

CITY OF COCKRELL HILL, TEXAS

ORDINANCE NO. 2007 H

AN ORDINANCE OF THE CITY OF COCKRELL HILL, TEXAS, AMENDING THE CITY OF COCKRELL HILL CODE OF ORDINANCES, CHAPTER 153, BY ADOPTING A NEW DIVISION TO BE ENTITLED "ALCOHOL REGULATIONS"; ADDING DEFINITIONS; ESTABLISHING PROHIBITIONS AND EXCEPTIONS; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 153 of the Code of Cockrell Hill, Texas ("Code"), sets forth the zoning regulations of the City; and

WHEREAS, the City has previously not allowed alcohol sales or public consumption within the City; and

WHEREAS, a local option election allowing the sale of alcoholic beverages for off-premises consumption is on the November ballot which would allow alcohol sales within the City; and

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

WHEREAS, the City Council of the City of Cockrell Hill desires to prevent alcohol sales within 300 feet of a school, church or public hospital in the event that the local option election passes; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety and general welfare of the public to amend Chapter 153 of the Code by adopting 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 Cockrell Hill, Chapter 153, is hereby amended to add a new Division entitled Alcohol Regulations which shall read as follows:

***"ALCOHOL REGULATIONS***

§ 153.037      **DEFINITIONS**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires 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 24hour day, whether or not the facility is operated for profit or charges for the services it offers.

**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** The same as that term is used in Sec. 109.33, Texas Alcoholic Beverage Code, and shall include **PERSON** as that term is defined herein.

**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.

**SCHOOL** means a public or 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 any single location affected by this ordinance.

§ 153.038      **SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR SCHOOLS, CHURCHES, OR HOSPITALS**

- (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, public or 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 public school, or 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 public school shall be 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.

**§ 153.039 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

**§ 153.040 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.

**§ 153.041 CONSUMPTION OF ALCOHOLIC BEVERAGE AND POSSESSION OF AN OPEN CONTAINER NEAR PUBLIC 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 500 feet of the property line of a facility that is a public school that provides all or any part of pre-kindergarten through twelfth 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 code.

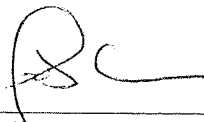
**§ 153.042 PENALTY**

Any person or dealer violating the provisions of this Division 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.** 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 4.** 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.

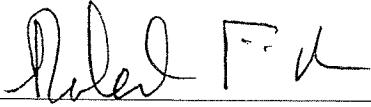
**PASSED AND APPROVED** the 16th day of October, 2007.

  
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Luis D. Carrera, Mayor

ATTEST:

  
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Bret Haney, Interim City Administrator

APPROVED AS TO FORM:

Handwritten signature of Robert F. Brown in black ink, written over a horizontal line.

Robert F. Brown, City Attorney

**SIG  
HEA**