

ORDINANCE NO. 2017-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITE OAK, TEXAS AMENDING THE CITY CODE OF ORDINANCES PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE (TABC), ESTABLISHING REGULATIONS FOR THE PURPOSE OF THE SELLING OF BEER AND WINE AND ALCOHOLIC BEVERAGES WITHIN THE CITY, AND THE OBTAINING OF PERMITS AND LICENSES FOR SAID SALE; REGULATING THE SALE OF ALCOHOLIC BEVERAGES NEAR PUBLIC SCHOOLS, PRIVATE SCHOOLS, CHURCHES, AND PUBLIC HOSPITALS; REGULATING THE POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PUBLIC OR PRIVATE SCHOOLS; ESTABLISHING PERMITS AND APPLICATION FEES FOR THE PROCESSING OF GRANTING PERMITS AND LICENSES TO APPLICANTS AND/OR FEES TO APPLICANTS FOR SAID LICENSE; REGULATING SIGNS ADVERTISING THE SALE OF BEER, WINE, AND OTHER BEVERAGES; REPEALER AND PROVIDING FOR SEVERABILITY CLAUSE AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION.

WHEREAS, City staff is recommending the creation of rules and regulations relating to the sale of alcohol within the city limits of the City of White Oak; and

WHEREAS, a voter referendum was held on May 6, 2017, permitting “the legal sales of beer and wine for off-premise consumption only” within the city limits of the City of White Oak, Texas; and

WHEREAS, section 109.33 of the Texas Alcoholic Beverage Code authorizes the City of White Oak, Texas by ordinance to prohibit the sale of alcoholic beverages within 200 feet of a church, public school, private school, or public hospital; and

WHEREAS, section 101.75 of the Texas Alcoholic Beverage Code prohibits the possession of an open container or consumption of an alcoholic beverage on a public street, public alley or public sidewalk within 1,000 feet of the property line of a public school or private school; and

WHEREAS, the City Council of the City of White Oak, Texas has determined that the following regulations are necessary in order to protect public health, safety and welfare; and

WHEREAS, the City Council hereby finds that the creation of rules and regulations relating to the sale of alcohol within the city limits of the City of White Oak, Texas is in the best interest of the citizens of the City of White Oak, Texas;

WHEREAS; the meeting at which this Ordinance was enacted, was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITE OAK, TEXAS:

Section 1. The recitals set forth above are hereby found by the City Council to be true and correct, and are incorporated by reference herein and expressly made a part hereof as if copied verbatim.

Section 2. Articles I and II of Chapter 6 of the Code of Ordinances of the City of White Oak, Texas, is hereby amended in its entirety with the language as follows and are applicable to the provisions of this ordinance:

Chapter 6 – ALCOHOLIC BEVERAGES

Article I. IN GENERAL

Sec. 6-1. Definitions.

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.

Alcohol beverage permit - Shall mean an official certificate issued by the City Secretary certifying compliance with this ordinance.

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.

Church – Religious building; a building for public worship.

City shall mean and refer to the City of White Oak, Texas.

Dealer - As that term is used in Section 109.33 Texas Alcoholic Beverage Code V.T.C.S. and shall include PERSON as that term is defined herein.

Off-premises consumption - The sale of sealed alcoholic beverage by an establishment permitted herein for the sale of consumption off-premises.

Open container - Means a container that is no longer sealed.

Outdoor advertising - Means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building so that it is visible by a person of ordinary vision from outside the building.

Permittee - Means a person who is the holder of a permit provided for in this ordinance, or an agent, servant, or employee of that person.

Person - Means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization of the manager, agent, servant, or employee of any of them.

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.

School - An organization that provides instruction as: A. an institution for the teaching of children. B. college, university.

Wine - Means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.

Wine cooler - Means an alcoholic beverage consisting of vinous liquor plus plain, sparkling, or carbonated water and which may also contain one or more natural or artificial blending or flavoring ingredients. A wine cooler may have an alcohol content as low as one-half of one percent by volume.

Sec. 6-2. Signage.

