

CITY OF COCKRELL HILL, TEXAS

ORDINANCE NO. 2009-M

AN ORDINANCE OF THE CITY OF COCKRELL HILL, TEXAS, AMENDING THE CITY OF COCKRELL HILL CODE OF ORDINANCES, BY ADOPTING A NEW CHAPTER 117 OF TITLE XI, "BUSINESS REGULATIONS," CONTAINING REVISED REGULATIONS REGARDING ALCOHOL TO BE ENTITLED "ALCOHOL REGULATIONS"; REMOVING CURRENT ALCOHOL REGULATIONS FROM CHAPTER 153 OF THE CODE OF ORDINANCES; ADDING NEW DEFINITIONS; ADOPTING RESTRICTIONS RELATED TO PARKS; ADOPTING A SPECIAL EVENT PERMIT PROCESS; CREATING AN ALCOHOL FREE ZONE WITHIN 1,000 FEET OF ALL DALLAS INDEPENDENT SCHOOL DISTRICT CAMPUSES; ESTABLISHING PERMIT REQUIREMENTS AND EXCEPTIONS TO THOSE REQUIREMENTS; PROVIDING FOR PERMIT FEES; PROHIBITING ALCOHOL SALES NEAR CERTAIN USES; PROHIBITING THE SALE OF BEER IN RESIDENTIAL AREAS; PROHIBITING CONSUMPTION OR POSSESSION IN CERTAIN AREAS; ESTABLISHING PROHIBITIONS AND EXCEPTIONS; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 16, 2007, the City Council of the City of Cockrell Hill, Texas ("City Council") adopted Ordinance No. 2007- H, which adopted alcohol regulations for the City of Cockrell Hill, Texas ("City"), and which regulations were codified in Chapter 153 of the Code of the City of Cockrell Hill, Texas ("Code"); and

WHEREAS, the City has determined that those regulations should be updated and strengthen in certain regards and relocated within the Code from Chapter 153 to Chapter 117; and

WHEREAS, Section 109.33(a) of the Texas Alcoholic Beverage Code ("TABC") authorizes the City to prohibit the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public school, private school, or public hospital; and

WHEREAS, Section 109.33 of the TABC further authorizes the City, by ordinance, to prohibit the sale of alcoholic beverages within 1,000 feet of a public school if the City receives a request from the school board of an eligible school district; and

WHEREAS, the Dallas Independent School District ("DISD") is an eligible school district that, on March 30, 2006, adopted a resolution requesting that the City of Cockrell Hill adopt alcohol-free zones within 1,000 feet of all DISD school campuses; and

WHEREAS, Section 11.38(a) of TABC, as amended, provides that the governing body of a city may levy and collect a fee not to exceed one-half (1/2) the state fee for each permit issued for premises located within the city; and

WHEREAS, Section 11.37(b) of the TABC, as amended, provides that the city secretary or clerk in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by ordinance; and

WHEREAS, Section 109.32 of the TABC authorizes the City, by ordinance, to prohibit the sale of beer in residential areas; and

WHEREAS, the City is also authorized under Section 109.33(e) of the TABC to grant variances to the alcohol regulations adopted by the City Council under certain specified circumstances; and

WHEREAS, Section 109.331 of the TABC authorizes the City, by ordinance, to prohibit the sale of alcoholic beverages within 300 feet of a day-care center or child-care facility; and

WHEREAS, Section 101.75 of the TABC prohibits the possession of an open container or consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a public school or private school; and

WHEREAS, the City Council has determined that the following revised alcohol regulations are necessary in order to protect public health, safety, and welfare, and hereby enacts Chapter 117 of the Code by adopting these revised alcohol regulations.

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

Section 1. That all of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

Section 2. The Code of Ordinances of the City of Cockrell Hill is hereby amended by adopting a new Chapter 117, "Alcohol Regulations," Sections 117.001 – 117.011, which shall read as follows:

"CHAPTER 117. ALCOHOL REGULATIONS

§ 117.001. DEFINITIONS.

For purposes of this chapter, certain terms, phrases, words and their derivatives shall be construed as specified in this chapter, unless the context clearly indicates or requires a different meaning. Where terms are not defined, they shall have their ordinary, accepted meanings within the context with which they are used. Words in the singular shall include the plural and the plural

the singular. Words used in the masculine gender shall include the feminine and the feminine the masculine:

ALCOHOLIC BEVERAGE. An 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.

ALCOHOLIC BEVERAGE ESTABLISHMENT. A person or dealer that sells, as defined herein, alcoholic beverages.

BEER. 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. A facility licensed, certified, or registered by the Texas Department of Family and Protective Services 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.

DAY CARE CENTER. A child care facility that provides care for more than 12 children less than 14 years of age for less than 24 hours a day.

DEALER. This term has the same meaning as that term is used in TABC § 109.33, and shall include “person” as that term is defined in this section.

OPEN CONTAINER. A container that is no longer sealed.

PERSON. 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. A private school, including a parochial school, that:

- (1) Offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
- (2) Has more than 100 students enrolled and attending courses at a single location.

SCHOOL. A public school, including a parochial school, that: (1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and (2) has more than 100 students enrolled and attending courses at any single location affected by this ordinance.

SELL. Includes any of the following activities:

- (1) Manufactures, distills, brews, sells, possesses for the purpose of sale, imports into this state, exports from this state, transports, distributes, warehouses, or stores liquor;
- (2) Solicits or takes orders for liquor; or
- (3) For the purpose of sales, bottles, rectifies, blends, treats, fortifies, mixes, or processes liquor.

