

## Chapter 6 ALCOHOLIC BEVERAGES<sup>1</sup>

### **ARTICLE I. IN GENERAL**

#### **Sec. 6-1. Definitions.**

Unless otherwise provided, the words, terms and phrases used in this chapter shall have the same meanings as ascribed to them by the Texas Alcoholic Beverage Code.

(Code 2002, § 6-1; Ord. No. 1989-2, § 1, 2-14-1989)

State law reference(s)—Definitions, V.T.C.A., Alcoholic Beverage Code § 1.04.

#### **Sec. 6-2. Applicability of Texas Alcoholic Beverage Code and state and county regulations.**

The provisions of this chapter shall be considered concurrent with or in addition to the Texas Alcoholic Beverage Code, and, where a conflict may be found to exist, the provisions of the Texas Alcoholic Beverage Code shall apply. Applicants for a city alcoholic beverage license must comply with all applicable state and county codes and regulations as well as the requirements of this chapter.

(Code 2002, § 6-2; Ord. No. 1989-2, § 22, 2-14-1989)

#### **Sec. 6-3. Violations; penalty.**

Any person who violates any provision of this chapter, or who allows, on premises covered by his license issued under this chapter, any person to do the things prohibited by this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provide in section 1-13. Any room, building, structure or place of any kind where alcoholic beverages are sold, bartered, stored, possessed or consumed in violation of this chapter or the Texas Alcoholic Beverage Code or under conditions and circumstances contrary to the purposes of this chapter or the Texas Alcoholic Beverage Code is hereby declared to be a common nuisance, and any person who maintains or assists in maintaining or permits the violation of this chapter or the Texas Alcoholic Beverage Code shall be guilty of a violation of this chapter. Action may be maintained by the city to abate and enjoin such nuisance.

(Code 2002, § 6-3; Ord. No. 1989-2, § 19, 2-14-1989)

State law reference(s)—General penalty, V.T.C.A., Alcoholic Beverage Code § 1.05.

#### **Secs. 6-4—6-24. Reserved.**

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<sup>1</sup>State law reference(s)—Alcoholic beverages, V.T.C.A., Alcoholic Beverage Code § 1.01 et seq.; local regulation of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code § 109.31 et seq.; local fee authorized, V.T.C.A., Alcoholic Beverage Code § 11.38; local license fee authorized, V.T.C.A., Alcoholic Beverage Code § 61.36; local regulation of billboards and electric signs, V.T.C.A., Alcoholic Beverage Code § 108.55; local option elections, V.T.C.A., Alcoholic Beverage Code § 251.71 et seq.

## **ARTICLE II. LICENSE<sup>2</sup>**

### **Sec. 6-25. Required; fee; term.**

It shall be unlawful for any person to manufacture, brew, distill, sell or distribute any wine, beer, liquor or other alcoholic beverage within the city, or engage in any other activity for which a license or permit is required by the Texas Alcoholic Beverage Code, without first obtaining a license to do so from the city. The fee for each such license shall be an amount equal to one-half of the fee charged by the state for a license or permit to engage in a similar activity. Such fee shall be paid to the tax collector, and the tax collector shall provide suitable and proper blanks for issuing receipts therefor referred and shall keep a duplicate copy of all license receipts issued as part of the records of office. All license receipts issued under the terms of this section shall terminate two years from the date of issuance, and no license receipt shall be issued covering a longer term than two years.

(Code 2002, § 6-31; Ord. No. 1989-2, § 2(a), 2-14-1989; Ord. No. 2018-01 , § I, 1-9-2018)

State law reference(s)—Local fee authorized, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

### **Sec. 6-26. State and county license required.**

No applicant shall be granted a license under this article who has not first been licensed by the county and state, and who fails to present satisfactory evidence of such license.

(Code 2002, § 6-32; Ord. No. 1989-2, § 2(b), 2-14-1989)

State law reference(s)—Licenses, V.T.C.A., Alcoholic Beverage Code §§ 11.01 et seq., 61.01 et seq.

### **Sec. 6-27. Persons owing delinquent taxes ineligible for license.**

No license shall be issued under this article if the applicant shall owe any delinquent taxes to the city. For purposes of this section, the term "applicant" shall include each member of a partnership or association and all officers and the owner of the majority of the corporate stock of a corporation, and the manager of the business for a corporation.

(Code 2002, § 6-33; Ord. No. 1989-2, § 2(c), 2-14-1989)

### **Sec. 6-28. Use of license restricted to premises for which granted.**

It shall be unlawful for any person licensed to sell beer, liquor or wine at retail, other than a manufacturer or distributor, to use or display a license or to exercise any privilege granted by a license except at the place, address, premises and location for which the license is granted.

(Code 2002, § 6-34; Ord. No. 1989-2, § 2(d), 2-14-1989)

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<sup>2</sup>State law reference(s)—Licenses and permits, V.T.C.A., Alcoholic Beverage Code ch. 11 et seq.