Inside and outside advertising for alcohol beverage sales shall follow the rules and guidelines according to the *TABC Alcoholic Beverage Code*.

Sec. 6-3. Local fees for license and application

- (a) For Off-Premises Consumption, the City hereby levies an annual fee in a sum equal to **fifty percent** of the State's fee for a beer and wine retailer's off-premises license, and all other licenses required, as authorized by the Texas Alcoholic Beverage Code, except a temporary or agent's beer license issued for premises locations within the corporate limits of the city.
- (b) There is hereby levied a **\$150.00** administrative processing fee for acceptance, review and verification of all new applications.
- (c) All payments shall be made to the city along with the submission of the application. The city shall issue a receipt for display with the state license or permit on the licensed or permitted premises.
- (d) All permits shall be renewed annually. All receipts issued for the payment of permit fees under the terms of this section shall terminate at midnight on the day before the anniversary date of their issuance, and no receipt shall be issued covering a longer term than one (1) year.
- (e) The City Secretary may cancel a permit if a permittee fails to pay the permit renewal fee. The City Secretary shall send notice of such cancellation to the address on file with the permit application.

Sec. 6-4. Penalty for violation.

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon final conviction thereof shall be fined an amount not to exceed the limit established by state statute.

Sec. 6-5 — 6-30. Reserved.

Article II. LOCATION OF SALES

Sec. 6-31. Sale of alcoholic beverages prohibited near public schools, private 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 200 feet of a church, public or private school front door to front door.
- (b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be 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 in a direct line from front door to front door of the place of business and in a direct line across intersections.

Sec. 6-32. Variances

Upon application of a dealer, or person authorized to sell alcoholic beverages, desiring to sell alcoholic beverages within the distance restrictions imposed by this ordinance, the City Council may, in its sole discretion, allow variances to the distance regulations contained in Articles III through XI if the City Council determines that enforcement of the waste or insufficient use of land or other resources, created 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.

Sec. 6-33 — 6-60. Reserved.

ARTICLE III. POSSESSION OR CONSUMPTION

Sec. 6-61. Consumption of alcoholic beverage and possession of an open container near public or private schools; 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, public sidewalk or public park, within 1,000 feet of the property line of a facility that is a public or private school including a parochial 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 ordinance.

Sec. 6-62 — 6-90. Reserved.

ARTICLE IV. NUDITY IN ALCOHOLIC BEVERAGE ESTABLISHMENTS

Section 3. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict only.

Section 4. Should it ever be found and determined by a court of competent jurisdiction that this action of the City Council should have been by resolution or in any other manner other than by ordinance as here ordered, the City Council expresses its

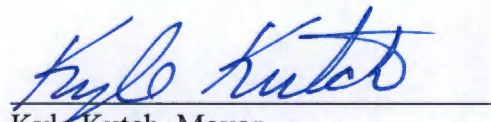
intent that this action be considered as having been done by order, or by resolution, or by such other manner as said court shall find, and further that it would have so acted in such manner as determined by the Court and desires that this Ordinance be read and considered as such order, resolution, or in such other form as may be found and determined.

Section 5. If any section, provision, subsection, paragraph, sentence, clause, phrase, or word in this Ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of White Oak, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

Section 6. 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, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

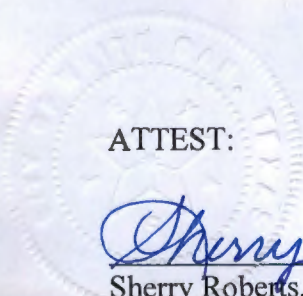
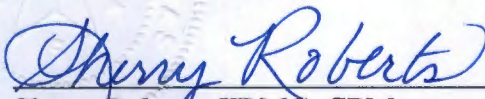
Section 7. This Ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

PASSED and APPROVED BY THE CITY COUNCIL OF THE CITY OF WHITE OAK, TEXAS on this the 16th day of May 2017.



Kyle Kutch, Mayor
City of White Oak

ATTEST:



Sherry Roberts, TRMC, CPM
Asst. City Manager/City Secretary