§ 117.002. STATE LAW TO CONTROL.

Nothing in this chapter shall be construed or interpreted to conflict with the TABC. The provisions of this chapter shall be subject to the limitations of such TABC and such TABC shall control. The municipal court of the City shall have jurisdiction of any offense under this chapter and under state law only where the constitution and the laws of this state confer such jurisdiction thereon.

§ 117.003. BUSINESS HOURS.

(A) It is unlawful for any person or dealer to sell or deliver any alcoholic beverage except within those hours as prescribed by state law.

(B) It is unlawful for any person to sell or offer for sale beer or wine, except within those hours as prescribed by state law.

§ 117.004. PERMIT REQUIRED.

(A) No person or dealer shall sell alcoholic beverages within the City without first having applied for and been granted a valid permit issued by the City to sell alcoholic beverages. Prior to issuing a City permit to the applicant for the proposed location, the City secretary or clerk 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 ordinance. Upon the exhibition of a license or permit duly issued by the state to the applicant, the City secretary or clerk, shall, in the name of the City, issue and deliver to the applicant a permit to engage in the business in the City of the character described in and authorized by the license or permit from the state held by the applicant. The license or permit so issued in the name of the City shall authorize the conduct of such business upon the premises described in a license or permit from the state and shall remain in force only so long as the license or permit from the state remains in force.

(B) The City secretary or clerk shall issue and deliver a receipt under this section to the person or dealer authorizing the sale of alcoholic beverages under this chapter and a state permit or license, if the person or dealer:

- (1) Pays the fees established by Section 117.005; and
- (2) Exhibits the permit or license issued by the state.

(C) The City secretary or clerk shall keep a record of all permits issued under this chapter.

(D) A permit shall be cancelled if the state license or permit is revoked.

§ 117.005. PERMIT FEES.

(A) Unless state law exempts a person from payment of a fee established by this section, a person or dealer must pay the City 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.

(B) A person or dealer shall pay the fees established under subsection (a) to the City no later than the 30th day after the date the person's payment of a state permit or license fee is due.

(C) A person who sells an alcoholic beverage at a business location before the person 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.

§ 117.006. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR PRIVATE SCHOOLS, CHURCHES, OR HOSPITALS; VARIANCES PERMITTED.

(A) 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.

(B) This section does not apply to the holder of:

(1) A license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or

(2) A license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that is located within 300 feet of a private school.

(C) 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.

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

(1) In a direct line from the property line of the 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.

(E) The City Council may allow a variance from the requirements of this section if the Council determines that enforcement of this section in a particular instance:

- (1) Is not in the best interest of the public;
- (2) Constitutes waste or inefficient use of land or other resources
- (3) Creates an undue hardship on an applicant for a license or permit;
- (4) Does not serve its intended purpose;
- (5) Is not effective or necessary; or
- (6) For any other reason the Council, 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 City.

§ 117.007. CREATION OF 1,000 FOOT ALCOHOL FREE ZONE, SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR PUBLIC SCHOOLS.

(A) It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this City within 1,000 feet of a public school.

(B) This section does not apply to the holder of:

- (1) A retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;
- (2) A retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or
- (3) A wholesaler's, distributors, brewers, distillers and rectifiers, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102 of the TABC.

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

- (1) In a direct line from the property line of the public 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 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.

(D) The City Council may allow a variance from the requirements of this section if the Council determines that enforcement of this section in a particular instance:

- (1) Is not in the best interest of the public;
- (2) Constitutes waste or inefficient use of land or other resources
- (3) Creates an undue hardship on an applicant for a license or permit;
- (4) Does not serve its intended purpose;
- (5) Is not effective or necessary; or
- (6) For any other reason the Council, 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 City.

§ 117.008. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR PRIVATE SCHOOLS, DAY-CARE CENTERS AND CHILD-CARE FACILITIES; EXCEPTION.

(A) 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-premise license, or brew pub 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.

(B) This section 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 childcare facility is located on the second story or higher of a multistory building.

(C) This section 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 Section 42.002 of the Texas Human Resources Code.

(D) 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 along the property lines of the street fronts and from front door to front door, and in direct line across intersections from the private school, day-care center or childcare facility to the place of business where alcoholic beverages are sold

§ 117.009. SALE OF BEER PROHIBITED IN RESIDENTIAL AREAS.

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

§ 117.010. CONSUMPTION OF ALCOHOLIC BEVERAGE AND POSSESSION OF AN OPEN CONTAINER NEAR PUBLIC OR PRIVATE SCHOOLS PROHIBITED; EXCEPTION.

(A) 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.

(B) 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 chapter.

(C) This section does not apply to a City park where the possession or consumption of an alcoholic beverage is permitted under this chapter.

§ 117.011 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 for each offense.”

Section 3. Those alcohol regulations enacted in Ordinance 2007-H and codified in Chapter 153 of the Code of Ordinances are hereby repealed.

Section 4. If any section, article, paragraph, sentence clause, phrase or word in this ordinance or application thereto any person or circumstances is held invalid or unconstitutional

by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. This ordinance shall become effective, and be in full force and effect, from and after the date of its passage, and it is accordingly so ordained.

PASSED AND APPROVED the 14th day of July, 2009.



Luis D. Carrera, Mayor

ATTEST:



Bret Haney, Executive Assistant

APPROVED AS TO FORM:



Robert F. Brown, City Attorney