sales. Approval of an R-AB requires a full zoning case with related costs and time.

3. Why are these amendments being proposed? Why now?

The Irving Convention and Visitors' Bureau (ICVB) has been discussing the disparities and limitations that result from our existing regulations for several years. While restaurants typically run on a tight budget and staffing, the pandemic created a real hardship for businesses in Irving. After long shutdowns, restaurants were allowed limited openings with outdoor seating. However, if their R-AB zoning district didn't allow patio seating, restaurants had to complete another full zoning process just to add the outdoor seating. It brought to light the broader difficulties of opening and operating a restaurant in Irving that wants to serve alcohol.

Additionally, the regulations are different within the city, with businesses in the Urban Center allowed to operate at 30%-to-70% (30/70) food-to-alcohol ratio, while the remainder of the city is a 50/50 food/alcohol ratio. The ICVB and local businesses feel that the amendments are needed to create an even business environment that can compete with surrounding cities.

4. Will the amendments eliminate the R-AB zoning requirement?

Yes. Restaurants or other uses that have food and alcohol service (such as hotels) will no longer be required to rezone to the R-AB district and can operate where they are otherwise allowed by zoning.

5. Does eliminating the R-AB zoning requirement eliminate all city control over alcohol sales and consumption?

No. The city retains its zoning authority to allow certain uses in only designated areas of the city. It does remove the requirement that every establishment serving alcohol have the SP1 (R-AB) zoning designation.

6. Will the amendments let businesses other than restaurants serve alcohol?

Yes. Businesses with a primary use that does not involve food service (such as movie theaters, arts center and museum, and golf courses) would be able to receive a TABC permit to sell alcohol, provided they are in the proper zoning district for the use and meet the distance requirements from a school, worship facility, or hospital. In most cases establishments that wish to sell alcohol above the 75% of gross sales threshold (such as bars) would require a Conditional Use Permit (CUP).

7. Will the amendments allow alcohol to be sold in every area of the city?

No. The sale of alcohol is not allowed in residential districts nor will it be allowed in residential districts under the proposed amendments.

8. How will my neighborhood be protected if bars are allowed?

The proposed amendments create a Conditional Use Permit (CUP) zoning tool that would be required for these businesses. Before a bar could open, all property owners within 200 feet of the proposed location will be notified and signs posted at the property regarding the request. The Planning and Zoning Commission and the City Council will hold public hearings to evaluate the location, potential impacts to the neighbors, and hear any comments from concerned citizens. A bar could not open unless the City Council approves it in that particular location. Each

request would be considered on a case-by-case basis. Businesses in the Las Colinas Urban Center and the area around the old stadium site (PUD #6) would not need to receive a Conditional use Permit to sell alcohol above the 75% of gross sales threshold.

9. What is the Conditional Use Permit and why use it here?

The Conditional Use Permit (CUP) is like a Site Plan district in that it requires public notification, public hearings at the Planning and Zoning Commission and City Council and requires City Council approval. The process is identical to that of a zoning change. However, it is different in that it is not a permanent zoning district. This allows the option for Council to impose time limits on the CUP. Some cities call this tool a Special Use or Specific Use Permit or (SUP) but it functions the same way as a Conditional Use Permit.

Additionally, the CUP can be revoked “for cause”, which cannot happen with the R-AB zoning. Conditions for revocation are listed in the ordinance and include illegal activity, noncompliance with city codes, and unapproved changes to the structures or use of property.

10. Will the proposed changes make it easier for a sexually oriented business (SOB) to come into Irving?

No. Chapter 46 of the Irving Code of Civil and Criminal Ordinances is administered by the Police Department and defines uses found in a SOB, the licensing requirements, and limitations of operation of a SOB within 1,000 feet of a church, school, day care, residential district or property line to a residential use, public park, or a hospital. The proposed changes do not affect the specific requirements of this section, and these regulations apply whether or not a SOB serves alcohol.

11. What is the state’s role in regulating alcohol?

The Texas Alcoholic Beverage Commission (TABC) tightly regulates the sales, manufacturing, and distribution of alcohol. The TABC issues specific permits with appropriate fees and requires bonding and insurance, monthly and annual reporting, and they enforce the license requirements. The TABC also issues Food and Beverage certificates for restaurants.

12. How does the reporting process work?

The city’s current ordinance requires all restaurants with R-AB zoning to report their ratio of food-to-alcohol sales twice per year. The City Treasurer is responsible for tracking all R-AB zoned businesses, sending notices, following up with nonreporting businesses, and working with the City Attorney’s Office in addressing noncompliant restaurants. If a business is noncompliant, the city’s recourse is to revoke their certificate of occupancy and R-AB zoning, eliminating the restaurant’s ability to operate. The proposed amendments include the ability for the city to audit any business at any time rather than relying on semi-annual reporting. The city can use this information to coordinate with the TABC in addressing bad actors and take appropriate action for violating the city’s regulations.

For more information, please email Planning@CityofIrving.org or call 972-721-4807.

AN ORDINANCE AMENDING PART II OF THE CITY OF IRVING LAND DEVELOPMENT CODE, “UNIFIED DEVELOPMENT CODE (UDC)” AS FOLLOWS: AMENDING SECTION 3.3 “ALCOHOLIC BEVERAGES; SALE, SERVING, OR STORAGE” TO AMEND REGULATIONS FOR THE SALE OF ALCOHOL IN THE CITY OF IRVING; AMENDING SECTION 1.12.5 “ADMINISTRATIVE AMENDMENTS” TO ADD APPROVAL PROCESS FOR OUTDOOR DINING; AMENDING SECTIONS: 2.5.2 “NONRESIDENTIAL LAND USE TABLE”; 2.5.6 “NEIGHBORHOOD COMMERCIAL (C-N)”; 2.5.7 “COMMUNITY COMMERCIAL (C-C)”; 2.5.11 “COMMERCIAL WAREHOUSE (C-W)”; 2.5.12 “FREEWAY (FWY)”; 2.5.13 “LIGHT INDUSTRIAL 20 (ML-20)”; 2.5.14 “LIGHT INDUSTRIAL 20A (ML-20A)”; 2.5.15 “LIGHT INDUSTRIAL 40 (ML-40)”; AND 2.5.16 “LIGHT INDUSTRIAL 120 (ML-120)” TO ADD ADDITIONAL ALLOWED PRINCIPAL USES TO EACH SAID ZONING DISTRICT; AMENDING SECTION 4.4.3 “OFF-STREET PARKING REQUIREMENTS” TO ADD PARKING REQUIREMENTS FOR NEW BUSINESS TYPES ALLOWED BY THIS ORDINANCE; AMENDING SECTION 2.3.5 “RESERVED” TO REPLACE AND RENAME THE SECTION “CONDITIONAL USE PERMIT OVERLAY” AND ADD REGULATIONS FOR THE CREATION AND OPERATION OF A CONDITIONAL USE; AMENDING SECTION 9.3 “DEFINITIONS” TO ADD OR AMEND DEFINITIONS; PROVIDING FOR CONFLICT RESOLUTION, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PENALTY, AND AN EFFECTIVE DATE.

WHEREAS, on August 10, 2021 and September 9, 2021 the Irving Convention and Visitor’s Bureau (ICVB) Destination and Development Committee expressed concerns about the barriers to open and operate a restaurant with alcohol service including the cost and time that is necessary through the existing rezoning, the differences and inconsistencies within the businesses in the city, and the barriers to serve alcohol outside of a food service establishment, and

WHEREAS, on September 27, 2021 the Irving Convention and Visitor’s Bureau (ICVB) Board of Directors adopted a resolution supporting amendments to regulations controlling the sale and serving of alcoholic beverages; and

WHEREAS, on October 1, 2021 the Hotel Association of North Texas provided a letter in support of amendments to the SP-1 (R-AB) zoning process; and

WHEREAS, on October 14, 2021 city staff briefed the City of Irving City Council on the proposed Alcoholic Beverage regulations, they expressed support thereof, and directed staff to proceed with the adoption process; and

WHEREAS, on November 1, 2021 city staff briefed the Planning and Zoning Commission on the proposed Alcoholic Beverage regulations, they expressed support thereof, and directed staff to proceed with the adoption process; and

WHEREAS, on November 1, 2021 the Board of Directors of the Irving-Las Colinas Chamber of Commerce adopted a resolution supporting amendments; and

WHEREAS, on _____ the Board of Directors of the Greater Dallas Restaurant Association adopted a resolution supporting amendments; and

WHEREAS, the City has also received communications from individual businesses affected by the ordinance as written; and

