

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS REPEALING AND RESCINDING THE EXISTING ARTICLE 4.11, ALCOHOL SALES, OF THE CITY OF WILLOW PARK CODE OF ORDINANCES; AND AMENDING THE CITY OF WILLOW PARK CODE OF ORDINANCES ARTICLE 4.11, ALCOHOL SALES, BY ADOPTING A NEW ARTICLE 4.11, ALCOHOLIC BEVERAGES; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR ZONING COMPLIANCE; PROVIDING FOR REGULATIONS PROHIBITING SALE OF ALCOHOLIC BEVERAGES NEAR A CHURCH, PUBLIC OR PRIVATE SCHOOL, PUBLIC HOSPITAL, DAY CARE CENTERS AND CHILD CARE FACILITIES; PROVIDING FOR HOURS OF SALE, INCLUDING LATE HOURS FOR MIXED BEVERAGES; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE REPEALER; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Willow Park, Texas (“City”) is a general law municipality located in Parker County, Texas created in accordance with the laws of the State of Texas; and

WHEREAS, it is the intent of the City to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City Council of the of the City has determined that it is in the best interest of the City and its citizens to adopt a new ordinance regulating the sale of alcoholic beverages in the City as provided herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS:

I. Enactment. Article 4.11, Alcohol Sales, is hereby repealed and rescinded in its entirety, and a new Article 4.11, Alcoholic Beverages, is hereby adopted to read as follows:

**“ARTICLE 4.11
ALCOHOLIC BEVERAGES**

Sec. 4.11.001. Authority.

This chapter is adopted in compliance with the applicable provisions of the Texas Alcoholic Beverage Code. The provisions of the Texas Alcoholic Beverage Code shall govern the administration and enforcement of this chapter.

Sec. 4.11.002. Definitions.

For purposes of this chapter, words, terms and phrases shall have the meanings assigned to same by the Texas Alcoholic Beverage Code as it exists on the date of the adoption of this ordinance and as it may be amended from time to time.

Sec. 4.11.003. Zoning compliance required.

No application to the Texas Alcoholic Beverage Commission shall be certified by the city secretary unless, at the location at which the business is sought to be established and maintained, the applicant's requested use is a "permitted use" under the then applicable provisions of the comprehensive zoning ordinance of the city.

Sec. 4.11.004. Regulations prohibiting sale of alcoholic beverages near a church, public or private school, public hospitals, day care centers and child care facilities.

- (a) It shall be unlawful for any person or entity who is engaged in the business of selling alcoholic beverages to sell the same at a place of business that is within:
 - (1) Three hundred feet of a church, public or private school, or public hospital; or
 - (2) One thousand feet of a private school if the city council receives a request from the governing body of the private school, and deems it appropriate given all circumstances; or
 - (3) One thousand feet of a public school if the city council receives a request from the board of trustees of a school district under Section 38.007, Education Code.
- (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 direct line across intersections.
- (c) 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 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.
- (d) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with the city and the Texas Alcoholic Beverage Commission. A copy of the notice must be submitted to the city and the Texas Alcoholic Beverage Commission with the application. This subsection does not apply to a

permit or license covering a location where minors are prohibited from entering the premises under V.T.C.A. Alcohol Beverage Code § 109.53.

(e) Exceptions to applicability:

(1) Subsection (a)(2) and (3) do not apply to the holder of: (i) 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; or (ii) 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 (iii) a wholesaler's, distributor's, brewer's, distiller's and rectifiers, or winery permit or license, or any other license or permit held by the wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102 of the Alcohol Beverage Code.

(2) Subsection (a)(2) and (3) do not apply to a performing arts facility leased to a performing arts facility leased to a nonprofit organization under a policy adopted under Section 11.179, Education Code.

(3) Subsection (a)(1) does not apply to the holder of a license or permit covering a premises that is located within 300 feet of a private school if the permit holder also holds a food and beverage certificate for the covered premises or if the permit covers a premises where minors are prohibited from entering under V.T.C.A. Alcohol Beverage Code § 109.53.

(4) Subsection (a)(2) does not apply to the holder of: (i) a permit issued under Chapter 30 of the Alcohol Beverage Code who is operating on the premises of a private school; or (ii) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Alcohol Beverage Code and that is located within 1,000 feet of a private school.

(f) In this section, "private school" means a private school, including a parochial school, that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

(g) The city council may allow a variance to this section if it determines that the enforcement of the regulations in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land and resources, creates an undue hardship on the 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 determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community.

(h) To the extent applicable under V.T.C.A. Alcohol Beverage Code § 109.331, the provisions of subsection (a)(1) relating to a public school also apply to a day-care center and child-care facility as those terms are defined in V.T.C.A. Human Resources Code § 42.002.

(i) As authorized by V.T.C.A. Alcohol Beverage Code § 109.36, the city council may allow a variance to this section if it determines that the enforcement of the regulations in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land and resources, creates an undue hardship on the 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 determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community.

- (1) No variance may be granted hereunder except after a public hearing for which notice has been given to owners of real property within 300 feet of the location of the place of business seeking a variance.
- (2) Such notice must be provided, not less than ten days before the date set for hearing, to all such owners who have rendered said property for city taxes, as the ownership appears on the last approved city tax roll.

Sec. 4.11.005. Hours of sale.

- (a) *Hours.* The hours permitted for the sale of alcoholic beverages shall be governed by V.T.C.A. Chapter 105, as now written or hereafter amended.
- (b) *Extended hours.* Pursuant to the authority granted by the Texas Alcoholic Beverage Code, Chapter 105, as amended, the city authorizes the offer to sell and the sale of mixed beverages between 12:00 midnight and 2:00 a.m. on any day by a holder of a mixed beverage extended hours license issued by the state under V.T.C.A., Alcoholic Beverage Code Chapter 29. “

II. Penalty Clause.

(a) Any person who violates or fails to comply with this ordinance, and any person who is the alcoholic beverage permit or license holder or otherwise operates any alcoholic beverage establishment that does not comply with the requirements of this ordinance, and any responsible officer of that alcoholic beverage permit or license holder, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than \$500.00. Each day any violation or noncompliance continues constitutes a separate offense.

(b) A violation of any term or provision of this ordinance may be enjoined by civil injunctive relief. The City may, at its sole discretion, seek injunctive and other equitable relief to restrain any violation of this ordinance and may, in addition, pursue any lawful remedies to correct, abate, or punish any violation hereof.

(c) The penalties and remedies provided for in this ordinance are not exclusive of each other or of any other remedy at law or in equity, and all such remedies are declared to be cumulative.

III. Severability Clause. It is hereby declared to be the intention of the City Council of the City of Willow Park that any phrase, sentence, section, or paragraph of this ordinance shall be declared unconstitutional or otherwise invalid by final judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

IV. Cumulative Repealer Clause. All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

V. Publication and Effective Date. The City Secretary is hereby authorized and directed to publish the caption of this Ordinance in the manner and for the length of time prescribed by law and this ordinance shall become effective after publication of same as provided by State law.

PASSED, APPROVED AND ADOPTED on this _____ day of October, 2023.

Doyle Moss, Mayor

ATTEST:

Crystal Dozier, City Secretary

The Willow Park City Council is acting on Ordinance No. _____-23 , did on the _____ day of October, 2023 vote as follows:

	<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>
Doyle Moss	_____	_____	_____
Eric Contreras, Place 1	_____	_____	_____
Chawn Gilliland, Place 2	_____	_____	_____
Greg Runnebaum, Place 3	_____	_____	_____
Lea Young, Place 4	_____	_____	_____
Nathan Crummel Place 5	_____	_____	_____