

## TITLE 6. LOCAL OPTION ELECTIONS

### CHAPTER 251. LOCAL OPTION STATUS

#### SUBCHAPTER D. MISCELLANEOUS LOCAL OPTION PROVISIONS

**Sec. 251.71. WET AND DRY AREAS.** (a) An area is a "dry area" as to an alcoholic beverage of a particular type and alcohol content if the sale of that beverage is unlawful in the area. An area is a "wet area" as to an alcoholic beverage of a particular type and alcoholic content if the sale of that beverage is lawful in the area.

(b) Those areas that are wet or dry when this code takes effect retain that status until the status of the area is changed as provided in this code.

(c) All trial courts of this state shall take judicial notice of the wet or dry status of an area in a criminal prosecution.

(d) In an information, complaint, or indictment, an allegation that an area is a dry area as to a particular type of alcoholic beverage is sufficient, but a different status of the area may be urged and proved as a defense.

(e) For purposes of this code:

(1) a reference to a local option election means an election held under Chapter 501, Election Code; and

(2) a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

**Sec. 251.72. CHANGE OF STATUS.** Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 501.035, Election Code, until that status is changed by a subsequent local option election in the same authorized voting unit.

**Sec. 251.73. PREVAILING STATUS: RESOLUTION OF CONFLICTS.** To insure that each voter has the maximum possible control over the status of the sale of alcoholic beverages in the area where he resides:

(1) the status that resulted from or is the result of a duly called election for an incorporated city or town prevails against the status that resulted from or is the result of a duly called election in a justice precinct or county in which the incorporated city or town, or any part of it is contained; and

(2) the status that resulted or is the result of a duly called election for a justice precinct prevails against the status that resulted from or is the result of a duly called election in an incorporated city or town in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

**Sec. 251.74. AIRPORT AND STADIUM AS WET AREAS.** (a) This section applies to any county:

(1) that has a population of more than 240,000, according to the most recent federal census;

(2) in which the sale of all alcoholic beverages has been legalized in all or any part of the county; and

(3) where, at the general election on November 3, 1970, the voters approved the constitutional amendment authorizing the sale of mixed beverages on a local option basis.

(b) In a county covered by this section, the commissioners court may designate as an area wet for the sale of mixed beverages only:

(1) the area encompassed by the building structure of a professional sports stadium, used wholly or partly for professional sporting events and having a seating capacity of at

least 40,000, and not more than 125 acres of adjacent land used for the benefit of the stadium, regardless of ownership of the land, if no registered voters reside there; and

(2) the area encompassed by a regional airport.

(c) The order of the commissioners court authorizes the issuance of a mixed beverage permit.

**Sec. 251.741. CERTAIN AIRPORTS AS WET AREAS.** In addition to those areas declared wet by order of the commissioners court under the authority of Section 251.74 of this code, in a county with a population of more than 175,000 according to the most recent federal census where the sale of mixed beverages only is legalized in the most populous city in the county by a local option election held after May 18, 1971, the area actually encompassed by any municipal airport under the jurisdiction of that city is wet for the sale of mixed beverages only. Subsequent local option elections held by that city do not affect the local option status of the airport unless the result of the election prohibits the sale of mixed beverages, in which case the provisions of this section do not apply.

**Sec. 251.75. CONTINUANCE OF OPERATION AS MANUFACTURER OR BREWER.** Notwithstanding any other provision of this code, if the sale of beer or ale is prohibited in an area by a local option election, a holder of a manufacturer's license or brewer's permit that was issued prior to the election may not be denied an original or renewal manufacturer's license or brewer's permit for the same location on the ground that the local option status of the area prohibits the sale of beer or ale. Except for the right to sell beer or ale contrary to the local option status of the area, the licensee or permittee may engage in all activities authorized by the license or permit, including the manufacturing, brewing, possessing, storing, and packaging of beer or ale, and transporting it to an area where its sale is legal. The licensee or permittee may deliver beer or ale at his licensed premises to a purchaser from outside the state, an authorized carrier, distributor, or class B wholesaler. The purchaser, carrier, distributor, or class B wholesaler may not receive the beer or ale for transportation unless there has first been an order, acceptance, and payment or legal satisfaction of payment in an area where the sale of beer or ale is legal.