WHEREAS, food and beverage sales are critical to the financial success of local facilities and promote and enhance the use and enjoyment of such facilities by tourists, convention registrants, and residents; and

WHEREAS, adequate assurances of safe business practices will be obtained through thorough review and contract obligations of any vendors operating in City owned facilities; and

WHEREAS, on December 9, 2021 the Irving City Council reviewed a draft of the proposed alcoholic beverage regulations, expressed support thereof, and provided additional feedback; and

WHEREAS, on December 13, 2021 the Irving Planning and Zoning Commission reviewed a draft of the proposed alcoholic beverage regulations and provided additional feedback; and

WHEREAS, on January 3, 2022, after notice and public hearing, the Planning and Zoning Commission considered the proposed amendments and made its final report; and

WHEREAS, after notice and public hearing, and upon consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during the public hearing, the City Council has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens that the zoning ordinance be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION 1: That Section 3.3 “Alcoholic Beverages: Sale, Serving, or Storage” of the City of Irving Unified Development Code is amended to read as follows:

3.3 Alcoholic Beverages

3.3.1 Notwithstanding any other provision of this ordinance, the storage, possession, sale, serving, or consumption of any alcoholic beverages, when permitted by the laws of the State of Texas, shall be regulated and governed by the use regulations and requirements within this Section. The Texas Alcohol Beverage Commission may be abbreviated as TABC throughout this Section.

3.3.2 ***Uses Permitted.*** After compliance with all codes of the City of Irving, compliance with the Texas Alcohol Beverage Code, compliance with Texas Alcohol Beverage Commission

rules and regulations, and receipt of a Certificate of Occupancy, an Alcohol Beverage Establishment may operate within a zoning district in accordance with this section.

- a) Restaurants, hotels, retail, service, or entertainment establishments shall be permitted in zoning districts as provided in Section 2.5.2, Nonresidential Land Use Table.
- b) Manufacturing, wholesale, and distribution of alcoholic beverages shall be permitted in zoning districts as provided in Section 2.5.2 Nonresidential Land Use Table.
- c) Alcohol Beverage Establishments with expected alcohol sales of 75% or greater may obtain a Conditional Use Permit in accordance with Section 2.3.5 of the Unified Development Code in zoning districts as indicated in Section 2.5.2, Nonresidential Land Use Table. Properties located within the Urban Business District Overlay and Planned Unit Development District (PUD) 6 district shall not be required to obtain a Conditional Use Permit.
- d) It shall be unlawful for any person to manufacture, distill, brew, import, transport, or store any alcoholic beverages for purposes of sale or distribution in any residentially zoned district within the City of Irving.

3.3.3 **Permit or License Required.** No person shall sell alcoholic beverages within the city without obtaining a city certification to sell alcoholic beverages at a specific address, maintaining a valid TABC license or permit for that location, and paying all appropriate fees to the City. A TABC license or permit does not grant the holder any right to violate the city's zoning ordinance or any other city regulations.

3.3.4 **Fees.** Upon application for certification from the city, the applicant shall pay the City a fee in the maximum amount permitted by law for the particular license or permit issued by the Texas Alcoholic Beverage Commission, except when said fee is waived according to the provisions of the Texas Alcoholic Beverage Code. Following payment of the fee and certification of compliance with this ordinance, as set forth herein, the City Secretary shall certify the TABC license/ permit application for that location. A refund of the fees levied under this section may not be made for any reason.

3.3.5 **Initial Application**

- a) Any person proposing to sell alcohol in the City of Irving shall file an application for certification with the city's Planning department.
- b) Each application shall contain, at a minimum, the following information:
 - 1) Legal name of the business applying for the permit (and DBA if applicable)
 - 2) Trade name and location of the business for which the permit is requested
 - 3) Legal description of the premises for which the license is requested
 - 4) Name, address, and contact information of the tenant/business operator
 - 5) Name, address, and contact information of the property owner
 - 6) Completed TABC Initial Application Forms and Required Certifications Form
 - 7) Certificate of Occupancy number or building permit number
 - 8) Application Fee in accordance with 3.3.4
 - 9) Projected percentage of gross revenue of alcohol to be sold

10) Other products or services to be provided by the business and the projected percentage of gross revenue from these activities

11) Zoning District of the business location for which the permit is sought

3.3.6 **Permit Renewals.** Within 30 days of confirmed renewal of a TABC license or permit, the operator shall submit to the city: a) a copy of the license/ permit renewal as provided by TABC and b) the appropriate fee due to the city. If TABC requires certification by the city that will not be considered a renewal and shall be processed as an initial application as provided in the section above.

3.3.7 **Change of business name, location, or ownership.** Upon change of business name, location, or ownership, any person selling alcohol in the City of Irving shall provide the city a copy of their completed TABC Location Packet for Reporting changes or Business Packet for reporting changes and any fee, if applicable. Any change in the operations of an establishment covered by this section that requires a change in the TABC license shall also be submitted to the city to update the record of the permit. If TABC requires certification by the city the change may require the completion of an initial application as provided in this section.

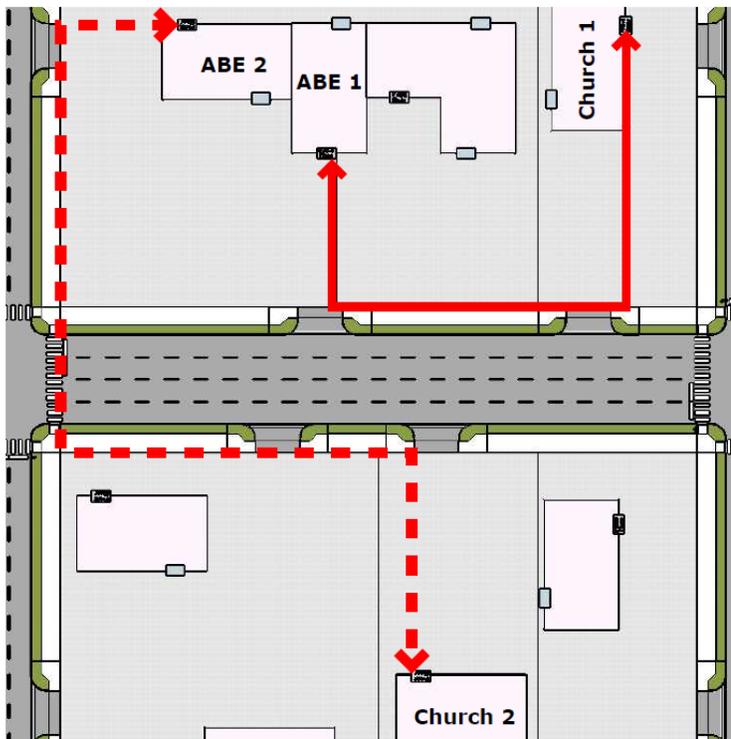
3.3.8 **Sales Near a School, Worship Facility, or Hospital.**

- a) The sales and serving for on-premises consumption and retail sales for off-premises consumption shall be not be permitted within 300 feet of a church, public or private school, or public hospital.
- b) Exemptions. The regulations contained in this subsection shall not apply when the business for which a permit or license is requested is located on property within the Urban Business Overlay District, the Heritage Crossing District, Planned Unit Development (PUD) 6, is zoned or has a development plan for Transit Oriented Development District, or is a City-owned property.
- c) This subsection does not apply to a holder of:
 - 1) a license or permit who also holds a TABC food and beverage certificate covering a premise that is located within 300 feet of a private school.
 - 2) a license or permit covering a premise where minors are prohibited from entering under Texas Alcohol Beverage Code Section 109.53 and that is located within 300 feet of a private school.
- d) In this subsection, "private school" means a private school, including a parochial school, that:
 - 1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
 - 2) has more than 100 students enrolled and attending courses at a single location.
- e) Measurements.
 - 1) 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 direct lines across intersections.