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## **Sec. 6-29. Unlawful sales prohibited.**

It shall be unlawful for any person to sell any type of alcoholic beverage, either for on-premises or off-premises consumption, except where such sale is permitted by ordinances.

(Code 2002, § 6-35; Ord. No. 1989-2, § 3(a), 2-14-1989)

## **Sec. 6-30. Categories.**

- (a) The types of categories for the sale of alcoholic beverages are hereby established as follows:
- (1) Category A: Off-premises consumption sale of all alcoholic beverages; package store.
  - (2) Category B: Off-premises consumption sale of wine, beer or ale.
  - (3) Category C: Off-premises consumption sale of beer.
  - (4) Category D: On-premises consumption sale of beer, wine and mixed beverages; restaurant or café, where the sale of beer, wine and mixed beverages on the premises would be incidental to the restaurant or café business.
  - (5) Category E: On-premises consumption sale of beer, wine and mixed beverages; tavern, lounge, or bar, where the sale of beer, wine and mixed beverages for on-premises consumption is the principal business line.
  - (6) Category F: Warehouse storage of beer, wine, or liquor for distributors; no sale of beer, wine or liquor for on-premises or off-premises consumption is permitted on the premises.
- (b) All existing businesses heretofore approved by the city council are hereby reclassified according to subsection (a) of this section.

(Code 2002, § 6-36; Ord. No. 1989-2, § 3(b), (c), 2-14-1989; Ord. No. 2008-17, § 1, 10-14-2008)

## **Sec. 6-31. Application.**

- (a) Written application for the sale of alcoholic beverages shall be made on forms provided by the city and filed with the city secretary. Such application shall be signed by the actual lessee or intended operator of the business for which the license is sought. The owner of the property must file a written consent to the application, unless the owner is making the application. Every such application shall contain the following:
- (1) An adequate legal description of the property for which license is sought, either by lot and block number or by a metes and bounds description.
  - (2) The exact nature of the business to be operated must be fully described.
  - (3) A plat of the property must be attached to the application showing the improvements, parking areas, and location of signs and other structures on the property and within 300 feet, to scale.
  - (4) A description of signs and the hours they will be operated.
  - (5) A floor plan of the building in which the business is to be conducted must be attached to the application, showing fixtures, furniture, restrooms, kitchen and other equipment.
  - (6) A statement giving the names, addresses, email addresses, telephone numbers and interests of all persons having a direct or indirect financial interest in the property and the business to be conducted.

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- (7) A verified statement must be attached to the application stating that the building is not within 300 feet of a church, school or hospital, and that the building is in compliance with the requirements of this chapter for separate and adequate toilet facilities for men and women, if used for on-premises consumption of beer, liquor or wine.
- (b) A filing fee, as fixed by resolution of the city council from time to time to defray the expenses of processing an application filed under this article, must be paid when the application is filed.

(Code 2002, § 6-37; Ord. No. 1989-2, § 3(d), (f), 2-14-1989)

State law reference(s)—Local fee authorized, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

### **Sec. 6-32. Grounds for denial.**

- (a) No application under this article shall be approved:
- (1) If the applicant or application does not meet all requirements of the ordinances of the city.
  - (2) If the granting of such application shall increase the number of alcoholic beverage establishments to more than five in any one block, a block to be defined as being from intersection to intersection on both sides of the street.
  - (3) If the applicant shall owe any delinquent taxes to the city.
  - (4) If the applicant has not already fulfilled all county and state requirements.
- (b) As used in this section, the term "applicant" shall mean and include each member of a partnership or association and all officers and the owner of the majority of the corporate stock of a corporation and the manager of such business for a corporation.

(Code 2002, § 6-38; Ord. No. 1989-2, § 3(g), 2-14-1989)

### **Sec. 6-33. Approval of license application by city council.**

After all the requirements for a license application under the provisions of this article have been met as determined by the city administrator, the application shall be presented to the city council for approval at a public meeting.

(Code 2002, § 6-39; Ord. No. 1989-2, § 3(h), 2-14-1989; Ord. No. 2018-01, § I, 1-9-2018 )

### **Sec. 6-34. Conversion to different use.**

Uses permitted under any of the categories designated in this article may be converted to another use only with the approval of city council.

