

# Local Option Alcohol Elections: Statutory Requirements and the Role of the City Attorney

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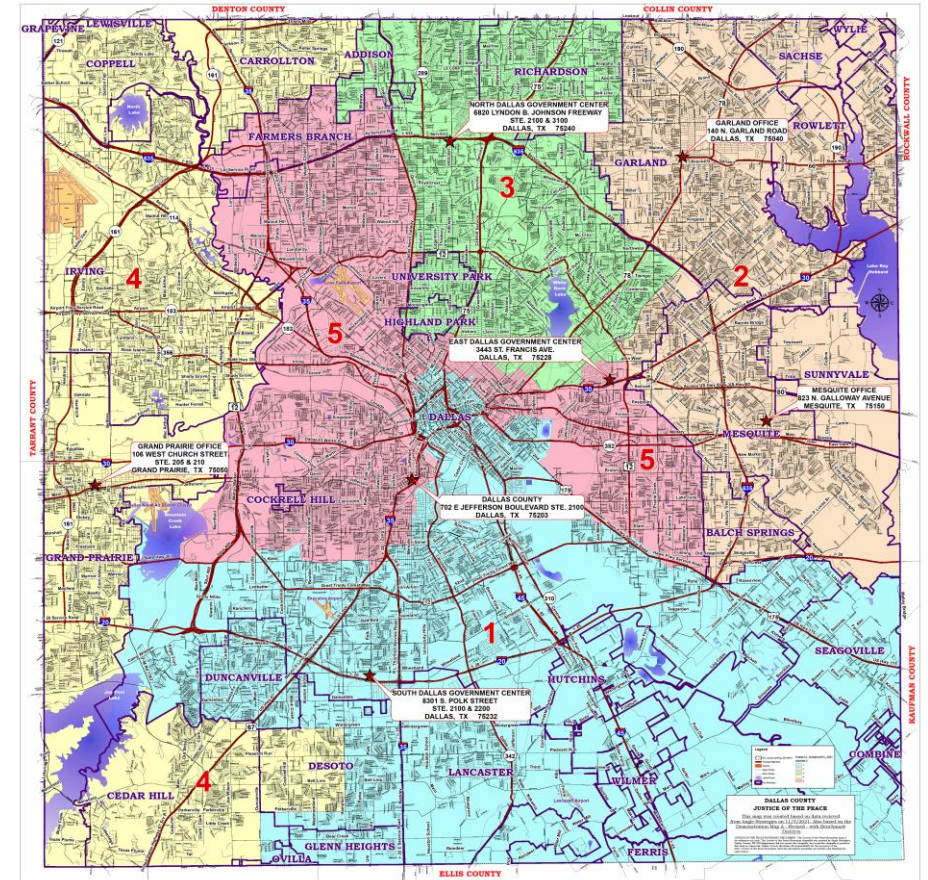
# Overview

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- General Information
- Required Steps for Holding a Local Option Alcohol Election
- Tips

# Local Authority over Alcohol Sales

- Individual Cities  
(At least 18 months old)(*EC §501.022*)
- Single Justice of the Peace  
(Judicial) Precincts
- Entire Counties  
(*EC §501.021*)





# Annexations and LOEs

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- Generally, a dry area annexed to a wet city retains its original dry status. *Houchins v. Plainos*, 110 S.W. 2d 549 (Tex. 1937).
- If the territory is annexed after the petition is issued but prior to the election
  - Territory is included in that election and affected by the election outcome.
  - # of signatures needed on the petition is increased to reflect the additional population of the area pending annexation.  
(*EC §501.1035*)

# Steps for Holding Local Option Elections





# Step One: Publication in Newspaper

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Notice must include:

- a. The individual or entity that is applying for the petition to gather signatures for a local option liquor election
- b. The type of LOE (Issue);
- c. The name of the City in which the petition will be circulated; and
- d. The name of the person and office in which the application will be filed.

*(EC §§ 501.035 and 501.105)*



A close-up photograph of a glass filled with beer, topped with a thick, white head of foam. The beer is a golden color. The text 'Step Two: File Application' is overlaid on the right side of the glass, with a thin horizontal line underneath it.