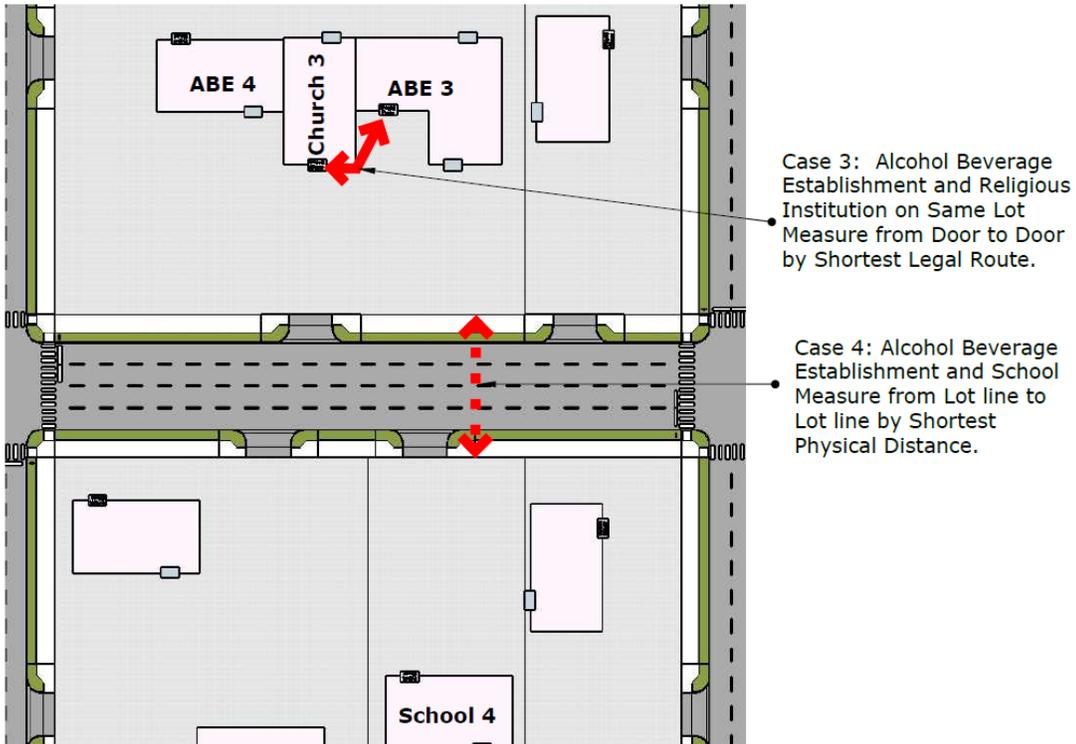
- 2) The measurement of the distance between the place of business where alcoholic beverages are sold and a public or private school shall be:
 - a. in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or
 - b. if the permit or license holder is located on or above the fifth 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.

f) Measurement Exhibits.



Case 1: Alcohol Beverage Establishment and Religious Institution from Front Door to Front Door, exiting Lot by shortest route, following legal path and entering adjacent lot and heading towards front door by shortest route.

Case 2: Alcohol Beverage Establishment and Religious Institution from Front Door to Front Door, exiting Lot by shortest route, following legal pedestrian path to cross the street and bypass unrelated properties, and entering adjacent lot and heading towards front door by shortest route.



- g) Variances. The city council may grant a variance to 3.3.8(a) if they determine that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the Council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.
- h) Applications for an alcohol distance variance request shall be heard as a public hearing before the City Council. Notice of the variance request shall be mailed to all property owners within five hundred (500) feet of the property from which the alcohol distance variance is being requested, according to the latest approved city tax roll. If an applicant is also requesting a conditional use permit under 2.3.5 of the Unified Development Code, then the variance shall be considered as part of that approval process.
- 3.3.9 **Audit.** The city shall retain the right to request an audit of applicable records to determine if a business is violating this chapter or any provision of the Unified Development Code.
- 3.3.10 **Properties currently zoned S-P-1 (R-AB).** Properties currently zoned S-P-1 (R-AB) shall retain their existing zoning designation and comply with all restrictions and regulations as approved on the specific site plan, but shall not be required to report gross sales to the City.

Any rezoning of such a property must go through the zoning change process as outlined in 1.12 of this ordinance.

- 3.3.11 **Rezoning Fee Waiver.** The application fee for a zoning change (as provided in the latest adopted fee schedule) may be waived for requests to rezone from S-P-1 (R-AB) to a base district. The fee shall only be waived if the requested zoning district provides for uses consistent with the comprehensive plan, as amended. The fee shall not be waived if the applicant is requesting rezoning to a S-P Site Plan district or a district not consistent with the comprehensive plan, as amended.

SECTION 2. That Section 1.12.5 “Administrative Amendments” of the City of Irving Unified Development Code is amended to add section e) as follows:

1.12.5 Administrative Amendments to approved site plan

- e) Minor amendments to an approved site plan in a S-P-1 (R-AB) zoning district
 - a. In S-P-1 (R-AB) zoning districts except those based on mixed use districts:
 - i. The director may approve a minor amendment to allow outdoor seating not to exceed 25% of the interior square footage used for dining service (not to include waiting areas, bar area, kitchen, and back of house).
 - ii. No outdoor dining or activities shall be permitted on any location on a patio that is within 50 feet of a single family district, and no amplified music shall be operated within 200 feet of a single family district, both as measured at the closest edge of the outdoor space.
 - b. In S-P-1 (R-AB) zoning districts based on mixed use districts:
 - i. The director may approve a minor amendment to allow outdoor seating not to exceed 50% of the interior square footage used for dining service (not to include waiting areas, bar area, kitchen, and back of house).
 - ii. No outdoor dining or activities shall be permitted on any location on a patio that is within 50 feet of a single family district, and no amplified music shall be operated within 200 feet of a single family district, both as measured at the closest edge of the outdoor space.

SECTION 3: That Section 2.5.2 “Non-Residential Land Use Table” of the City of Irving Unified Development Code is amended to add the following and the table shall be adjusted accordingly.

Add “Explanation of Table Abbreviations” to the table. “P= Permitted by right; CUP= allowed with Conditional Use Permit; Blank cell= prohibited”

Create new column “Conditional Use Permit (CUP)”

Add “Brewpub” and “Alcoholic Beverage Establishments” as separately listed uses under the section “Entertainment and Recreation” and add a “CUP” to the chart for each use to indicate the use is allowed only by Conditional Use Permit.

Add “Event Center” under the section “Entertainment and Recreation” and add a “P” to the chart under the C-N, C-C and FWY districts to indicate the use is allowed in the district.

Add “Wine Boutique” and “Microbrewery, Microdistillery” as separately listed uses under the section “Entertainment and Recreation” and add a “P” to the chart under the C-C and FWY districts to indicate the use is allowed in the district.

Add “Alcohol beverage manufacture, wholesale and distribution” as a single use under the section “Light Industrial” and add a “P” to the chart under the C-W, FWY, ML-20, ML20a, ML-40, and ML-120 districts to indicate the use is allowed in the district.

SECTION 4: That Section 2.5.6 “Neighborhood Commercial (C-N)” of the City of Irving Unified Development Code is amended as follows:

2.5.6 Neighborhood Commercial (C-N)

a) Principal uses. The following uses shall be permitted as principal uses:

2. Café, restaurant, or cafeteria. Outdoor dining shall be permitted except in any area within 50 feet of a single family district and no amplified music shall be operated within 200 feet of a single family district, both as measured at the closest edge of the patio space of the outdoor dining service.
12. Event Center

SECTION 5: That Section 2.5.7 “Community Commercial (C-C)” of the City of Irving Unified Development Code is amended to add the following:

2.5.7 Community Commercial (C-C)

a) Principal uses. The following uses shall be permitted as principal uses:

12. Event Center
13. Microbrewery, Microdistillery
14. Wine Boutique

SECTION 6: That Section 2.5.11 “Commercial Warehouse (C-W)” of the City of Irving Unified Development Code is amended to add the following:

2.5.11 Commercial Warehouse (C-W)

a) Principal uses. The following uses shall be permitted as principal uses:

11. Alcohol beverage manufacture, wholesale, and distribution

SECTION 7: That Section 2.5.12 “Freeway (FWY)” of the City of Irving Unified Development Code is amended to add the following:

2.5.12 Freeway (FWY)

- a) Principal uses. The following uses shall be permitted as principal uses:
 - 17. Event Center
 - 18. Microbrewery, Microdistillery
 - 19. Wine Boutique
 - 20. Alcohol beverage manufacture, wholesale, and distribution

SECTION 8: That Section 2.5.13 “Light Industrial 20 (ML-20)” of the City of Irving Unified Development Code is amended to add the following:

2.5.13 Light Industrial 20 (ML-20)

- a) Principal uses. The following uses shall be permitted as principal uses:
 - 11. Alcohol beverage manufacture, wholesale, and distribution

SECTION 9: That Section 2.5.14 “Light Industrial 20a (ML-20a)” of the City of Irving Unified Development Code is amended to add the following:

2.5.14 Light Industrial 20a (ML-20a)

- a) Principal uses. The following uses shall be permitted as principal uses:
 - 11. Alcohol beverage manufacture, wholesale, and distribution