(Code 2002, § 6-40; Ord. No. 1989-2, § 3(i), 2-14-1989; Ord. No. 2018-01, § I, 1-9-2018 )

### **Secs. 6-35—6-56. Reserved.**

## ***ARTICLE III. REGULATIONS***

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### **Sec. 6-57. Consumption on street, sidewalk or alley.**

- (a) Drinking alcoholic beverages on a public street, sidewalk or alley of the city, whether afoot, or as a passenger in or an operator of any vehicle, is unlawful and is prohibited.
- (b) Exception: subject to the rules and regulations of the Texas Alcoholic Beverages Code, persons afoot on a public street, sidewalk or alley of the city are permitted to drink beer and wine in a limited public area defined as:
  - (1) The north right-of-way line of Eva Street (State Highway 105) extending north to the south right-of-way line of Clepper Street and bounded on the east by Prairie Street, and on the west by Pond Street, extending north to the south right-of-way line of College Street to also include the east of the eastern right-of-way line of Liberty Street between College Street to the south right-of-way line of Clepper Street and an area extending west from the west right-of-way line of Pond Street and bounded on the south by the south right-of-way line of Eva Street, as further described by the map attached to the ordinance from which this section derived as exhibit "A."
  - (2) This exception is authorized only from 7:00 a.m. to 12:00 midnight, Monday through Saturday; 12:00 midnight to 1:00 a.m. on Sundays; and 12:00 noon to 12:00 midnight on Sundays.
  - (3) This permission by the city is further conditioned upon documentation submitted to the city administrator that shall include the applicable Texas Alcoholic Beverage Commission permit and letters of authorization from the owners of property within the designated area.
- (c) The throwing of any opened container of any type generally used for beverages from or out of any vehicle shall be prima facie evidence that the occupant thereof was then and there drinking alcoholic beverages in violation of this section.

(Code 2002, § 6-61; Ord. No. 1989-2, § 14, 2-14-1989; Ord. No. 2017-16 , § II, 7-11-2017; Ord. No. 2021-04 , § 2, 2-9-2021)

Editor's note(s)—Exhibit "A" to Ord. No. 2021-04 is not set out herein but is available at the office of the city secretary.

### **Sec. 6-58. Consumption or possession in cemeteries.**

It shall be unlawful for any person to drink or have in his possession any alcoholic beverages within any cemetery located within the corporate limits of the city.

(Code 2002, § 6-62; Ord. No. 1989-2, § 15, 2-14-1989)

### **Sec. 6-59. Consumption in parks prohibited during certain hours.**

It shall be unlawful for any person to drink alcoholic beverages of any kind in any public park within the corporate limits of the city between the hours of 9:00 p.m. and 7:00 a.m.

(Code 2002, § 6-63; Ord. No. 1989-2, § 16, 2-14-1989)

### **Sec. 6-60. Sale near church, school or hospital.**

- (a) The sale of alcoholic beverages by any dealer whose place of business is within 300 feet of a church, public or private school, or public hospital is prohibited.

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- (b) 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 a direct line across intersections. 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 multi-story 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.
- (c) As to any dealer who held a license or permit in a location where a regulation under this section was in effect on that date, for purposes of subsection (a) of this section, the measurement of the distance between the place of business of the dealer and a public or private school shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.
- (d) The city council may also allow variances to the regulation if the city council determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes 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, is not effective or necessary, or for any other reason the city 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 community.
- (e) Subsection (a) of this section does not apply to the holder of:
- (1) A license or permit who also holds a food and beverage certificate covering a premises that is located within 300 feet of a private school; or
  - (2) A license or permit covering a premises where minors are prohibited from entering and that is located within 300 feet of a private school.
- (f) In this section, the term "private school" means 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.

(Code 2002, § 6-64; Ord. No. 1989-2, § 4, 2-14-1989)

State law reference(s)—Authority to regulate sales near schools, churches or hospitals, V.T.C.A., Alcoholic Beverage Code § 109.33.

### **Sec. 6-61. Building requirements for on-premises establishments.**

No person shall sell beer, liquor or wine at or on any premises within the city for consumption on the premises where sold unless the building housing such business conforms to the following:

- (1) Has not less than 600 square feet of floor space devoted solely to the retail portion of the operation of such business, exclusive of storage and/or restrooms.
- (2) Complies with the building code.
- (3) Complies with the electric code.
- (4) Complies with the plumbing code.

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- (5) Is connected to the city sanitary sewer system for toilet facilities.
  - (6) Is connected to the city water system.
  - (7) Has adequate flush toilet facilities, with separate facilities for men and women in the building. Outside toilet facilities shall not constitute compliance with this requirement.
  - (8) Has sufficient lighting, and such lighting provides illumination to at least 25 foot-candles in all areas of the premises where beer, liquor or wine is sold or consumed, according to measurements by an agent of the city.

(Code 2002, § 6-65; Ord. No. 1989-2, § 6, 2-14-1989)

**Sec. 6-62. Beer establishment personnel.**

- (a) No person other than the permittee or licensee shall serve beer or other drink or food to any customer or patron of a beer establishment unless the person so serving is employed by the permittee or licensee of the beer establishment.
- (b) No person serving beer to any patron or customer of a beer establishment shall receive, as compensation, any part of the price paid by the patron or customer for such beer, nor shall his compensation be dependent on the amount served by him.
- (c) No person shall collect from any customer or patron of a beer establishment, as the price of beer, more than the price paid to the bartender or cashier by the person serving the beer.

(Code 2002, § 6-66; Ord. No. 1989-2, § 7, 2-14-1989)