

CITY OF LAVON, COLLIN COUNTY TEXAS

ORDINANCE NO: 2010-12-01

Amending the Comprehensive Zoning Ordinance Related Alcoholic Beverages

AN ORDINANCE OF THE CITY OF LAVON, COLLIN COUNTY, TEXAS: AMENDING THE COMPREHENSIVE ZONING ORDINANCE NO. 97-12-08; ADDING ARTICLE XVII ALCOHOLIC BEVERAGES; PROVIDING SEVERABILITY 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, the Planning and Zoning Commission and the City Council believe it is in the best interest of the City to clearly define the regulations related to off premise sale of beer and wine; and

WHEREAS, the State of Texas sets certain limits on municipal authority related to the regulation of off premise sale of beer and wine; and

WHEREAS, the Planning and Zoning Commission and the City Council held a joint public hearing on December 21, 2010 to receive public comment on this amendment; and

WHEREAS, the City Council has given due and diligent thought to this concern.

NOW THEREFORE:

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

SECTION 1. Adding Article XVII

The Comprehensive Zoning Ordinance no. 97-12-08, shall be amended by the addition of *Article XVII*. Article XVII shall read:

**Article XVII
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 § 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:

A) Offers a course of instruction for students in one or more grades from kindergarten through grade 12; and

B) 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 TABC.

2.1 It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 1000 feet of a public school.

2.2 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, private school, or public hospital.

2.2.1 Section 2.2 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 § 109.53 and that is located within 300 feet of a private school.

2.3 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.

2.4 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.

2.5 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.

2.5.1 Section 2.5 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.

2.5.2 Section 2.5 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 § 42.002.

2.6 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.

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

Section 3 - Consumption of Alcoholic Beverages and Open Container

3.0 A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a facility that is a public or private school, including a parochial school, that provides all or any part of pre-kindergarten through 12th grade.

3.1 This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this Code.

Section 4 – Permits for Sale of Alcoholic Beverages Required

4.0 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 an annual permit or license fee of one-half (½) the amount of the state fee for each permit and license authorizing the sale of alcoholic beverages.

4.1 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.

4.2 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.

4.3 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 4.0; and
- B) Exhibits a valid permit or license issued by the state.

Section 5 – Wet/Dry Certification

5.0 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.

Section 6 – Penalty

6.0 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 2. SEVERABILITY

It is hereby declared by the City Council of the City of Lavon that if any of the sections, paragraphs, sentences, clauses or phrases of this ordinance shall be declared unconstitutional or otherwise illegal by the valid judgement or decree of any court of

competent jurisdiction, such event shall not effect any remaining the sections, paragraphs, sentences, clauses or phrases of this ordinance.

SECTION 3. EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and publication and it is so ordained.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS ON THIS 21ST DAY OF DECEMBER, 2010.



The Honorable Norma Martin, Mayor

Attest:



Linda Ardis, City Secretary

Primary Sponsor(S):

Mayor Pro Tem Chris Kane
City Manager J. Michael Jones

Additional Sponsors: