

AN ORDINANCE OF THE CITY OF LEON VALLEY, TEXAS, CITY COUNCIL AMENDING THE CITY OF LEON VALLEY CODE OF ORDINANCES, CHAPTER 4 BUSINESS REGULATIONS, ARTICLE 4.03 ALCOHOLIC BEVERAGES, DIVISION 2 LICENSE AND PERMIT FEES; REPEALING ALL ORDINANCES IN CONFLICT THERWITH; PROVIDING FOR SEVERABILITY; SAVING CLAUSE; EFFECTIVE DATE; NOTICE OF OPEN MEETING AND PROVIDING FOR A PENALTY

WHEREAS, The authority of a city to regulate the manufacture, sale, distribution, transportation and possession of alcoholic beverages is restricted by the Texas Alcoholic Beverage Code; and

WHEREAS, The City of Leon Valley City Council wishes to update Article 4.03 Alcoholic Beverages governing the sale of alcoholic beverages within the city: and

WHEREAS, The City Council wishes to levy fees for the sale of alcoholic beverages within the city; and

WHEREAS, The City of Leon Valley City Council believes that it is in the best interest of the citizens Leon Valley to adopt the Texas Alcoholic Beverage Code for the regulation and sale of alcoholic beverages within the city; and

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

SECTION I. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Leon Valley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION II. Chapter 4 Business Regulations, Article 4.03 Alcoholic Beverages, Division 2 License and Permit Fees shall be amended as follows:

Division 2. License and Permit Fees

Sec. 4.03.031 Definitions.

Except as otherwise provided in this section, all words, and phrases in this article, which are defined in the Texas Alcoholic Beverage Code, shall, for the purposes of this Article, have the definition ascribed to them in such act.

Code means the Texas Alcoholic Beverage Code as same may be amended, revised or re-codified in the future.

Sec. 4.03.032 Code Adopted.

The Texas Alcoholic Beverage Code is hereby adopted and made part of this Article by reference for all purposes as though fully set out herein.

Sec. 4.03.033 Sales Near Churches, Public Schools, or Private Schools.

It shall be unlawful for any person to sell or engage in the business of selling alcoholic beverages within the city where the place of business is within 300 feet of any church, public school, or private school. The measurement of the distance between the place of business where alcoholic beverages are sold and the church shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public schools shall be in a direct line from the property line of the public school or private school to the property line of the place of business, and in a direct line across intersections.

As authorized by Texas Alcoholic Beverage Code Section 109.33(e), city council may consider applications for variances to the prohibition against the sale of alcoholic beverages within 300 feet of any church, private school or public school only if city council first conducts a public hearing on the matter and before the thirtieth day before the date of the public hearing notice is given by publication in the city's official newspaper and on the city's website, and after the conclusion of the public hearing at least three-fourths ($\frac{3}{4}$) of the total membership of city council find all of the following:

- (1) The proposed sale of alcoholic beverages would constitute no more than 30 percent of the establishment's annual gross revenues.
- (2) Prior to the date of the public hearing an authorized representative of the affected church, public school, or private school has provided the city manager with written confirmation that the affected church, public school, or private school has no objection to the granting of the variance.
- (3) The granting of the variance will not have a negative effect on the health, safety, or welfare of the public.
- (4) On or before March 15 of the year following the granting of a variance, and every March 15 thereafter, the owner of the establishment for which the variance was granted shall submit to the city secretary all necessary documentation to verify that during the preceding calendar year no more than 30 percent of the establishment's annual gross revenues were generated by the sale of alcoholic beverages; and
- (5) Violations of the conditions on the variance are punishable by criminal fine and any and all remedies available at law and or equity including but not limited to revocation of the variance.

Sec. 4.03.034 Hours for Sale and Consumption.

The "Standard Hours Area" provisions as established by Chapter 105 of the Texas Alcoholic Beverage Code are hereby adopted for the City of Leon Valley.

Sec. 4.03.035 Late hours permit.

- (a) **Adoption of Extended Hours by City.** All establishments in the City limits and in compliance with the conditions of the City late hours permit will have their application for extended hours approved by the city secretary. The late hours permit holder may thereafter legally offer alcohol for sale between midnight and 2:00 a.m. on any day, as prescribed by Texas Alcoholic Beverage Code §§ 105.03 and 105.05.
- (b) **Application for Late Hours Permits.** Establishments seeking extended sale of alcohol hours must file an application for a permit with the Texas Alcoholic Beverage Commission and with the office of the city secretary. Applications for late hour permits must be approved by the city secretary before an establishment can observe extended hours in the City. An establishment seeking a permit from the City must pay a fee of one-half of the fee charged by the state for a mixed beverage late hours permit, except when said fee is waived according to the provisions of the Texas Alcoholic Beverage Code.
 - (1) An application for a permit must include but may not be limited to the following provisions: name, title, address, and telephone number of the authorized representative of the applicant.
 - (2) The application must include a sworn affidavit demonstrating that:
 - a. At least 51 percent of the establishment's gross daily receipts will be non-alcohol; and
 - b. The establishment will continue offering for sale food or its other non-alcohol commodities or services for the duration of the extended alcohol service hours.
 - (3) The city secretary shall make a determination on an application for a permit on or before the 30th day after the date the application was filed.
- (c) **Appeals Process.** An applicant or permittee whose application is denied, or permit is revoked by the city secretary under the provisions of this article may appeal the city secretary's decision to City Council.
- (d) **City Late Hours Permit.** The city secretary may not grant a permit unless the applicant has complied with the requirements of the application. Continued operation of late hours is conditioned on compliance with the statements in the affidavit for the entirety of the permit period.
 - (1) The permit must show that the establishment may:
 - a. Legally offer alcohol for sale between midnight and 2:00 a.m. any day, as

prescribed by Texas Alcoholic Beverage Code, §§ 105.03 and 105.05.

b. Conditioned on:

1. At least 51 percent of the establishment's gross daily receipts being non-alcohol; and
2. The establishment continuing to offer the sale food or its other non-alcohol commodities or services for the duration of the extended alcohol service hours; and

c. The time frame for which the permit is valid.

