

CITY OF LAVON, TEXAS

ORDINANCE NO. 2022-06-03

Amendment to Article 5.04 "Alcoholic Beverages"

AN ORDINANCE OF THE CITY OF LAVON, TEXAS, ENACTING AN AMENDMENT TO THE CITY OF LAVON CODE OF ORDINANCES, CHAPTER 5 "BUSINESS REGULATIONS", ARTICLE 5.04 "ALCOHOLIC BEVERAGES", TO REVISE ARTICLE 5.04 "ALCOHOLIC BEVERAGES" IN ITS ENTIRETY; PROVIDING A CONFLICT CLAUSE; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Lavon, Texas is a Type A general law municipality; and

WHEREAS, Subchapter C. "Local Regulation of Alcoholic Beverages" of the Texas Alcoholic Beverage Code. authorizes a city to adopt ordinances regulating the sale and consumption of alcoholic beverages; and

WHEREAS, the City Council finds that this Ordinance substantially advances the public health, safety, and general welfare of the citizens of the City.

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

Section 1. Incorporation of Recitals. The foregoing recitals hereby are incorporated by reference and made a part hereof as if fully set forth.

Section 2. Amendment. Chapter 5 "Business Regulations", Article 5.04 "Alcoholic Beverages", is hereby revised and amended to read as follows

ARTICLE 5.04 ALCOHOLIC BEVERAGES

Sec. 5.04.001 Definitions

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

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.

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.

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.

Code of Ordinances mean the Code of Ordinances of the City of Lavon, as amended.

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.

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.

Distance Modification has the meaning described and set forth in Section 5.04.005(k).

Open container means a container that is no longer sealed.

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.

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.

All references to state or local laws shall mean as such presently exist or may subsequently be amended.

Sec. 5.04.002 Temporary alcohol sales and consumption in conjunction with a special event permit

(a) The storage, possession, sale or serving of alcoholic beverages by anyone for the consumption, either on or off the premises, shall be prohibited unless on land zoned specifically for that purpose with a conditional use permit, as permitted in the governing zoning district in accordance with Chapter 9 (Planning Development Regulations) of the Lavon Code of Ordinances, or as otherwise permitted in association with a special event permit.

Sec. 5.04.003 Permit requirements for alcohol-related uses, sales, consumption, and events

(a) Any person applying for a permit or license issued by authority of the Texas Alcoholic Beverage Code or a renewal of such permit or license or to change the location of the place of business designated in such permit or license shall deliver to the city secretary, for filing, one copy of the appropriate forms prescribed by the Texas Alcoholic Beverage Commission, together with scale drawings showing the proposed location of the applicant's business in relation to streets, property lines and the nearest church, public school, or public hospital.

(b) Such person shall also provide a statement of his name, current address, addresses for the previous ten years, age, all other city permits or licenses held, and the names and addresses of all persons with an interest in such business, which statement shall include an affidavit that the

information given is true and correct. The applicant shall give permission for his fingerprints, height, weight, race, and other description to be obtained by the police department.

Sec. 5.04.004 Review of application by city secretary; certification as to zoning; objections to issuance

(a) The city secretary shall review the application as submitted by the applicant and verify zoning and approval of a conditional use permit by the city council. If, from the city secretary's examination, it appears that the applicant is disqualified, or that the applicant's place of business is inadequate, unsafe, unsanitary or does not comply with all the terms of the Code of Ordinances, the Texas Alcoholic Beverage Code and/or other applicable laws and regulations, or that any lawful reason exists why the permit or license should not be issued, it shall be the duty of the city secretary to not sign the Texas Alcoholic Beverage Commission form , file objections to the issuance of the permit or license with the Texas Alcoholic Beverage Commission or with the county judge, and/or pursue other remedies provided by law.

Sec. 5.04.005 Location requirements for sale of alcoholic beverages

(a) It shall be unlawful for any business or individual to sell alcoholic beverages unless properly authorized and licensed to do so by the Texas Alcoholic Beverage Commission and the city.

(b) It shall be unlawful for any business or individual 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.

(c) Subsection (b) does not apply to the holder of:

(1) 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

(2) 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.

(3) A license or permit who has been granted a Distance Modification to this section by city council if it determines that the enforcement of the regulation in a particular instance is not in the best interests of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, or is not effective or necessary, or for any other reason the city council determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the Distance Modification is in the best interest of the community and still complies with any applicable Texas Alcoholic Beverage Commission requirements.

(d) 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.