SECTION 10: That Section. 2.5.15 “Light Industrial 40 (ML-40)” of the City of Irving Unified Development Code is amended to add the following:

2.5.15 Light Industrial 40 (ML-40)

- a) Principal uses: The following uses shall be permitted as principal uses:
 - 11. Alcohol beverage manufacture, wholesale, and distribution

SECTION 11: That Section. 2.5.16 “Light Industrial 120 (ML-120)” of the City of Irving Unified Development Code is amended to add the following:

2.5.16 Light Industrial 120 (ML-120)

- a) Principal uses: The following uses shall be permitted as principal uses:
 - 11. Alcohol beverage manufacture, wholesale, and distribution

SECTION 12: That Section. 4.4.3(c) “Off-Street Parking Requirements” of the City of Irving Unified Development Code is amended to add the following:

4.4.3 Off Street Parking Requirements

- c) *Number of parking spaces required:* The minimum number of off-street parking spaces required shall be as follows:
20. Distribution, warehousing, and storage, including Alcohol beverage manufacture, wholesale, and distribution - One (1) for each one thousand (1,000) square feet of floor area
 26. Brewpub, Alcoholic Beverage Establishments- One (1) for each one hundred (100) square feet of floor area used for retail sales and seating, and one space per five hundred (500) square feet of floor area used for the manufacture of alcoholic beverages. No minimum required spaces within the Urban District Overlay or Planned Unit Development 6.
 27. Microbrewery, Micro-distillery, or Wine Boutique - One (1) for each one hundred (100) square feet of floor area used for retail sales and seating, and one (1) per 1,000 square feet of floor area used for manufacturing and storage. No minimum required spaces within the Urban District Overlay or Planned Unit Development 6.
 28. Event Center- One (1) for each one hundred (100) square feet of floor area used for retail sales and seating. No minimum required spaces within the Urban District Overlay or Planned Unit Development 6.

SECTION 13. That section 2.3.5 “Reserved” the City of Irving Unified Development Code is renamed “Conditional Use Permit (CUP)” and amended to read as follows:

2.3.5 Conditional Use Permit (“CUP”)

- a) Purpose and Intent. A Conditional Use Permit provides flexibility necessary to achieve the goals and objectives of the comprehensive plan and allows compatible and orderly development of certain uses which have the potential to adversely impact surrounding property or the general public. Conditional uses are those uses which are generally compatible with the permitted land uses in a zoning district, but which require individual review and public hearing to consider their scope, proposed location, design, and configuration. Special review of such uses is necessary and specific conditions may be required to ensure that the uses are operated and located on property with respect to their effects on surrounding properties and so that any potentially adverse impacts can be mitigated. The purpose of the conditional use permit process is to provide a procedure and set forth standards whereby such uses might be permitted, where appropriate, by further restricting or conditioning them so as to eliminate the probable and potential negative impacts.
- b) Conditional Use Permits
 - 1) The City Council of the City of Irving, Texas, after a public hearing and proper notice to all parties affected and after recommendation by the Planning and Zoning Commission may authorize the issuance of a CUP for uses as indicated in 2.4.2 (Residential Land Use Table) and 2.5.2 (Non-Residential Land Use Table).

- 2) The conditional use permit functions as a zoning overlay that supplements the primary underlying zoning district classification by adding the specified use not otherwise allowed by right in the base zoning district. The zoning designation of property with a conditional use permit shall consist of the base zoning symbol and the overlay symbol “CUP” as a suffix.
- 3) The following general rules apply to all conditional uses:
 - a. Approval of a conditional use permit shall authorize only the particular use or category of related uses for which the conditional use permit is issued.
 - b. A conditional use shall not be enlarged, extended, or otherwise modified unless approved by the city council.
 - c. Obtaining a conditional use permit does not exempt the property owner from complying with requirements of the building code, state and federal law, or other city ordinances.
 - d. The use of property for the purposes described in a conditional use permit shall not commence until a certificate of occupancy has been issued.
- c) Application and fee. The property owner or certified agent shall make application on a form prescribed by the city. All applications shall be accompanied by a fee in accordance with the most recently adopted fee schedule. Payment of such fee shall not be refundable in whole or in part. Each application shall contain at least the following information before it is considered complete and subject to review, unless the zoning administrator determines certain information is inapplicable or unnecessary to appropriately evaluate the application.
 - 1) The applicant's name, address, contact information, and interest in the property;
 - 2) The owner's name, address, and contact information, if different than the applicant, and the owner's signed consent to the filing of the application;
 - 3) The street address and legal description of the subject property and a survey or plat of the subject property;
 - 4) The zoning classification, zoning district boundaries and present use of the subject property;
 - 5) A complete description of the proposed conditional use;
 - 6) Site plan in compliance with subsection (d);
 - 7) Traffic impact analysis;
 - 8) A statement indicating whether the applicant will require a variance in connection with the proposed conditional use specifying both the request and justification for the deviation; and
 - 9) Such other and further information or documentation as the zoning administrator may deem to be necessary for a full and proper consideration and disposition of the particular application.
- d) Conceptual Site Plan Required. The conceptual site plan submitted in support of a request for a conditional use permit shall contain sufficient information delineating the characteristics of the site, changes in those characteristics as may be proposed by the

development, how the development will relate to public services and facilities, and what protection features are included to ensure that the development will be compatible with existing and allowable development on adjacent property and to mitigate development-related adverse impacts. The plan shall show at least the following items of information:

- 1) The location of all structures on the subject property and on adjoining properties, including height, approximate square footage, and setbacks;
 - 2) Landscaping and/or fencing of yards and setback areas and proposed changes;
 - 3) Design of ingress and egress;
 - 4) Off-street parking and loading facilities;
 - 5) Proposed uses; and
 - 6) The location and types of all signs, including lighting and heights.
- e) Approval Procedure. A conditional use permit requested under the provisions of this section shall be considered as an amendment to the zoning ordinance as applicable to the property involved and shall be approved by ordinance. Required notice and public hearings shall be in accordance with Section 1.12 (Zoning Map Amendments) of the Unified Development Code.
- 1) Review Criteria. In reviewing a request for conditional use permit approval, the planning and zoning commission and city council shall consider:
 - a. Existing uses: That the conditional use will not be injurious to the use and enjoyment of other property in the immediate area for purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.
 - b. Vacant properties: That the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in area.
 - c. Services: That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided. Conditional uses in residential districts shall generally require direct access to an arterial street.
 - d. Parking: That adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed uses.
 - e. Performance standards: That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.
 - 2) Waivers and variances. The city council may waive or modify specific standards otherwise made applicable to the conditional use as reasonably necessary to mitigate adverse effects of the proposed use in accordance with the standards and purpose of this section. Conditions imposed by the city council

may not be waived or varied by the board of adjustment. A distance variance granted pursuant to 3.3.8 may be included as part of the conditional use permit process and shall not require separate action.

- 3) Required Findings. The City Council may permit a conditional use subject to appropriate conditions and safeguards when the council finds:
 - a. The proposed use is consistent with the Comprehensive Plan;
 - b. The proposed use is compatible with the existing and adjacent uses;
 - c. The proposed use meets all supplemental use standards specifically applicable to the use as set forth in Chapter 3, Performance Standards for Selected Uses;
 - d. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods;
 - e. Any negative impact on the surrounding area has been mitigated; and
 - f. The proposed use is not materially detrimental to the public health, safety, and welfare, or result in material damage or prejudice to other property in the vicinity.
- 4) Conditions. The City Council may stipulate conditions and limitations on the approval of the Conditional Use Permit in the interest of public welfare and to assure that the intent of this ordinance is carried out. Conditions imposed shall be complied with before a certificate of occupancy is issued for the use of the land or any structure which is part of the conditional use permit. Such conditions shall be expressly set forth in the motion authorizing the conditional use. These conditions may include, but are not limited to:
 - a. Time limits as outlined in 2.3.5(e)(5) below;
 - b. Limitation of building size or height;
 - c. Enhanced loading and parking requirements;
 - d. Additional landscaping, curbing, sidewalk, vehicular access and parking improvements;
 - e. Placement or orientation of buildings and entryways;
 - f. Buffer yards, landscaping, and screening;
 - g. Signage restrictions and design;
- 5) Time Limits. A time limit may be imposed as a condition of the approval of a conditional use permit in circumstances when the city council determines that:
 - a. The use is presented by the applicant as a temporary or interim use or the use, due to its nature and operation, may be considered temporary or interim, so that removal of the use is reasonably to be expected after a period of time. Temporary or interim use may be indicated by leasing of land or building space, by minimal

construction of property improvements or by the lack of construction customized for the specific use.