**Sec. 251.76. CONTINUANCE OF OPERATION AS DISTILLER AND RECTIFIER.** Notwithstanding any other provision of this code, a person who has been issued a distiller's and rectifier's permit may not subsequently be denied an original or renewal distiller's and rectifier's permit for the same location on the ground that the sale of distilled spirits has been prohibited in the area by a local option election. A person holding a permit at the time of the election or issued a permit under this section may exercise all privileges granted by this code to the holder of a distiller's and rectifier's permit, including the manufacturing, possessing, storing, packaging, and bottling of distilled spirits and the transportation of them to areas in which their sale is legal.

**Sec. 251.77. CONTINUANCE OF OPERATION AS DISTRIBUTOR.** (a) Notwithstanding any other provision of this code, if the sale of beer is prohibited by local option election, a licensed distributor of beer whose warehouse or other facilities used in connection with the distributorship are located in the area affected, has the right to continue to operate as a distributor in that area and maintain the necessary premises and facilities for distribution. The distributor continues to enjoy all the rights and privileges incident to distributorship, including the right to possess, store, warehouse, and sell beer in that area, and deliver beer into and out of that area.

(b) A distributor in the area affected may sell or deliver beer only to licensed outlets located where the sale of beer is legal.

**Sec. 251.78. CONTINUANCE OF OPERATION AS WHOLESALER.** (a) Notwithstanding any other provision of this code, if the sale of the type or types of liquor authorized to be sold by the holder of a wholesaler's permit whose warehouse or other facility used in connection with the wholesale operation is prohibited in an area by local option election,

the holder of the wholesaler's permit shall have the right to continue to operate as a wholesaler in that area and maintain the necessary premises and facilities for the wholesale operation. The wholesaler shall enjoy all the rights and privileges incident to the permit, including the right to possess, store, warehouse, sell, deliver, and receive liquor.

(b) A wholesaler in the area affected may only sell or deliver liquor to permittees located where the sale of liquor is legal.

**Sec. 251.79. AREAS IN WHICH CERTAIN PERMITS AND LICENSES MAY BE ISSUED.** Notwithstanding any other provision of this code, a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, or general, local or branch distributor's license may be issued and licensed premises maintained in any area where the sale of any alcoholic beverage is legal. A person issued a permit or license under this section may exercise all rights and privileges of other permittees and licensees of the same class.

**Sec. 251.80. CHANGE IN PRECINCT BOUNDARIES.** (a) Whenever a local option status is once legally put into effect as the result of the vote in a justice precinct, such status shall remain in effect until the status is changed as the result of a vote in the same territory that comprised the precinct when such status was established. If the boundaries of the justice precinct have changed since such status was established, the commissioners court shall, for purposes of a local option election, define the boundaries of the original precinct. A local option election may be held within the territory defined by the commissioners court as constituting such original precinct.

(b) Nothing in this section is intended to affect the operation of Section 251.73 of this code.

(c) The provisions of Section 501.107, Election Code, relating to the payment of local option election expenses shall apply to elections held in a territory that is defined in accordance with Subsection (a) of this section.

**Sec. 251.81. SALE OF WINE.** (a) If the sale of wine was approved in an area by a local option election, other than a local option election that approved the sale of all alcoholic beverages, before September 1, 1999, an alcoholic beverage license or permit holder may not sell in that area wine containing more than 14 percent alcohol by volume unless a subsequent local option election approves the sale of wine or wine and other alcoholic beverages.

(b) The commission shall, on the face of each alcoholic beverage license or permit indicate whether the holder may sell wine and, if the license or permit holder may sell wine, whether the holder may sell wine up to 14 percent alcohol or 17 percent alcohol by volume.

**Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS.** For the purposes of an election conducted under Section 501.109, Election Code, a reference in this code:

- (1) to the county is considered to refer to the city or town;
- (2) to the commissioners court is considered to refer to the governing body of the city or town;
- (3) to the county clerk or registrar of voters is considered to refer to the secretary of the city or town or, if the city or town does not have a secretary, to the person performing the functions of a secretary of the city or town; and
- (4) to the county judge is considered to refer to the mayor of the city or town or, if the city or town does not have a mayor, to the presiding officer of the governing body of the city or town.