

ORDINANCE NO. 01-06-15

AN ORDINANCE OF THE CITY OF COOPER, TEXAS AMENDING THE CITY ORDINANCE PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE (TABC); ESTABLISHING REGULATIONS FOR THE PURPOSE OF SELLING BEER AND WINE FOR OFF-PREMISE CONSUMPTION AND PERMITS AND LICENSES FOR SAID SALE, AND PROHIBITING AREAS FOR SAID SALE AND PERMITTING AREAS FOR SAID SALE; REGULATING THE SALE NEAR CHURCHES, DAY-CARE CENTERS AND CHILD-CARE FACILITIES; REGULATING THE SALE AND CONSUMPTION OF BEER AND WINE IN RESIDENTIAL AREAS; 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 AND WINE; REPEALER AND PROVIDING FOR SEVERABILITY CLAUSE AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION.

**WHEREAS**, the City is recommending the creation of rules and regulations relating to the sale of alcohol within the city limits of the City of Cooper, Texas; and

**WHEREAS**, Sections 109.33-109.331 of the Texas Alcoholic Beverage Code authorizes the City of Cooper, Texas, to prohibit, by ordinance, the sale of alcoholic beverages within 300 feet of a day-care facility, child-care facility, church, public school, private school, or public hospital; and

**WHEREAS**, Section 101.74 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 Cooper, 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 related to the sale of alcohol within the city limits of the City of Cooper, Texas is in the best interest of the citizens of the City of Cooper, 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 Meeting Act.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Cooper, 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.

**Section 2.** The following definitions are hereby added to the Comprehensive Zoning Ordinance.

1. **CITY** shall mean and refer to the City of Cooper, Texas.
2. **BEER AND WINE RETAIL SALES (NO DRIVE THROUGH).** Businesses that engage in the sale of beer, wine and/or malt liquors containing alcohol in excess of one-half of one percent (0.5%) by volume but not more than seventeen percent (17%) by volume for off-premise consumption only, with no drive-through facility.
3. **BEER AND WINE RETAIL SALES (DRIVE-THROUGH).** Businesses that engage in the sale of beer, wine and/or malt liquors containing alcohol in excess of one-half percent (0.5%) by volume but not more than seventeen percent (17%) by volume, for off-premise consumption only, with a drive-through facility including a drive-up window, drive-through building or any other means of conducting sales without requiring customers to exit their vehicles.
4. **PRE-PACKAGED ALCOHOLIC BEVERAGE RETAIL SALES (NO DRIVE-THROUGH).** Businesses that engage in the sale of pre-packaged alcoholic beverages for off-premise consumption only, with no drive-through facility.
5. **PRE-PACKAGED ALCOHOLIC BEVERAGE RETAIL SALES (DRIVE-THROUGH).** Businesses that engage in the sale of pre-packaged alcoholic beverages for off-premise consumption only, with a drive-through facility including a drive-up window, drive-through building or any other means of conducting sales without requiring customers to exit their vehicles.
6. **ALCOHOLIC BEVERAGE PERMIT** shall mean an official certificate issued by the City Secretary certifying compliance with this Ordinance.
7. **ON-PREMISE CONSUMPTION** shall mean the sale of an alcoholic beverage for the consumption in a business establishment.

8. **OFF-PREMISE CONSUMPTION** shall mean the sale of an alcoholic beverage as permitted herein for consumption not within a business establishment.
9. **CONVENIENCE CENTER** shall mean retail establishments which carry convenience goods, such as groceries, drugs, and some variety items, which include but is not limited to grocery stores, markets, supermarkets and convenience stores.
10. **ALCOHOLIC BEVERAGE** shall mean alcohol or any beverage containing more than one-half of one percent (0.5%) of alcohol by volume and which is capable of use for beverage purposes either alone or when diluted.
11. **BEER** shall mean a malt beverage containing one-half percent (0.5%) or more of alcohol by volume and not more than four percent (4%) of alcohol by weight and does not include a beverage designated by label or otherwise by a name other than beer.
12. **CHILD-CARE FACILITY.** As some terms are defined by Section 42.002 of the Texas Human Resources Code, child-care facility means a certified facility licensed, certified, or registered by the Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility for all or part of the 24-hour day whether or not the facility is operated for profit or charges for the services it offers.
13. **DEALER** shall have the meaning as used in Section 109.33 of the Texas Alcoholic Beverage Code V.T.C.S. and shall include PERSON as that term is defined below.
14. **OPEN CONTAINER** shall mean a container that is no longer sealed.
15. **PERSON** shall mean a natural person or association of natural persons, trustee, receiver, partnership, and corporation, organization of the manager, agent, servant, or employee of any of them.
16. **PRIVATE SCHOOL** shall means a privately-owned and operated educational facility, including a parochial school that 1) offers a course of instruction for students in one or more grades from kindergarten through Grade 12 and 20 has more than 100 students enrolled and attending courses at a single location.