- b. The use is consistent with current uses in the area and on adjoining property; however, anticipated future changes in the area would cause the requested use to become incompatible after a period of time.
- c. The health, safety, and welfare of the public would not be adequately protected from the use without such condition.

f) Lapse, Expiration, or Renewal of Approved CUP.

- 1) *Failure to implement.* Approval of the conditional use permit shall automatically lapse and terminate 180 days after the date granted by ordinance unless a building permit or a certificate of occupancy has been issued for the use. Upon written request, received no later than thirty (30) days prior to the termination of the CUP, the zoning administrator, for just cause, may authorize an extension of an additional 180 days to obtain a building permit or certificate of occupancy. To qualify for such an extension, the owner must provide documentation of the circumstances beyond their control that necessitate longer than the initial 180 days. Under no circumstances is the zoning administrator required to authorize an extension of time nor can any time beyond 360 days be authorized without City Council approval.
- 2) *Expiration.* If the conditional use permit has a time limitation attached, the expiration date shall be as set forth in the permit.
- 3) *Renewal.* When a conditional use permit is to expire due to a time limit imposed by the City Council at the time of approval and the property owner wishes to continue the use, they must file a complete application for renewal with the zoning administrator not later than 90 days before the expiration date of the conditional use permit. Requested renewals of existing Conditional Use Permits shall require the same notice and public hearing procedures as an initial application.

g) Withdrawal of CUP Application.

- 1) *Prior to Public Hearing.* An applicant may withdraw an application by giving written notice to the zoning administrator at least five days prior to the date of the public hearing. Permission of the planning and zoning commission shall not be required for such withdrawal.
- 2) *Prior to Recommendation.* The applicant may also request withdrawal of an application at the time of the public hearing before the planning and zoning commission. The commission shall provide an opportunity to present evidence of the request for withdrawal to the proponents and opponents of the application, and shall take action on the withdrawal request prior to proceeding with the public hearing.

- 3) *After Recommendation.* After the commission has held a public hearing and forwarded a report and recommendation on an application, an applicant may not withdraw an application from consideration except with the express permission of the council. An applicant may present a request for withdrawal to the council at the time of the public hearing. The council shall provide an opportunity to present evidence on the request for withdrawal to the proponents and opponents of the application, and shall take action on the withdrawal request prior to proceeding with the public hearing.
 - 4) If the city council approves a request for the withdrawal of a conditional use permit application, an applicant may not file a new application for the same or similar permit until six months have expired from the date of withdrawal. The time period within which a new application may not be filed shall not apply if the request for a change to zoning district boundaries or a special permit was initiated and filed by the city
- h) Effect of Denial. If the council denies an application for a conditional use permit, an applicant may not file a new application for a conditional use permit or a Site Plan District zoning case for the property until after 12 months have expired from the date on which the application was denied. The time period within which a new application may not be filed shall not apply if the request for a change to zoning district boundaries or a special permit was initiated and filed by the city.
 - i) Discontinuation of use. In the event the property for which a use under the conditional use permit is discontinued for six months, or after changing the use to another use not included in the CUP and permitted by the base district, the future use of the property shall thereafter conform to the regulations of the base zoning district of such property unless a new and separate conditional use permit is granted by the city council for continuation of the use.
 - j) Transferability. A conditional use permit shall continue to be valid upon a change of ownership of the site, business, service, use or structure which was the subject of the permit application unless the city council finds that a use or uses defined and permitted under a conditional use permit are sufficiently unusual in character or operation as to create the potential for variations in function or operation with possible negative impacts upon adjacent properties or on the citizenry as a whole, the city council may specify in its approval that the conditional use permit is approved solely for the business represented by the applicant and that the conditional use permit shall not be transferable to a different person or business.
 - k) Review and Revocation
 - 1) *Review.* The departmental director as designated by the city manager may periodically review any CUP to ensure that the conditional use is being operated in a manner consistent with the conditions of approval and in a manner which is not detrimental to the public health, safety or welfare, or materially injurious to properties in the vicinity. Upon determination of noncompliance with the provisions of the conditional use permit, the director shall give written notice to the permit holder of the nature of the violation, the necessary action to

remedy the violation, and the time period, not less than ten days nor more than 30 days after the date of notification, within which to comply.

- 2) *Revocation Process.* If the violations have not been corrected within the prescribed time period, the City Attorney's Office shall notify the property owner in writing that due to their noncompliance and failure to rectify all violations a public hearing has been set to consider revocation of the conditional use permit. The revocation process shall be conducted in the same manner as any other zoning change and comply with all notice and hearing requirements outlined in Section 1.12 (Zoning Map Amendments).
 - a. The Planning and Zoning Commission shall conduct a public hearing not more than 30 days after the City Attorney's notice, shall consider any public testimony, staff reports, documentation of any health and safety concerns, police records as applicable, municipal or other court records as applicable, code enforcement records as applicable, and the status of any state license required for operation of the use and make a recommendation to the City Council regarding the proposed revocation.
 - b. After due hearing, the City Council may revoke or modify any conditional use permit that has been reported in violation by the director. Continued use without a conditional use permit will be a violation of this chapter and subject to the penalties provided in Section 1.8.1 (Enforcement- Penalty).
- 3) *Revocation Considerations.* A Conditional Use Permit may be revoked or modified if any one (1) of the following findings can be made:
 - a. That circumstances have changed so that one or more of the findings contained in subsection (e)(3) of this chapter, Required Findings, can no longer be made;
 - b. The building, premise, or land uses under the conditional use permit is enlarged, modified, structurally altered, or otherwise significantly changed without the approval of a separate conditional use permit for such enlargement, modification, structural alteration or change;
 - c. Violation of any provision of the site plan encompassing the property for which the conditional use permit was issue for, terms or conditions of a conditional use permit;
 - d. The conditional use permit was obtained by fraud or with deception.
 - e. That the use for which the CUP was granted had ceased or was suspended for one hundred eight (180) calendar days or longer;
 - f. That one (1) or more of the conditions of the Use Permit have not been met;

- g. That the use is in violation of any applicable statute, ordinance, law, or regulation; or
 - h. That the use permitted by the Use Permit is detrimental to the public health, safety or welfare, or constitutes a nuisance.
- 4) *Effect of revocation.* Upon the effective date of the revocation, it shall be unlawful to undertake or perform any activity that was previously authorized by the conditional use permit. The property subject to the conditional use permit may be used for any permitted use within the base zoning district.

SECTION 14. That Section 9.3 “Definitions” of the City of Irving Unified Development Code is amended to amend existing definitions and add new definitions as follows. All definitions shall be renumbered to retain their alphabetical order.

Alcoholic Beverage shall have the definition as established by the Texas Alcoholic Beverage Code.

Alcoholic Beverage Establishment shall mean any establishment that derives seventy-five (75) percent or more of its gross revenue on a quarterly basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, as amended, for on-premise consumption. An Alcoholic Beverage Establishment may include live entertainment and/or dancing; but shall not include any adult entertainment. Accessory uses may include the manufacture of alcoholic beverages for on-site consumption and/or retail sales.

Alcohol beverage manufacture, wholesale and distribution; Brewery; Winery; Distillery shall mean a small-scale brewing establishment involving the manufacturing and distribution of alcoholic beverage and holding the appropriate permits issued by the Texas Alcoholic Beverage Commission in accordance with the Texas Alcoholic Beverage Code, as amended. This use may include the production or blending of wines, spirits or a brewing facility for the production of malt liquors such as beer and ale but does not include sales for on-site consumption. Sampling, meeting/banquet facilities, food service and retail sales of related items may be operated as accessory uses to an alcoholic beverage manufacturer or brewery, provided the size of the accessory uses complies with the maximum allowed in the building code.

Brewery- See Alcohol beverage manufacture

Brewpub shall mean an establishment holding an appropriate license issued by the Texas Alcoholic Beverage Commission in accordance with the Texas Alcoholic Beverage Code, as amended, permitting the license holder to manufacture, brew, bottle, can, package, and label malt liquor, ale and beer; sell or offer without charge, on the premises of the brewpub, to ultimate consumers for consumption on or off those premises, products allowed by the license. Sampling, meeting facilities, food service, entertainment and retail sales of related items may be operated as accessory uses to a brewpub, provided the size of the accessory uses complies with the maximum allowed in the building code. All brewing activities must occur within a building; storage of spent grain within a structure is permitted provided it is screened from public view.

