

CITY OF LAVON, TEXAS
ORDINANCE NO. 2018-03-04

Alcoholic Beverage Regulations

AN ORDINANCE OF THE CITY OF LAVON, TEXAS ADOPTING AN ORDINANCE FOR THE REGULATION OF ALCOHOLIC BEVERAGES; AMENDING THE FEE SCHEDULE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED \$500.00 PER OFFENSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 2, 2010, the voters of the City of Lavon approved the sale of beer and wine for off-premise consumption in the City of Lavon; and

WHEREAS, on December 21, 2010, the City Council adopted Ordinance No. 2010-12-01 amending the Comprehensive Zoning Ordinance to add **Article XVII** providing for the regulation of alcoholic beverages; and

WHEREAS, the City Council desires to change the regulations adopted in Ordinance No. 2010-11-01 from the zoning ordinance to the business regulations of the City; and

WHEREAS, the City Council desires to amend the regulations pertaining to the location distance from a public school and to open containers; and

WHEREAS, the City Council desires to authorize an administrative fee for the review of an initial application for a Beer and Wine Retailer Permit;

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

SECTION 1. ADOPTING BUSINESS REGULATIONS FOR ALCOHOLIC BEVERAGES

The City Council of the City of Lavon does hereby adopt the regulations attached hereto as Exhibit "A" Alcoholic Beverages.

SECTION 2. SEVERABILITY CLAUSE

In the event any clause, phrase, provision, sentence, or any part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provisions hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Lavon, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 3. PENALTY

Any person or dealer violating the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a penalty or fine not to exceed \$500.00 for each offense.

SECTION 4. REPEALER CLAUSE

All ordinances or parts of an ordinance inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed. All other provisions of the ordinances of the City which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 5. OPEN MEETING

It is hereby officially found and determined that all notice required by law has been given and notice of this Ordinance was posted and the Ordinance passed in accordance with the Open Meeting Act.

SECTION 6. PUBLICATION

The City Secretary is hereby directed to publish notice of this Ordinance in accordance with applicable laws.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED and APPROVED by the City Council of the City of Lavon, Texas, on the 20th day of March, 2018.



Charles A. Teske, Jr., Mayor

ATTEST:



Kim Dobbs, City Administrator | City Secretary



CITY OF LAVON, TEXAS
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EXHIBIT "A"

ALCOHOLIC BEVERAGES

SECTION 1. DEFINITIONS

1.0 The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1.1 *Alcoholic beverage* means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

1.2 *Beer* means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

1.3 *Child care facility* means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

1.4 *Day care center* means a child care facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

1.5 *Dealer* means the same as that term is used in V.T.C.A., Alcoholic Beverage Code section 109.33, and shall include "person" as that term is defined in this section.

1.6 *Open container* means a container that is no longer sealed.

1.7 *Person* means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

1.8 *Private school* means a private school, including a parochial school that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

SECTION 2. LOCATIONS WHERE SALE OF ALCOHOLIC BEVERAGES IS PROHIBITED

2.0 It shall be unlawful for any dealer to sell alcoholic beverages unless properly authorized and licensed to do so by the Texas Alcoholic Beverage Commission.

2.1 It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 300 feet of a church, public school, private school, or public hospital.

2.1.1 Section 2.1 does not apply to the holder of:

- A. A license or permit who also holds a food and beverage certificate covering premises that is located within 300 feet of a private school; or
- B. A license or permit covering premises where minors are prohibited from entering under V.T.C.A., Alcoholic Beverage Code section 109.53 and that is located within 300 feet of a private school.

2.2 The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

2.3 The measurement of the distance between the place of business where alcoholic beverages are sold and the 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.

2.4 It shall be unlawful for any holder of a wine and beer retailer's permit, mixed beverage permit, private club registration permit, retail dealer's on-premises license, or brewpub license who does not hold a food and beverage certificate to sell alcoholic beverages from or at a place of business within this city within 300 feet of a day care center or child care facility.

2.4.1 Section 2.4 does not apply to a permit or license holder who sells alcoholic beverages if:

- A. The permit or license holder and the day care center or child care facility are located on different stories of a multistory building; or
- B. The permit or license holder and the day care center or child care facility are located in separate buildings and either the permit or license holder or the day care center or child care facility is located on the second story or higher of a multistory building.

2.4.2 Section 2.4 does not apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by V.T.C.A., Human Resources Code section 42.002.

2.5 The measurement of the distance between the place of business where alcoholic beverages are sold and the day care center or child care facility shall be:

- A. In a direct line from the property line of the day care center or child care facility 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 day care center or child care facility 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.

2.6 It shall be unlawful for any person or dealer to sell beer in any residential areas within the city.

SECTION 3 PERMITS FOR SALE OF ALCOHOLIC BEVERAGES REQUIRED

3.0 Unless state law exempts a permittee or licensee from payment of a fee established by this section, a permittee or licensee must pay the city:

- A. An administrative processing fee.
- B. An annual permit or license fee of one-half (1/2) the amount of the state fee for each permit and license authorizing the sale of alcoholic beverages.

3.1 An applicant shall pay the fees established under subsection 4.0 to the city no later than the 30th day after the date the applicant's payment of a state permit or license fee is due.

3.2 A permittee and licensee who sells an alcoholic beverage at a business location before the applicant pays the fees established by this section commits a class C misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.

3.3 The city secretary shall issue and deliver a receipt under this section to the permittee or licensee authorizing the sale of alcoholic beverages under this chapter and a state permit or license, if the permittee or licensee:

- A. Pays the fees established by subsection 3.0; and
- B. Exhibits a valid permit or license issued by the state.

SECTION 4 WET/DRY CERTIFICATION

Prior to issuing a city permit to applicant for the proposed location, the city secretary shall certify whether the location is located in an area that is wet and that the sale of alcoholic beverages

at this location is not prohibited by Charter or ordinance. The city secretary shall keep a record of all permits and certificates issued under this chapter.