

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.

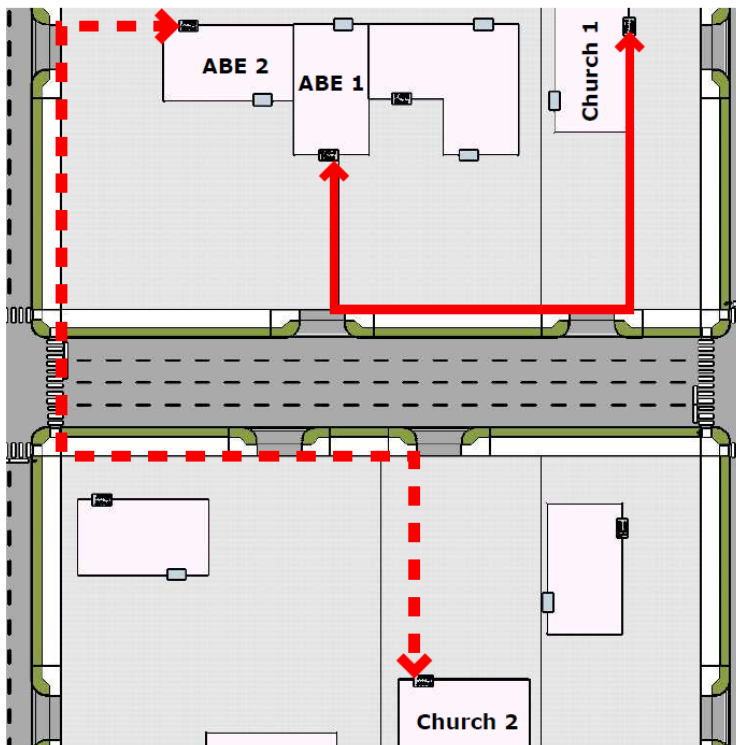
3.3.8 **Sales Near a School, Worship Facility, or Hospital.**

- 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.

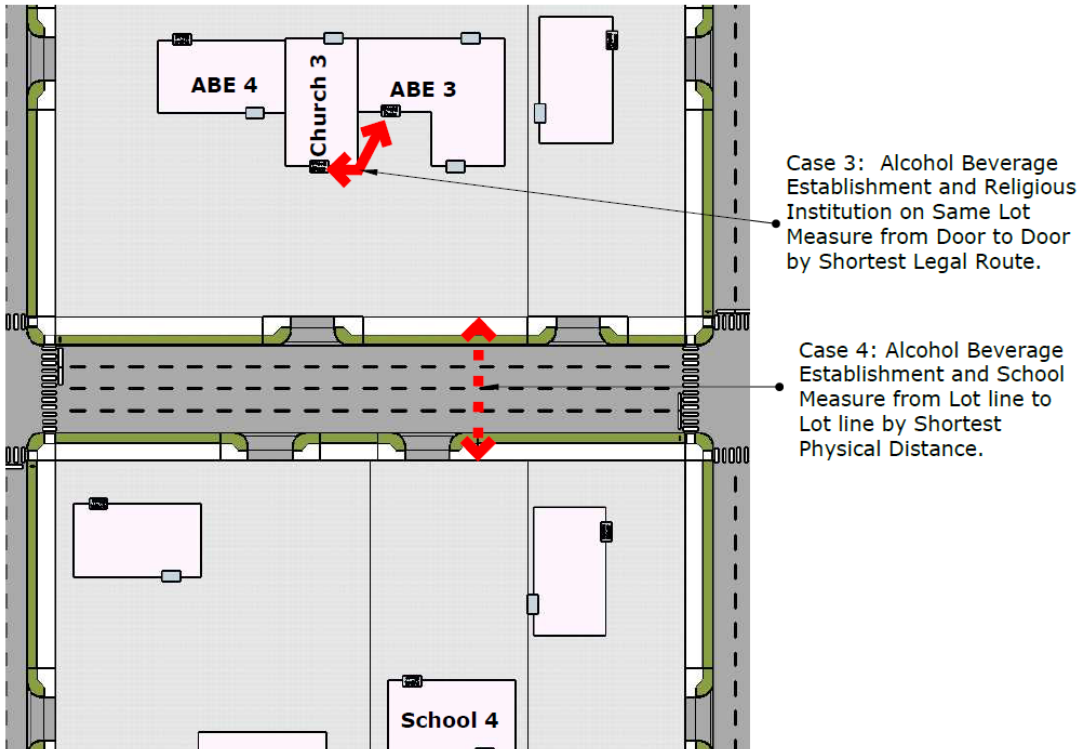
- 2) The measurement of the distance between the place of business where alcoholic beverages are sold and a public or private school shall be:
  - a. in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; 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.