

## ARTICLE 4.03 ALCOHOLIC BEVERAGES<sup>\*</sup>

### Division 1. Generally

#### Sec. 4.03.001 Penalty

Each violation of this article shall be punishable by a fine in accordance with [section 1.01.009](#) of this code. Each day shall constitute a separate offense.

#### Secs. 4.03.002–4.03.030 Reserved

### Division 2. License and Permit Fees<sup>\*</sup>

#### ~~Sec. 4.03.031 — Package stores and wine and beer retailers~~

~~A permit fee equal in amount to exactly one-half of that levied by the state is hereby levied upon all package stores and upon all wine and beer retailers located within the limits of the city. The permit fee shall be levied pursuant to the provisions of the Alcoholic Beverage Code, 11.01, 11.31, 11.38, Vernon's Texas Codes Annotated (V.T.C.A.). (This section does not apply to wine and beer retailer's permits, except those for railway cars or excursion boats, or to wine and beer retailer's off-premises permits.) (1972 Code, sec. 13.101; 2008 Code, sec. 4.03.031)~~

#### ~~Sec. 4.03.032 — Mixed beverage on-premises permit~~

~~An annual permit renewal fee equal in an amount of exactly one-half of that levied by the state is hereby levied upon all mixed beverage permits (which includes the sale of wine, beer, ale, and malt liquor for consumption on the licensed premises) after the three-year period following the issuance of the permit. This fee is levied pursuant to the provisions of the Alcoholic Beverage Code, 11.38, 28.01 and 28.02, V.T.C.A. (1972 Code, sec. 13.102; 2008 Code, sec. 4.03.032)~~

#### ~~Sec. 4.03.033 — Manufacture, distribution or sale of beer~~

~~A license fee and annual license renewal fee in the amount of exactly one-half of that levied by the state is hereby levied upon all licensed by the state to manufacture, distribute or sell beer (except a temporary or agent's beer license) within the city. These fees are levied pursuant to the provisions of the Alcoholic Beverage Code, 61.31, 61.36, V.T.C.A. (1972 Code, sec. 13.103; 2008 Code, sec. 4.03.033)~~

#### ~~Sec. 4.03.034 — Place and time of payment~~

~~All original permit fees and license fees shall be paid to the development department at city hall. All renewal fees shall be due to the development department at city hall on or before the expiration of the anniversary date of issuance. (1972 Code, sec. 13.104; 2008 Code, sec. 4.03.034)~~

#### ~~Sec. 4.03.035 — Other fees and taxes~~

~~The city shall not levy or collect any other fees or taxes from the above except general ad valorem taxes, the hotel occupancy tax levied under chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (V.T.C.A., Tax Code, ch. 351), and the local sales and use tax levied under the Municipal Sales and Use Tax Act (title 3 of the Tax Code). (1972 Code, sec. 13.201; 2008 Code, sec. 4.03.035)~~

#### ~~Sec. 4.03.036 — Failure to pay fee~~

~~It shall be an offense of this article to sell an alcoholic beverage without having first paid the permit fee or license fee set out above. (1972 Code, sec. 13.301; 2008 Code, sec. 4.03.036)~~

### 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:
- At least 51 percent of the establishment's gross daily receipts will be non-alcohol; and
  - 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:
- 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.
  - Conditioned on:
    - At least 51 percent of the establishment's gross daily receipts being non-alcohol; and
    - 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
  - 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.
- ~~(c) The city manager may cancel a license if it finds the licensee has not paid a fee levied under this section.~~

#### **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 ~~city manager~~ 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.