

ORDINANCE NO. 14-588-12

AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE CITY OF BROOKSHIRE, TEXAS, PROHIBITING THE SALE OF ALCOHOL IN CERTAIN LOCATIONS IN CLOSE PROXIMITY TO SCHOOLS, CHURCHES, HOSPITALS AND CHILD-CARE FACILITIES; PROHIBITING THE SALE OF BEER IN RESIDENTIAL AREAS; REGULATING THE EXTENDED HOURS SALE OF BEER AND MIXED BEVERAGE REPEALING ORDINANCE NOS. 10-555-11, 07-527-10A, AND 83-151-3 PASSED AND APPROVED ON SEPTEMBER 16, 2010, OCTOBER 18, 2007 AND JULY 26, 1983, RESPECTIVELY, AND ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING A PENALTY FOR VIOLATION OF THIS ORDINANCE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR EACH VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council finds that it is in the best interest of the health, welfare and safety of its citizens to regulate the consumption and Sale of alcoholic beverages in ways expressly allowed pursuant to various provisions of the Texas Alcoholic Beverage Code; and

WHEREAS, this includes regulations or restricting the sale of alcohol within certain prescribed distances for churches, hospitals and schools, selling beer in residential areas and regulating extended hours of sale of beer and mixed beverages; now therefore

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BROOKSHIRE, STATE OF TEXAS:

Section 1. The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed

Section 2. Ordinance Nos. 10-555-11, 07-527-10A and 83-151-3 adopted on September 16, 2010, October 18, 2007 and July 26, 1983, respectfully, are hereby repealed as well as all other ordinances or parts of ordinances in conflict herewith.

Section 3. Location of alcoholic beverage sales restricted.

(a) It shall be unlawful to sell or offer for sale any alcoholic beverage by a dealer whose place of business is within:

(1) 300 feet of a church, public or private school, public hospital, day-care center and child-care facility;

(2) 1,000 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; or

(3) 1,000 feet of a private school if the city council receives a request from the governing body of the private school.

(b) For the purposes of this section, 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. 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.

(c) 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. A copy of the notice must be submitted to the city with the application. This subsection does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53 Texas Alcoholic Beverage Code.

(d) As to any dealer who held a license or permit on September 1, 1983, in a location where a regulation under this section was in effect on that date, for purposes of Subsection (a), but not Subsection (c), 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 direct line across intersections.

(e) Subsection (a)(1) does not apply to the holder of:

- (1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
- (2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 Texas Alcoholic Beverage Code and that is located within 300 feet of a private school.

(f) Subsections (a)(2) and (3) do not apply to the holder of:

- (1) 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;
- (2) 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
- (3) a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102, Texas Alcoholic Beverage Code.

(g) Subsection (a)(3) does not apply to the holder of:

- (1) a license or permit issued under Chapter 27, 31, or 72 Texas Alcoholic Beverage Code who is operating on the premises of a private school; or
- (2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 Texas Alcoholic Beverage Code and that is located within 1,000 feet of a private school.

(h) In this section, "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.

(i) With respect to required distances from day-care centers and child-care facilities as set forth above, subsection (a)(1) above does not apply to a permit or license holder who sells alcoholic beverages if

(1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or

(2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.

Section 4. Sale of beer in residential area prohibited.

(a) It shall be unlawful to sell or offer for sale beer from a place of business which is located in a residential area within the City.

(b) For purposes of this Ordinance, the term *residential area* shall mean an area occupied primarily by structures used for private dwellings.

Section 5. Regulation of Extended Hours for Sale of Alcohol

(a) Definitions:

The following definitions shall apply to this entire section:

1. City: shall mean the City of Brookshire, Waller County, Texas.
2. Extended Hours: shall mean the hours between midnight and 2 A.M. on any day.
3. Mixed Beverages, Beer and Wine: shall have the meanings as described in the Texas Alcoholic Beverage Code.
4. Permit: shall mean a City issued extended hours written permit for the sale of mixed beverages, beer and wine. Such permit shall be effective for a period of one calendar year.
5. Person: shall mean a person, individual, company, corporation, partnership, association, or other entity.

(b) Permit and Fee:

1. Permit Required:

No person shall hereafter sell mixed beverages, beer or wine within the corporate limits of the City during extended hours without first having applied for and secured a permit from the City. A permit is effective for one calendar year. After the expiration of that calendar year, the person seeking a permit shall be required to apply for a new permit.

2. General Requirements for Issuance of a Permit:

A person seeking a permit shall successfully satisfy the requirements of all appropriate laws of the State of Texas, rules of regulatory agencies of the State of Texas, and the regulations of the City. The City Council shall not issue a permit if such issuance would constitute a danger to the health, safety and welfare of the citizens of the City.

Section 6. Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed five-hundred dollars (\$500.00). Each day of violation shall constitute a separate offense.

Section 7. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Brookshire, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED on first and final reading this 20th day of November, 2014.

Eric Scott

Eric Scott, Mayor

ATTEST:

Claudia Harrison

Claudia Harrison, City Secretary