## Step Two: File Application

# Step Two: File Application

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- Filed with the City Secretary
- Must be in writing
- Signed by 10 or more qualified voters (*EC §501.023*)
  - Qualified voter = Registered voter in the City
- Particular heading, statement and issue is required
  - Prohibition election (*EC §501.024*)
  - Legalization election (*EC §501.025*)
- Filed with proof of publication in newspaper of general circulation

# 10 Possible Issues for Election *(EC 501.035)*

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- **Malt Beverage – Off:** “The legal sale of malt beverages for off-premise consumption only.”
- **Malt Beverage:** “The legal sale of malt beverages.”
- **Wine/Malt Beverage – Off:** “The legal sale of malt beverages and wine for off-premise consumption only.”
- **Wine/Malt Beverage:** “The legal sale of malt beverages and wine.”
- **All AB – Off:** “The legal sale of all alcoholic beverages for off-premise consumption only.”
- **All AB Except Mixed:** “The legal sale of all alcoholic beverages except mixed beverages.”
- **All AB:** “The legal sale of all alcoholic beverages including mixed beverages.”
- **Mixed Beverages:** “The legal sale of mixed beverages.”
- **RM:** “The legal sale of mixed beverages by food and beverage certificate holders only.”
- **Winery:** “The legal sale of wine on the premises of a holder of a winery permit.”



**BEER**

**IS NOW  
“MALT BEVERAGE”**

*EC §501.035,  
HB 1545 (2021)*

# Step Three: City Secretary Issues Petition

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- Each page must contain:
  1. The heading and statement (*EC §§501.027, 501.028*)
  2. The type of LOE (Issue) (*EC §§501.035*)
  3. The pages have to be serially numbered (*EC §§501.026*)
  4. The actual seal of City (*EC §§501.026*), and
  5. The date the petition is issued to petitioners (*EC §501.026*).
- Supply as many pages as requested (no more than 1 page for every 10 voters) and keep a copy (*EC §501.030*)



# Step Four: Petition is Circulated for Signatures

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# How many signatures are needed?

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Depends on the category of local option liquor election the petitioners are seeking. Equal to or greater than:

- 25 percent of the registered voters in the City who voted in the most recent **general** election (as indicated by the official returns for that election)
  - Only with “The legal sale of wine on the premises of a holder of a winery permit” ballot issue
- 35 percent of the registered voters in the City who voted for governor in the most recent **gubernatorial** election (as indicated by the official returns for that election)
  - All other ballot issues

*(EC §501.032)*

# Step Four: Petition is Circulated

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- Petition can be circulated for 60 days from issuance of Petition
- It is a Class B misdemeanor to misrepresent the purpose or effect of a local option liquor petition (*EC § 501.029*)
- Signer must already be a registered voter in the City as of the date the petition was issued
  - Therefore, a petition circulator could not ask a potential signer to fill out a voter registration application and then immediately have that individual sign the petition (30-day period for voter registration validity) (*EC §§ 13.143, 501.031*)

# Step Five: Petition is Filed

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*(EC §501.032)*

# Step Five: Petition is Filed

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- A petition must be filed no later than 60 days after it is issued. (*EC §501.032*)
- If the 60th day after the petition is issued falls on a Saturday, Sunday, or legal holiday, the filing deadline is on the next regular business day. (*EC §1.006*)



# Step Six: Verify Petition

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*(EC §501.032)*

# Step Six: Verify Petition

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- City Secretary is required to verify (*EC §501.031*)
- The signature criteria that must be verified is the following:
  1. Must live within the City
  2. Must have been registered to vote in the City as of the date of the issuance of the petition
  3. Must appear on the County Election Administrator's official record of registered voters for the City

# Statistical Sampling Method

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- City may choose to use a statistical sampling method when verifying petition signatures.
- Any citizen can file a written request that each signature be verified.
- The citizen making the request is responsible for the cost of verifying each signature.
- If a valid request is made, the city secretary, as applicable, shall verify each signature.

*(EC §501.031(a))*

# What constitutes a valid signature?

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- For a signature to be valid, it must be accompanied by:
  1. the signer's printed name;
  2. the signer's date of birth;
  3. if City is in more than 1 county, the county of registration;
  4. the signer's residence address; and
  5. the date of signing.

The signature is the only requirement that must be in the signer's own handwriting.