17. **PERMITTEE** shall mean a person who is the holder of a permit provided for in this ordinance, or an agent, servant, or employee of that person.
18. **LICENSEE** shall mean a person who is the holder of a license provided in this ordinance, or any agent, servant, or employee of that person.
19. **WINE** shall mean the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries or honey, and includes wine coolers.
20. **WINE COOLER** shall mean 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 and may have alcohol content as low as one-half of one percent (0.5%) by volume.
21. **ALE OR MALT LIQUOR** shall mean a malt beverage containing more than four percent (4%) or alcohol by weight.
22. **OUTDOOR ADVERTISING** shall mean 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.
23. **BILLBOARD** shall mean a structure directly attached to the land, a house, or a building that has one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale or distribution of alcoholic beverages, whether or not the structure is artificially lighted.
24. **ELECTRIC SIGN** shall mean a structure or device, other than an illuminated billboard, by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

### **Section 3. PERMITTED USES**

1. Beer and Wine Retail Sales (both with No Drive Through and with a Drive Through) and Pre-Packaged Alcoholic Beverage Retail Sales (both with No Drive Through and with a Drive Through) and holding an alcoholic beverage permit issued by the City Secretary of the City of Cooper, Texas, will be allowed to operate only in areas that are zoned LR (Local Retail), GB (General Business), II (Industrial) and OC (Outside Commercial).



2. The sale of alcoholic beverages for on-premise consumption is not permitted.
3. Any business, existing or new, that desires to sell any alcoholic beverage within the city limits of the City of Cooper, Texas must obtain an alcoholic beverage permit issued by the City.

**Section 4. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR PUBLIC SCHOOLS, PRIVATE SCHOOLS, CHURCHES OR HOSPITALS.**

1. It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 300 feet of a church, public school, private school, or public hospital.
2. 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 the intersections.
3. The measurement of the distance between the place of business where alcoholic beverages are sold and the public school or private school shall be in a direct line from the property line of the place of business and in a direct line across intersections.

**Section 5. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR DAY-CARE FACILITIES AND CHILD-CARE FACILITIES; EXCEPTION.**

1. It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 300 feet of a day-care or child-care facility.
2. This section does not apply to foster group homes, foster family homes, family homes, agency group homes, or agency homes as those terms are defined by Section 42.002 of the Texas Human Resources Code.
3. The measurement of the distance between the place of business where alcoholic beverages are sold and the day-care or child-care facility shall be in a direct line from the property line of the facility to the property line of the place of business and in a direct line across intersection.

**Section 6. SALE OF ALCOHOLIC BEVERAGES PROHIBITED IN RESIDENTIAL AREAS.**

It shall be unlawful for any person or dealer to sell alcoholic beverages on

residential lots, tracts, or parcels of land zoned as residential within this city.

**Section 7. CONSUMPTION OF ALCOHOLIC BEVERAGE AND POSSESSION OF AN OPEN CONTAINER NEAR PUBLIC OR PRIVATE SCHOOLS OR PUBLIC PROPERTY; EXCEPTION.**

1. It shall be unlawful for any person to consume any alcoholic beverage in and on any public property, including any parking areas which are used generally by the public, or for any person to possess any alcoholic beverage in and on any public property, including any parking areas which are used generally by the public unless a conditional-use-special-event permit, specifying the type(s) of alcohol to be permitted at the special event, is approved by the City Council.
2. It shall be unlawful for any person to consume, have or possess or have upon their persons or in their possession, any beer, wine, malt or vinous liquors or any other alcoholic beverage, regardless of the name or strength thereof, or be found in a state of intoxication, while attending or being in or upon any school grounds, public school grounds, public school buildings, football grounds and/or stadiums, basketball grounds and/or stadiums, at any time, including but not limited to while football games, basketball games, track meets or any other public meetings are being held within said grounds and/or buildings within the city.
3. The possession by any person of beer, wine, malt or vinous liquors or any other alcoholic beverage regardless of name or strength shall be prima facie evidence that same is being possessed for unlawful purposes.

**Section 8. SIGNAGE.**

1. No person may erect or maintain a billboard, electric sign, or any outdoor advertising or fail to erect a sign, billboard, electric sign, or any outdoor signage that is in conflict with the Texas Alcoholic Beverage Code.
2. No person may erect or maintain a billboard, electric sign, or any outdoor advertising in violation of any ordinance of the City of Cooper, Texas (including this ordinance).

**Section 9. LOCAL FEES FOR LICENSE AND APPLICATION.**

1. For off-premise consumption, the City hereby levies an annual fee in a sum equal to fifty percent (50%) of the State's fee for a beer retailer's off-premise 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 located within the corporate limits of the city.

2. There is hereby levied a \$150.00 administrative processing fee for receipt, review and verification of all new applications.
3. All payments shall be made to the City of Cooper, Texas, at the time of 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.

**Section 10. PENALTIES.**

Any violation of this ordinance shall be subject to the penalty as provided for in the Code of Ordinances.

**Section 11.** All ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict only.

**Section 12.** 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 13.** 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 Cooper, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

**Section 14.** This ordinance shall be in full force and effect from and after the date of adoption.

**IT IS ACCORDINGLY SO ORDAINED.**

**PASSED AND APPROVED** by the City Council of the City of Cooper, Texas, on the 18 day of June, 2015.

  
\_\_\_\_\_  
Scotty Stegall, Mayor

**ATTEST.**

  
\_\_\_\_\_  
Emily Howse, City Secretary

**APPROVED AS TO FORM.**

  
\_\_\_\_\_  
Edgar J. Garrett, Jr., City Attorney