(e) The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

- (1) 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
 - (2) 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) It shall be unlawful for any alcohol-related use to sell alcoholic beverages from or at a place of business within the city limits within 300 feet of a day-care center or child-care facility that was located in an applicable area prior to the alcohol-related use permit.
- (g) Subsection (f) does not apply to a permit or license holder who sells alcoholic beverages if:
 - (1) The permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or
 - (2) 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.
- (h) Subsection (f) 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.
- (i) 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:
 - (1) 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
 - (2) 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.
- (j) It shall be unlawful for any business or individual to sell alcoholic beverages in any areas within the city without approved zoning and permits.
- (k) Distance Modification for Alcohol Sales:
 - (1) The City Council may allow a Distance Modification to the regulations stated in subsection (b) above if it determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes a 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, or is not effective or necessary, or for any other reason it, 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.
 - (2) The City Council may allow a Distance Modification to this section for any other reason the City Council determines, after consideration of the health, safety and welfare

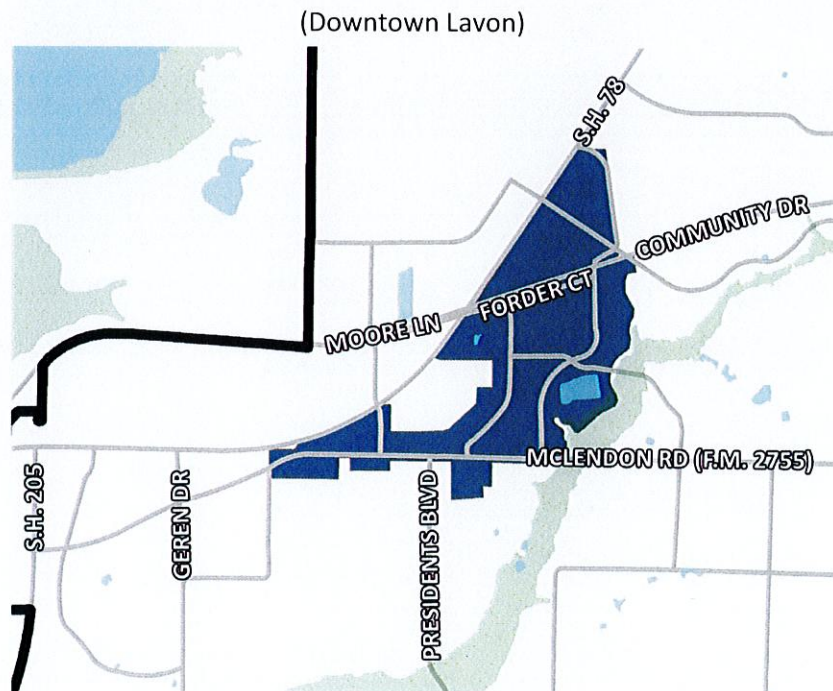
of the public and the equities of the situation, that the Distance Modification is in the best interest of the community.

(3) No Distance Modification may be granted under this subsection except after a public hearing for which notice has been given. Notice of a request for a Distance Modification to adjust the minimum distance requirements of this section shall be given to owners of property within 300 feet of the business. The notice area for a Distance Modification request relating to a church or public hospital shall be measured in a direct line from the front door of the place of business. The notice area for a Distance Modification request relating to a public or private school shall be measured in a direct line from the property line of the place of business. The notice shall be sent via regular United States mail not less than 10 days before the date set for public hearing, to all such owners who have rendered their property for city taxes as the ownership appears on the last approved city tax roll.

(4) The City Council may assess a reasonable fee for the administrative costs associated with processing a Distance Modification request under this subsection.

(l) This section does not apply to either:

(1) A place of business where alcoholic beverages are sold located with a postal address within the area depicted on the map indicated below (with approved zoning):



(2) Within an area for a special event sponsored or hosted by the city;

(3) Within an area for a special event for which the city is a partner;

(4) Within an area for a permitted use (either by right, conditional use permit, or special use permit) whereby distances to nearby uses and potential impacts of the alcohol-related use were considered; or

- (5) A sale within an area owned by the city or the Economic Development Corporation associated with a special event or permitted use.

Sec. 5.04.006 Hours of sale and consumption of alcoholic beverages

(a) The hours of sale and consumption shall be as required by the laws of the State of Texas, the Texas Alcoholic Beverage Commission and by any associated conditional use permit for an alcohol-related use.