Distillery – See Alcohol beverage manufacture

Event Center Or Rental Hall – A commercial establishment that is leased on a temporary basis before the event by individuals or groups who reserve the facility to accommodate private functions, including but not limited to banquets, weddings, anniversaries, receptions, business organizational meetings, and other similar functions, to which the general public is not admitted and for which no admission charge is imposed. Such establishments may include kitchen facilities for the preparation of food and areas for dancing, dining and other entertainment activities that customarily occur in association with banquets, weddings, or receptions. An event center does not include a game room, alcohol beverage establishment, pool hall, dance hall, night club, or concert hall that presells tickets or has a door cover charge. Drink tickets shall not be sold within an event center.

Microbrewery, Microdistillery shall mean a small-scale brewing establishment not to exceed 10,000 square feet holding an appropriate permit issued by the Texas Alcoholic Beverage Commission in accordance with the Texas Alcoholic Beverage Code, as amended, for the manufacture, blending, fermentation, processing, and packaging of alcoholic beverages and malt liquors such as beer and ale. Sampling, meeting facilities, food service, entertainment and retail sales of related items may be operated as accessory uses to a microbrewery or microdistillery, provided the size of the accessory uses complies with the maximum allowed in the building code. All brewing activities must occur within a building; storage of spent grain within a structure is permitted providing it is screened from public view.

Private Club shall mean an establishment as qualified by Chapter 32 of the Texas Alcoholic Beverage Code for the operation of a social organization to which membership is by invitation only, and its meeting place in which only members and their guests are permitted.

Rental Hall- see Event Center

Restaurant shall mean a place of business open to the public for the provision of food and beverages to customers for compensation. A restaurant shall: provide food sales and service as the primary source of revenue; delineate areas for permanent seating and serving of patrons; and include a full kitchen or otherwise install appropriate kitchen facilities for preparation and preparation of a permanent menu which provides an assortment of foods for sale and consumption. Restaurants intending to provide alcoholic beverages service for consumption on the premises, including manufacture of such beverages on the premises, shall hold an appropriate permit issued by the Texas Alcoholic Beverage Commission in accordance with the Texas Alcoholic Beverage Code, as amended, for the operation. Dancing and entertainment uses may be operated as accessory uses.

Restaurant, Drive-in shall mean a public eating place which has facilities for serving food and beverages to customers in their motor vehicles on the premises.

Wine boutique shall mean a retail outlet for bottled wines which may include tasting and small scale wine making experiences for the customer to select, blend, ferment and bottle the wine on site using wine concentrates for future consumption off the premises. May also include meeting/banquet facilities.

Winery- See Alcohol beverage manufacture

SECTION 15. That this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Irving, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 16. Should any paragraph, sentence, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal, or unconstitutional, and shall not affect the validity of the comprehensive zoning ordinance as a whole.

SECTION 17. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

SECTION 18. That any property zoned SP1 (RAB) prior to the effective date of this ordinance shall retain such zoning for all purposes unless subsequently amended.

SECTION 19. That all regulations contained in Unified Development Code Section 3.3 (Alcoholic beverages; Sale, Serving, or Storage) shall be retained in their entirety in the City of Irving Land Development Code, Part V, Repealed Zoning Districts.

SECTION 20. That any person violating or failing to comply with any provisions of this ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00), and each day any violation or noncompliance continues shall constitute a separate offense.

SECTION 21. That this ordinance shall take effect on _____ and shall be published in accordance with the provisions of the Texas Local Government Code and the Irving City Charter.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,
on _____, 2022.



Proposed Unified Development Code Amendments: Alcoholic Beverage Establishments

Planning and Zoning Commission

January 18, 2022



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Purpose

- Discuss the **current concerns** for businesses in Irving
- Provide overview of **existing regulations**
- Provide a **history** of the S-P-1/R-AB zoning district
- Describe the **steps** necessary to create or revise a R-AB district
- Provide an overview of **proposed regulations** of alcohol sales

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Concerns

- **Burdensome approval** process to sell alcohol for on site consumption makes Irving **less competitive** and lose restaurants to other cities
- Different alcohol allowances (50/50 or 30/70) create an **uneven environment** across the city
- Different requirements for sales for **on premise** (restaurants) and **off premise** (retail) consumption

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Concerns, cont.

- Certain city facilities that use HOT tax but **do not sell food** cannot sell alcohol
- **Reporting** requirements are burdensome and not effective
- R-AB process is **very restrictive**, including detailed floorplans that require a full rezoning to amend, adding fees and delays
- Current zoning does **not allow outdoor dining** by right nor allow expansion outside when needed if not on the site plan

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ICVB recommendation

The Irving Convention and Visitors Bureau Board passed a resolution on September 27, 2021 supporting changes to how alcohol is sold in Irving. The Resolution is based on:

- The need for the entertainment industry to remain **competitive** with other cities;
- The need to support Irving's **small business** owners and operators;
- The hospitality industry, especially restaurants, continues to struggle due to the **pandemic**;
- The current R-AB **process is expensive and onerous** for all restaurants to serve alcohol with meals;
- No method for **non restaurant venues** such as galleries and theaters to serve alcohol to patrons

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Goals of Amendments

- **Equality/level playing field across the city** for a business that serves alcohol
- **Eliminate barriers to operating in Irving** and support local businesses
- **Reduce time** to open a business or operate where a restaurant once operated
- Retain control of establishments that primarily serve alcohol for on premises consumption **through new zoning tool**
- Allow for most businesses to **operate under base zoning** districts
- Allow **Irving to be competitive** with area cities, provide options, create jobs and grow the economy

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Current State of Texas Alcoholic Beverage Regulations

- Texas Alcoholic Beverage Code (TABC) provides **licensing, qualifications, and regulatory and penal provisions** related to the alcoholic beverage industry
- Texas Alcoholic Beverage Commission is responsible for enforcing the Texas Alcoholic Beverage Code and TABC Administrative Rules
 - Any business with a state license or permit to manufacture, distribute or sell alcoholic beverages is subject to action from the agency if they violate the law or TABC rules.
 - Requires performance bond of \$2,000 to \$6,000; only restaurants with Food and beverage certificate (60/40 sales) are exempt
 - All TABC licensed businesses must file a monthly sales report and an annual compliance report with the agency to ensure compliance with their license or permit

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Current Irving Alcoholic Beverage Regulations

Irving's Unified Development Code (UDC) requires a specific zoning district for the sale of alcoholic beverages for on premises consumption: S-P-1/R-AB

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Purpose of R-AB zoning

- R-AB is an abbreviation for ***Restaurant with attendant accessory use of the sale of alcoholic beverages for on-premises consumption.***
- The S-P-1/R-AB district was created as a unique zoning district to regulate the on premises sale of alcohol **in a restaurant** on a case by case basis.
- The R-AB zoning within a restaurant is the **only way to sell** alcohol for on premises consumption in Irving:
 - Other businesses in the city that are not restaurants cannot receive a license to sell alcohol for on premise consumption with their service (Arts Center, theaters, hotels etc.)

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History of Alcohol Regulations

9/26/1963	Established private club limits
11/5/1964	Created zoning ordinance section for sales, serving or storage of alcoholic beverages (ord. 1144)
10/31/1974	Distance, sales, and storage limits set
10/1981	Voter approved sales of mixed beverages
11/19/1981	Created R-AB section and distance limits
6/11/1987	State sets limits on city regulation but allows regulation over 75% consumption
5/23/1996	Established distance considerations and parameters in urban overlay
2008	Voter approved retail sale of beer and wine
10/16/2008	Set distance regulations and variances (Heritage Crossing, TOD's)
10/22/2009	Allow sales in areas with HOT tax (repealed 2013)
1/24/2013	Created Special Regulation area in Urban Center for Music Factory development and allowed ratio of 30% food sales/70% alcohol sales
8/8/2013	Changed mixed beverage definition to be consistent with State law changes
1/9/2014	Created Public Entertainment Facility (PEF) for Music Factory; permitted to report 30/70 as aggregated
2019	Voter approved retail sales of alcohol

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Current Process

To **open** a restaurant with alcohol sales, or to **add** alcohol sales to an existing restaurant, or to **expand or renovate** your space if you have alcohol sales, you must:

1. Submit a zoning change application and its non-refundable minimum \$750 application fee (varies depending on restaurant site acreage)
2. Provide a detailed site plan of the entire property (\$)
3. Provide a detailed floor plan (\$)
4. Provide exterior elevations (\$)
5. Provide a professional survey (metes and bounds)/legal description (\$)
6. Provide menus for food and beverage offerings
7. Provide a description of the restaurant and its activities/offerings, and an estimation of food: beverage ratio

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Current Process, cont.