- (2) Compliance procedure. The permit holder shall fully cooperate with city officials, the Texas Alcoholic Beverage Commission, and local law enforcement in their efforts deemed reasonably necessary to ensure compliance with the conditions of the permit. Compliance may be assessed by, but is not limited to, the following mechanisms: random audits, checking receipts upon yearly application, and reporting by citizens.
- (3) Expiration. The permit will expire one year from the date on which it is granted. The establishment must apply for the permit each year to maintain extended hours. The establishment's compliance with the conditions of the permit will be formally re-evaluated with each yearly application.
- (4) Permit Revocation. If a permit holder fails to comply with this article or applicable state law, a permit issued under this article may be revoked for a period of six months.

Sec. 4.03.036 City Fees Levy.

(a) ***Levy Against Permit.*** The City does hereby levy a City Alcoholic Beverage Fee equal to one-half (1/2) of the state fee, as provided by section 11.38, of the Texas Alcoholic Beverage Code and other relevant provisions of said Code, against each permit issued. Notwithstanding the forgoing, the following shall be exempted from the levy:

- (1) Agent's, industrial, carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permits.
- (2) Wine and beer retailer's permit issued for a dining, buffet, or club car; and
- (3) A mixed beverage permit during the three-year period following the issuance of the permit.

(b) ***Levy Against Licenses.*** The City does hereby levy a City Alcoholic Beverage Fee

equal to one-half (½) of the state fee, as provided by section 61.36, of the Texas Alcoholic Beverage Code and other relevant provisions of said Code, against every permittee who is domiciled within the corporate limits of the City and who holds a permit from the state alcoholic beverage commission for the purchase, transportation, importation, sale or manufacture of alcoholic beverages or other permits in regard thereto; except a temporary or agent's beer license, issued for premises located within the county.

- (1) A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a class "C" misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.

Sec. 4.03.037 Beverage Fee Due Date; Fees for Portion of Year; Separate Fee for Each Outlet.

- (a) All fees levied by this article shall be due and payable in advance for one year from the date of the issuance of the permit or license issued by the state alcoholic beverage commission, unless such fee is collected for only a portion of the year. In such event, the fee required shall cover the period of time from the date of such permit to midnight of the last day of August succeeding and only the proportionate part of the fee levied for such permit shall be collected. The fractional part of any month remaining shall be counted as one month in calculating the fee which shall be due.
- (b) A separate fee shall be paid for each sales location in this City.

Sec. 4.03.037 Refund of Fees.

No refund of the fee shall be made for any reason, except when the permittee is prevented from continuing in business by reason of the result of a local option election, or a rejection of an application for a permit by the state alcoholic beverage commission or its administrator.

Sec. 4.03.038 Display of City Alcoholic Beverage Fee Receipt.

The City of Leon Valley Alcoholic Beverage Fee Receipt shall be displayed in a conspicuous place at all times on the licensed premises. Failure to so display said receipt shall constitute of Class "C" misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.

Sec. 4.03.039 Cancellation or Denial of License or Permit.

- (a) The commission or administrator may cancel or deny a license for the retail sale of alcoholic beverages, including a license held by the holder of a food and beverage

certificate, if it finds that the license holder or applicant has not paid delinquent ad valorem taxes due on that licensed premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a license holder or applicant is presumed delinquent if the payment of taxes due from the license holder or applicant:

- (1) Is placed on a delinquent tax roll prepared under Section 33.03, Tax Code.
 - (2) Has received a notice of delinquency under Section 33.04, Tax Code; and
 - (3) Has not made a payment required under Section 42.08, Tax Code.
- (b) The city may cancel or deny an application or permit issued by the city if the the permit holder or applicant has not paid delinquent ad valorem taxes due on the permitted premises or due from a business operated on the premises to any taxing authority in the county of the premises. Failure to renew on time with he city, may also result in permit cancellation.
- (c) In this section, "applicant" has the meaning assigned by section 11.45 of the Code.

SECTION III. REPEALER CLAUSE. The provisions of the Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent by any other ordinance.

SECTION IV. SEVERABILITY CLAUSE. If any provision, section, sentence, clause, or phrase of this ordinance or application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provisions or regulation contained herein shall become inoperative or fall by reason of any unconstitutionally or invalidity of any portion, provision, or regulation.

SECTION V. SAVINGS CLAUSE. The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

SECTION VI. EFFECTIVE DATE. That this Ordinance shall take effect immediately from and after its passage and publication as required by law.

SECTION VII. NOTICE OF MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VIII. PENALTY. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Chapter 1. General Provisions, Article 1.01 Code of Ordinances, Section 101.009 General penalty for violations of code: continuing violations of the City of Leon Valley Code, and/or applicable state law.