(b) The holder of a retail dealer's on-premises late hours license issued by the State of Texas may sell and offer to sell and serve beer and wine in a restaurant with a food and beverage certificate between the hours of 1:00 a.m. and 2:00 a.m. on Sunday and between 12:00 p.m. and 2:00 a.m. on any other day, provided that the holder complies with the Texas Alcoholic Beverage Code and with any standards established in an associated conditional use permit or planned development district. The holder of a mixed beverage late hours permit issued by the State of Texas may sell and offer for sale mixed beverages in a restaurant with a food and beverage certificate between the hours of midnight and 2:00 a.m. on any day, provided that the holder complies with the Texas Alcoholic Beverage Code and with any standards established in an associated conditional use permit or planned development district.

Sec. 5.04.007 Temporary alcohol sales and consumption in conjunction with a special event permit

(a) Provided all requirements of the Texas Alcoholic Beverage Commission requirements and permits are met and approved, the city council may permit the temporary sale of alcoholic beverages for on-premises consumption for a time period not to exceed the length of time approved for the event granted under the special event permit.

(b) Temporary alcohol sales and consumption may only be granted in conjunction with a special event permit. The restrictions on alcohol sales within prescribed distances of public and private schools, churches, and public hospitals, as well as the compliance requirements with zoning provisions within Chapter 9 (Planning and Development Regulations), shall not apply to temporary alcohol sales and consumption permitted under this section.

Sec. 5.04.008 Permits for sale of alcoholic beverages required

(a) A permit issued by the city is required for each location selling alcoholic beverages within the city. 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:

- (1) An administrative processing fee as established by the city's fee schedule; and
- (2) An annual permit or license fee of one-half (1/2) the amount charged or taxed by the state pursuant to the Alcoholic Beverage Code for each type of business or occupation.

(b) No permittee or licensee under this article shall engage in the business authorized by his permit or license without first having paid to the city the permit or license fee levied by this section. It shall be the duty of the city attorney, following approval by the City Council, to petition

the Texas Alcoholic Beverage Commission to cancel the permit or license of any permittee or licensee who engages in the business authorized by the permit or license of such person without first having paid the fees levied by this section.

(c) An applicant shall pay the fees established under subsection (a) 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. No refund of a fee paid to the city under the terms of this article shall be made for any reason except when the permittee or licensee is prevented from continuing in business by reason of the result of a local option election or an amendment of the zoning regulations of the city concerning the property on which the place of business is situated.

(d) 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 in accordance with the general penalty provided in [section 1.01.009](#) of this code.

(e) A separate license or permit, as required by this article, shall be obtained for every place of business where the business of alcoholic beverage manufacture, distribution, or sale is conducted, and fees for each such license or permit shall be paid.

(f) 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 article and a state permit or license, if the permittee or licensee:

- (1) Pays the fees established by subsection (a);
- (2) Exhibits a valid permit(s) or license(s) issued by the state; and
- (3) The requirements of the Code of Ordinances are satisfied.

(g) Each permit shall contain the number, name, and expiration date of the state permit or license; the name of the permittee or licensee; the trade name of such permittee or licensee; the address of the business; and the date of issuance. The license or permit issued by the city secretary under this article shall be displayed at all times in a conspicuous place within the licensed or permitted place of business.

(h) 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 article.

Sec. 5.04.009 Records

All persons operating establishments engaging in the sale of alcoholic beverages within the city shall comply with the reporting requirements of this section.

(a) During the first year of any license for on-premises alcoholic beverage consumption issued to a new license-holder, the owner, operator or person in control of an establishment licensed by the state for on-premises alcoholic beverage consumption shall, on a quarterly basis with the quarters ending March 31, June 30, September 30 and December 31, file with the city secretary an affidavit, on an officially approved form provided by the city secretary, that reflects gross sales for the preceding three months, indicating the sales of non-alcoholic items and alcoholic beverages. The quarterly reports for the previous three-month period shall be due on

or before the 25th day of April, July, October and January. In the event that no violation occurs during the first year, then the business will only be required to report on an annual basis, thereafter.

(b) The party shall also file on a quarterly basis, at the same time the affidavit on sales is filed, a copy of the filing(s) supplied to the state for sales tax and alcoholic beverage tax purposes for the previous three-month period.

(c) Such affidavit and copies of filing(s) supplied to the state for sales tax and alcoholic beverage tax purposes shall be reviewed by the city administrator or designee for compliance with the provisions of zoning regulations regarding the ratio of non-alcohol items to alcohol beverage sales.