- After application:
 - Staff site plan review and identifies needed revisions
 - Staff conducts distance check from a school, church or public hospital, or residential (R-AB only)
 - Applicant submits revised site plan if necessary
 - Applicant picks up and posts zoning sign(s) on the property
 - Staff advertises in the newspaper per state law and mails public notices to owners within 300 ft.
 - Newspaper ad must be published at least 15 days prior to the City Council meeting
 - public notice must be mailed greater than 10 days prior to the Planning & Zoning hearing.
 - Two public hearings must be held: one at Planning & Zoning Commission and one at City Council
- Once/if Zoning is approved, then the applicant begins the TABC process, including city distance verification
- Once Zoning is approved and TABC has verified distance, then permits can be issued.

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TABC Permit Process

1. Applicant begins application process for TABC permit/ license which includes city certifications
2. Applicant requests zoning and distance check from city and pays proper fee; City Secretary certifies compliance with city regulations after Planning review and sign off
3. Applicant submits full application to TABC for verification and issuance
4. Applicant begins selling alcohol as allowed by their specific license or permit and files an annual compliance report with the agency to ensure compliance with all regulations
5. Applicant submits required renewals and fees as required.

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Changing a R-AB District

- Using a R-AB zoned space by a **new tenant** requires a full zoning change to undo the R-AB
- A full zoning change is required to **revise** any part of a R-AB:
 - to add outdoor seating if not part of any original plan/footprint
 - if current restaurant or new tenant changes floorplan, or
 - if restaurant wants to expand
- A restaurant that keeps R-AB zoning but **does not** sell alcohol **must submit** the semi-annual reports even if the alcohol sales amount is \$0.

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Current City Reporting Requirements

- Reporting was established with the R-AB zoning to ensure gross alcohol sales did not exceed food sales or the maximum allowed 50%.
- Sales ratios are limited to **food vs alcohol**, no other sales count
- Every currently zoned R-AB property must submit a report to the city **semi annually** (twice a year) to demonstrate alcohol sales do not exceed 50% of gross revenue.
- The required ratios citywide in Irving currently are 50-50, except in the Urban Center where gross sales of alcohol may be a maximum of 70%:
 - Public Entertainment Facility (City-Owned Music Factory) allowed to aggregate sales from multiple establishments to meet the 30/70 ratio requirement
 - Entire parcel is zoned R-AB as the base district with entertainment uses added ¹⁵

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Current City Reporting Process

- Businesses file semi-annual reports of gross food and beverage sales with the City Treasurer's Office.
- City Treasurer's office maintains a list of R-AB zoned properties and monitors whether each establishment has filed their report
- If a business has not provided the required reports or is not in compliance with the required ratio, the Treasurer's Office and City Attorney's Office notifies the business of their failure to comply with the ordinance
 - The restaurant has 30 days to rectify any deficiency.
 - If the restaurant remains out of compliance the City Council may revoke the establishment's Certificate of Occupancy, thereby shutting down the business.
 - Staff also initiates a companion item zoning change to undo the R-AB district. ¹⁶

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Effectiveness of R-AB Reporting Requirements

- Submissions are accepted at face value; audits are not completed unless specifically identified as needed.
- Currently 19 restaurants have not submitted required reporting. An estimated 5-10 businesses (3-6% out of avg. 150) in a typical reporting period do not submit on time.
- Finance staff must follow up on non submittals.
- Several restaurants have been disciplined for not submitting reporting. An estimated seven (7) businesses have been penalized by removal of their CO and city rezoning from the R-AB district.

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R-AB cases in 5 yrs

	#	%
Adopted	83	92.2%
Withdrawn	6	6.7%
Defeated	1	1.1%
TOTAL	90	
	#	%
Hotel	14	15.6%
Movie Theater	3	3.3%
Water Street (Urban Center)	10	11.1%
TMF (Urban Center)	7	7.8%
Mainstage Irving	1	1.1%
City Golf Course	1	1.1%
Other (restaurants)	54	60.0%
TOTAL	90	

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Benchmarking of Neighbor Cities

	<u>Restaurant</u>	<u>Bar/brewpub</u>	<u>Distillery/winery/brewery</u>
Arlington	By right in commercial and industrial districts	Permitted by right downtown, industrial, and mixed use	By right in a commercial and industrial districts; by SUP downtown
Coppell	By SUP	By SUP	By SUP
Dallas	By right in most commercial districts	By SUP in all districts	By right in industrial; by SUP in Central Areas
Denton	By right in commercial, industrial and mixed use districts	Downtown and most commercial districts by right; by SUP in mixed use and neighborhood districts	
Eules	By right in commercial and industrial districts	By SUP in all districts	
Fort Worth	By right in all commercial districts including neighborhood	By right in higher intensity commercial and industrial districts	By right in Industrial districts
Grand Prairie	By right in commercial and industrial districts	By right downtown; by SUP in most commercial and industrial districts; by SUP w/conditions	Distilleries by right in industrial districts; if have tasting then by SUP
Grapevine	By CUP	By CUP in all districts	By CUP
Plano	By right in most commercial districts	Staff determines by use based on TABC license	By right as a moderate industrial use; Winery by SUP

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Recent Presentations and Discussions

September 27, 2021	Irving Convention and Visitors' Bureau passes resolution of support
October 14	Council work session #1
November 1	Greater Irving-Las Colinas Chamber of Commerce passes resolution of support
November 1	Planning and Zoning Commission work session #1
December 9	Council work session #2
December 13	Planning and Zoning Commission work session #2
January 3, 2022	Planning and Zoning Commission public hearing and recommendation (postponed to February 7)

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Proposal

1. Regulate Alcoholic Beverage Establishments that **derive 75% or more of their gross revenues** from the sale of alcohol for on premises consumption through a **Conditional Use Permit (CUP)**
 - City regulation is **allowed** by the Alcoholic Beverage Code
 - Similar to current S-P-1 (R-AB) but **adds additional control** including revocation of CUP for cause and time limits - not available in a permanent zoning
 - Processed **similar to a zoning case** per state law with two public hearings and final council consideration
 - Considered case by case and site by site
 - Includes site plans, narratives, exhibits
 - Will not apply within the Urban Business District Overlay and PUD 6

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Proposal, cont.

2. Regulate uses that receive **less than 75%** of gross revenue for on premises consumption based on the **zoning district for their primary function**
 - Allows restaurants, hotels, service, entertainment establishments to provide alcohol service with distance verification
3. Retain **separation distances** for the TABC permit
 - Continue to require 300 foot measurements for public or private schools, worship facilities and public hospitals as allowed by state law at time of TABC permit
 - Exempt the Urban Business Overlay (Lake Carolyn area), Heritage Crossing Zoning District, TOD districts, PUD 6, and city-owned properties where on-premises consumption may occur
 - Revise the alcohol distance variance process to be considered by the City Council only
4. Remove city revenue reporting requirement

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Sample Scenarios

1. A property in the urban center was zoned R-AB but was not serving food:
 - a. A desired business was located in a tenant space on Las Colinas Blvd. beneath the Alesio apartments
 - b. The R-AB zoning only allowed it to operate as a restaurant serving at least 30% food (revenue).
 - c. The business had installed multiple beer taps with tables for patrons and did not serve food.
 - d. The only option was to close the alcohol service and operate as a retail store.
 - e. With the proposed amendments, the business would have been able to reopen for on premises consumption with a new Certificate of occupancy.



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Sample Scenarios

2. A movie theater whose business includes the sale of alcohol during showings
 - a. Several national chains' business model includes the ability for patrons to consume alcohol while watching movies
 - b. Unless a theater also serves food, they cannot sell alcohol at this time
3. If the Irving Arts Center desires to sell wine for patrons during exhibitions and performances
 - a. Does not have a kitchen nor does their business model including selling food
 - b. Since the only way to sell alcohol for on-premises consumption is through the R-AB zoning, they are not allowed to sell wine.

The ordinance as proposed would allow both of these scenarios with the primary uses.