*(EC §501.031)*



# Missing Information

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- Doesn't have to be full address, as long as the rest of the information on the petition establishes that the signer is eligible to sign the petition. *In re Kevin H. Bell*, 91 S.W.3d 784 (Tex. 2002)
- The address on the petition is not required to have the state or zip code listed to be valid.
- Doesn't have to be the same address as what is on the official voter registration list, as long as they still live within the City
- If one person signs two names on one line → only count one
  - Ex. John and Jane Doe

A large, modern conference room with a curved wooden table, rows of chairs, and a sign that reads "AUTHORIZED ACCESS ONLY BEYOND THIS POINT". The room features a high ceiling with recessed lighting and large windows in the background. The text "Step Seven: Council to take Action" is overlaid on the image.

# Step Seven: Council to take Action

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- Must be brought before the City Council to vote on whether to order a special election
- When?- Next **regular** meeting **after** 30 days after the petition is filed (*EC §501.032*)
- Petition recorded in the minutes- date filed, names of the signers, the council action

# What must be in the election order?

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1. Heading and text must state whether the election is for the purpose of legalizing or prohibiting the sale of beverages as set out in the petition.
2. Must state the issue to be voted on (which must be the same as the issue on the petition).
3. The polling place for each election precinct.
4. For city liquor elections, only the city election precincts need to be stated in the order.
5. The early voting polling places and polling hours shall be stated in the order calling the election.
6. The order must state the city secretary's mailing address to which ballot applications and ballots voted by mail may be sent. *(EC §501.034)*

# What if the petition doesn't have enough signatures?

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- Applicant can't supplement or add signatures after the petition has been submitted (even if they are still within their 60 days to circulate the petition)
- Still have to take to City Council to record the petition in the minutes
- Recommend to note the deficiency and process, take action not to call election, and to record the required information in the meeting minutes



**Step Eight:  
Hold Election (If signatures are sufficient)**

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# Step Eight: Hold Election

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- When must a local option liquor election be held?
  - Uniform election date (1<sup>st</sup> Saturday in May and 1<sup>st</sup> Tuesday after the first Monday in November). (*EC §41.001(a)*)
- Ballots
  - The permissible ballot propositions are set out in Election Code Section 501.035.
  - The ballot must be bilingual (and other languages, if required)

# Who pays for the election?

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- The City has to pay (*EC §501.109*)
- Deposit of 25 cents per registered voter in the City can be required from the Petitioner if the City has conducted an election on exactly the same issue within a one-year time period. (*EC §501.108*)
- City Secretary can't issue petition until the deposit is made



# Step Nine: Post Election Actions

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# Step Nine:

## Post Election Actions

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- Canvass the election and declare results of election
- Successful election to **prohibit** the sale, the ordinance must state that the sale of the type(s) of beverages is prohibited effective the 30th day after the date the order is entered.
- Successful election to **prohibit** the sale, city secretary must publish the order declaring the result of the election at 3 public places in City and record the posting of the order in the City Council meeting minutes.
- Successful election to **legalize** the sale, the sale of such beverages is legal upon the entering of the City's canvassing and ordinance.
- Within 3 days of canvassing- city secretary must certify the results to the Secretary of State and to the TABC by providing certified copy of canvassing ordinance

# Tips

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- **Must advise your client** to coordinate with important deadlines for upcoming uniform election dates.
  - Last day to order an election (78 days before the election)
  - LOE must be heard at next regular meeting 30 days after Petition is filed (*EC §501.032*)
  - Petitioner has up to 60 days to circulate the petition
- Important to know the history of how alcohol sales happened in your City
  - Excel spreadsheet of current wet/dry status
  - List of historic elections- 1937- Present

# Tips

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- LOE in a newly-annexed area, make sure that your City has notified the County and that the County Election Administrator has gotten an updated street index/list from you for that newly-annexed area
- Work with County Elections Administrator to get list of registered voters as of the date the petition is issued

# Helpful Links

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- TABC Website
  - <https://www.tabc.texas.gov/public-information/local-option-elections/>
  - Excel spreadsheet of current wet/dry status of counties, precincts and cities
  - List of historic elections- 1937- Present
- Secretary of State Website
  - <https://www.sos.state.tx.us/elections/laws/liquorelections.shtml>

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# Thank You!

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