(d) If a quarterly report submitted indicates that the filing establishment does not comply with the percentage requirements of Chapter 9 (Planning and Development Regulations), the establishment shall have until the next due date of a quarterly report to bring the establishment into compliance with city ordinances. The licensee shall be notified by certified mail by the city secretary that a violation of this Section has occurred. Such notification shall specify the date by which the licensee must be in compliance with the percentage requirements. A report containing the same information as the quarterly report must be filed with the city secretary on or before the date required for compliance, as stated in the letter of notification of violation.

(e) If a quarterly report is not submitted to the city secretary on or before the 25th day of April, July, October and January, the city secretary shall notify the licensee by certified mail that a quarterly report has not been submitted. The licensee shall have a period of 10 days after the date of delivery marked on the certified mail return receipt to file the quarterly report.

(f) Failure to file a quarterly report or failure to bring the establishment into compliance by the next due date of a quarterly report shall constitute a violation of this section. The city attorney shall inform the Texas Alcoholic Beverage Commission that the establishment is no longer in compliance with the city ordinances as previously certified to by the city secretary and request that the Texas Alcoholic Beverage Commission take whatever action is available under the Texas Alcoholic Beverage Code to revoke the state license.

(g) The person operating an establishment subject to the reporting requirements of this article shall permit the city administrator or her designee to view and copy the books, records and receipts relative to sales of non-alcohol items and alcoholic beverages at any time after 24 hours' notice. In the any event the city administrator finds a violation, then the business will be required to comply with quarterly reporting as stipulated in provision (a), within this Section above, for the succeeding 12 months.

(h) The city shall have the right to request the establishment to provide a prior quarter's report in order to determine the business has remained in compliance. In the event the establishment fails to be in compliance then but gets back into compliance within the stated required timeframe, the business will be subject to the quarterly reporting requirements for another year.

(i) No license or permit issued under this article shall be renewed for any location where the records required by this section indicate that gross receipts from non-alcohol sales are not in

compliance with the percentage requirements of Chapter 9 (Planning and Development Regulations). No new license or permit shall be granted for alcoholic beverage sales, manufacturing, distribution, consumption, or other alcohol-related use (temporary, conditional, or permanent) at such location for a period of at least six months.

Sec. 5.04.010 Consumption of Alcoholic Beverages in a Public Place

(a) Prohibited; enforcement.

- (1) It shall be unlawful for any person to consume any alcoholic beverage on any public street or alley in the city, except during permitted special events the city sponsors, organizes, or is a partner that specifically allow for the specified manner of consumption.
- (2) It shall be unlawful for any person to consume any alcoholic beverage on any public place adjacent to any street or alley in the city, except during permitted special events the city sponsors, organizes, or is a partner that specifically allow for the specified manner of consumption.
- (3) It shall be unlawful for any person to consume any alcoholic beverage in a city park except during permitted special events the city sponsors, organizes, or is a partner that specifically allow for the specified manner of consumption.

(b) Penalty.

- (1) Any person, firm or corporation violating any part of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed the sum of \$500.00 for each offense.

Sec. 5.04.012 Possession of Alcoholic Beverages in a Public Place

(a) Prohibited; enforcement.

- (1) It shall be unlawful for any person to possess any alcoholic beverage in any city park, except during permitted special events sponsored and/or organized by the city.

(b) Penalty.

- (1) Any person, firm or corporation violating any part of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed the sum of \$500.00 for each offense.

Section 3. Conflict Clause. To the extent any provisions of the city's Subdivision Ordinance, codified as Article 9.02 of the city's Code of Ordinances, are in conflict with this Ordinance, this Ordinance shall control.

Section 4. Penalty. Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum in accordance with the general penalty provided in section 1.01.009 of the city's Code of Ordinances. Each time that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this division is a misdemeanor. The penalty provisions imposed under this Ordinance shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies to it pursuant to local, state and federal law.

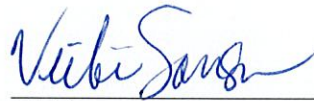
Section 5. Severability Clause. It is hereby declared by the City Council that if any of the sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance should be declared

unconstitutional or otherwise invalid for any reason, such event shall not affect any remaining sections, paragraphs, sentences, clauses, phrases, words, or provisions of this Ordinance.

Section 6. Open Meeting. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Section 551.042, Texas Government Code.

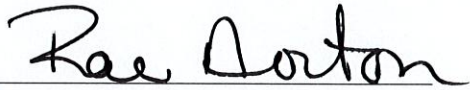
Section 7. Effective Date. This Ordinance shall take effect immediately upon its passage.

DULY PASSED AND APPROVED by the City Council of the City of Lavon, Texas, this 7th day of June 2022.



Vicki Sanson, Mayor

ATTEST:



Rae Norton, City Secretary