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Sample Scenarios



4. An establishment proposed in a shopping center at the corner of 635 and 161
 - a. The property is a large strip shopping center with out-parcels
 - b. The property is primarily zoned C-C with multiple restaurants zoned R-AB
 - c. With the amendments, if a restaurant expects less than 75% of revenue from alcohol sales, no CUP will be required; CUP required if greater than 75% revenue

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Sample Scenarios

5. An establishment proposed in an existing shopping center near a neighborhood:
 - a. Staff will request disclosure of the % of revenue expected from alcohol sales (must be consistent with TABC license application).
 - b. If more than 75% of gross revenue, the applicant will be directed to complete the process to request a Conditional Use Permit (CUP).
 - c. Through the CUP zoning processes, a site plan will be submitted
 - d. Notifications will be sent to property owners within 200 ft. and signs will be posted.
 - e. Two (2) public hearings will be held.
 - f. If 20% or more of the property owners within the 200 ft. area submit written opposition, a vote of at least 7 council members will be required for approval.

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Sample Scenarios

6. An establishment proposed on Main Street in the Heritage Crossing District:
 - a. The area is redeveloping, with the reconstruction of Irving Blvd. and new investments
 - b. Any new business proposing more than 75% of gross revenue, would be required to request a Conditional Use Permit (CUP) and complete the process with notifications and public hearings.
 - c. The amendments would also allow outside dining.



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Sample Scenarios

7. Golf Courses
 - a. All golf courses in the city are required to get R-AB zoning to offer alcohol service during play or on the property.
 - b. In order to serve on the entire property outside of any club or restaurant, the whole course must be rezoned R-AB as the base district and add the golf course use.

The ordinance as proposed would allow golf courses to sell for consumption in a restaurant or on the golf course.

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Other Amendments

- A. Amend C-N and C-C to remove the requirement of **activities within in a building**
- Restaurants are only allowed by right in C-N, C-C, M-FW and FWY
 - Only C-N and C-C have the limitation
 - Allows restaurants to **serve on outside patios by right**, with appropriate noise and adjacency considerations
 - Provide additional **parking** as needed for patio seating area
- B. Amend Administrative Amendments to allow **expansion to an outside patio**
- For existing R-AB districts, allow an **expansion** of the existing restaurant seating square footage on an adjacent patio area, with appropriate noise and adjacency considerations
 - Up to 25% in non mixed use districts (most districts)
 - Up to 50% in mixed use and TOD districts

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Other Amendments, cont.

- C. Amend or add **definitions**
- Alcoholic Beverage Establishments, Brewpub
 - Alcohol beverage manufacture, wholesale and distribution; Brewery; Winery; Distillery
 - Wine Boutique, Microbrewery/distillery
 - Event Center/Rental Hall
 - Restaurant
 - Private Club (update)
- D. Amend **land use chart** and **individual sections** to define districts for uses
- Restaurants currently allowed in C-N, C-C and FWY districts
 - Add Alcoholic Beverage Establishments, Brewpub by CUP only
 - Add Wine Boutique, Microbrewery/distillery in C-C, FWY, and TOD
 - Add Alcohol beverage manufacture, wholesale and distribution in all industrial districts

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Other Possible Amendments, cont.

- E. Allow **waiver of processing fees** when rezoning out of a S-P-1 R-AB to a base district that is consistent with the comprehensive plan
- Fee is not waived if rezoning to another Site Plan district or to a district not consistent with the comp plan that would require an amendment

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Other Amendments, cont.

- F. Create Conditional Use Permit
- For uses identified on the **land use chart** as CUP required;
 - Requires **approval** from Council before use is allowed;
 - Allows for **site by site** consideration of a request;
 - Requires the applicant to provide a **site plan**;
 - Enables **revocation** for poor behavior or operation, inaction, or discontinuance of use; and
 - Sets an **indefinite time period** for operation unless otherwise determined by Council

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CUP Approval Process

1. An **application** is submitted to Planning staff which includes a site plan and details about the business.
2. Staff reviews the site plan for **compliance** with city codes including zoning, fire, water/wastewater, traffic, etc.
3. Staff provides **public notice** to property owners within 200 feet and publishes notice concerning the hearings.
4. The **Planning and Zoning Commission** conducts a public hearing and makes a **recommendation** to the City Council
5. **The City Council** conducts a public hearing and approves, denies, or modifies CUP, and may include an **expiration date** if desired.

*If more than 20% of the property owners within 200 feet are opposed, 75% or 7 of 9 Council votes are required for approval.

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CUP Renewal Process

- The **City Council will decide** at the time of approval if the use is allowed to operate indefinitely or has a time limit, e.g. the Council wants to determine **if it should continue**.
- If the City Council does not set a timeframe, the CUP use can continue **indefinitely**, but is still subject to revocation if necessary.
- If the City Council approves a CUP with a **limited time or expiration date**, then the owner can decide whether to seek **renewal** before the expiration and follow the same public hearing process.

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Revocation of Permit and CO

The City Council may **revoke** a CUP and corresponding Certificate of Occupancy (CO) due to any of the following:

- Circumstances changed from the reasons for approval;
- Alterations or enlargements or otherwise significant changes without approval;
- Violation of any provision of the site plan;
- The CUP was obtained by fraud or with deception;
- If the use ceases or was suspended for one hundred eight (180) calendar days or longer;
- One (1) or more of the conditions of the CUP were not met;
- The use is in violation of any applicable statute, ordinance, law, or regulation; or
- The use is detrimental to the public health, safety or welfare, or constitutes a nuisance.

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Revocation Process

The zoning process to revoke a CUP is the same as when it was created.

- Planning and City Attorney Departments **initiate** revocation process
- Staff provides **public notice** to property owners within 200 feet and publishes notice concerning the hearings.
- The **Planning and Zoning Commission** holds a public hearing and makes a recommendation to the City Council
- The **City Council** holds a public hearing. The City Council may proceed to revoke the CUP, or may allow it to continue or amend the conditions of the CUP.

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Enforcement

Necessary compliance actions for violations or failure to stop operations may be taken **as for any zoning or code violations**:

1. Code Compliance works with Planning on CUP requirements and **initiates an investigation** to determine compliance;
2. Code officer has **discussions with operator/owner** to address items not in compliance;
3. Notice of Violation and **citations** are issued when appropriate;
4. If the CUP is **revoked or expired**, the Code officer will provide a **deadline** for ceasing operations;
5. With failure to comply, **additional citations** are issued and the city files a case through **District Court**.

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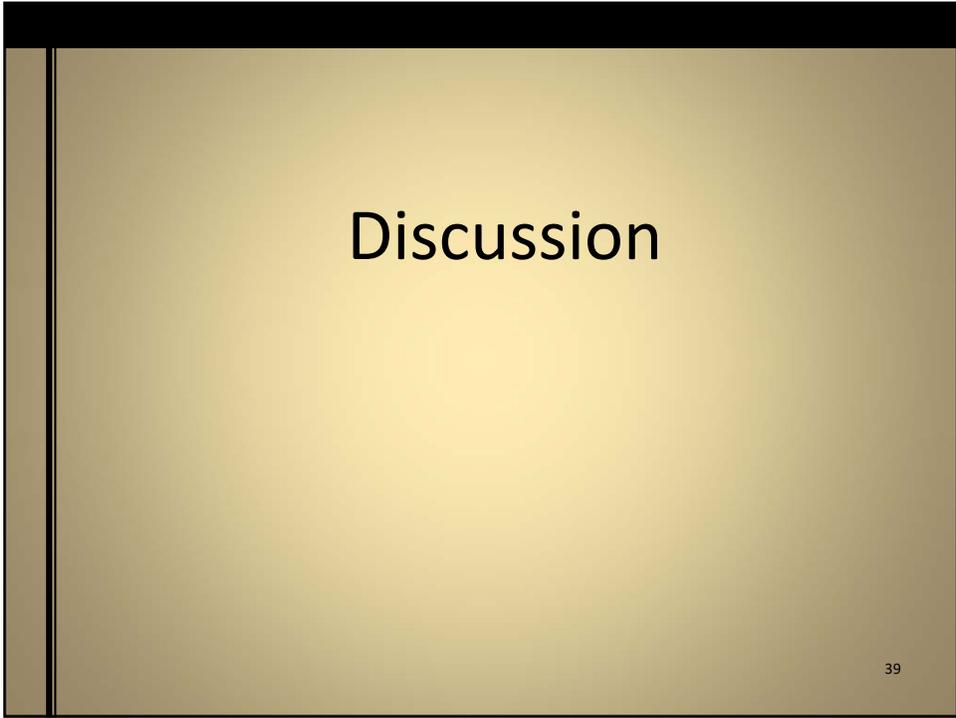
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Next Steps

January 18	Planning and Zoning Commission Work Session #3
February 7	Planning and Zoning Commission public hearing and recommendation
February 10 (scheduled)	City Council public hearing and vote

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