

ORDINANCE NO. 2017-28

SALE OF ALCOHOLIC BEVERAGES

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE CODE OF ORDINANCES, RELATED TO CHAPTER 4, TITLED "BUSINESS REGULATIONS", ARTICLE 4.02, TITLED "SALE OF ALCOHOLIC BEVERAGES" AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING.

WHEREAS, the City Council has developed and approved written policies and procedures that provide for and allow for the sale and consumption of alcoholic beverages in various locations in the City of Bastrop; and

WHEREAS, the City Council has developed and approved written policies and procedures that provide for and allow for the sale and consumption of alcoholic beverages in various locations in the City of Bastrop; and

WHEREAS, the City is authorized by Tex. Loc. Gov't Code § 51.001 to adopt, appeal or amend any ordinance that is for the good government, peace, or order of the municipality, and for the trade and commerce of the municipality, and is necessary or proper for carrying out a power granted by law to the municipality; and

WHEREAS, the City has the full power of local self-government as recognized by Tex. Loc. Gov't Code § 51.072; and

WHEREAS, the City has the ability to enact certain rules regarding alcoholic beverages in accordance with Tex. Alc. Bev. Code Chapter 109; and

WHEREAS, the City Council finds the attached amendments reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bastrop, TX:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Chapter 4, Article 4.02 of the City of Bastrop Code of Ordinances is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

7. PROPER NOTICE & MEETING

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.

READ & ACKNOWLEDGED on First Reading on the 12th day of December 2017.


READ & APPROVED on the Second Reading on the 9th day of January 2018.

APPROVED:



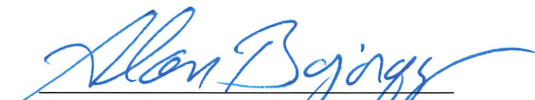
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Bastrop Code of Ordinances

Chapter 4: Business Regulations

Article 4.02: Sale of Alcoholic Beverages

Section 1: The Code of Ordinances of the City of Bastrop, Texas, is hereby amended by amending Chapter 4 titled "Business Regulations", to read follows:

CHAPTER 4 – BUSINESS REGULATIONS

ARTICLE 4.02 - SALE OF ALCOHOLIC BEVERAGES

Sec. 4.02.001 - Definitions.

The definitions contained in the Texas Alcoholic Beverage Code shall apply to the provisions of this article.

Sec. 4.02.002 - Construction consistent with state law.

This chapter shall be construed in accordance with the Texas Alcoholic Beverage Code, as may be amended, and rules and regulations promulgated under its authority.

Sec. ~~4.02.002~~ 4.02.003 - Processing of applications for state licenses or permits.

- (a) Any person applying for a permit or license issued by the authority of the Texas Alcoholic Beverage Code, or a renewal of such permit or license, or to change location of the place of business designated in such permit or license, shall present in person to the City Secretary the appropriate application forms prescribed by the alcoholic beverage commission and shall file one copy thereof with the City Secretary;
~~Such applicant shall file an application for a package store permit, a wine and beer retailer's permit and a retail dealer's on-premises license shall also provide, on a form to be furnished by the city, information necessary to show compliance by the applicant with the provisions of this article. Such information shall include, but not limited to, the name, age, height, weight, race and all other city permits or licenses held by the applicant.~~
- (b) The City Secretary ~~shall direct the applicant to deliver the filed application to the state alcoholic beverage commission, which shall cause an investigation to be made as to the applicant's moral character and also as to the applicant's police or criminal record, if any. The applicant may be required and directed to submit a classifiable set of his fingerprints if the Chief of Police deems such to be necessary to accomplish said investigation. On completing this investigation, the Chief of Police shall forward the application and information form, together with his report of the applicant's personal record, to the building official~~ Planning Department, which shall:

- (1) determine the use zoning district in which the proposed business is to be located, determine road frontage as applicable, and determine the location of the nearest church, public or private school, and public hospital;
- ~~(2) and the building official shall indicate such facts and any other pertinent information by appropriate notation in the applicant's file;~~
- ~~(3) (2) The building official shall immediately promptly~~ advise the City Secretary, in writing, of the use zoning district in which the place of business is located and the location of the nearest church, public or private school and public hospital. ~~The building official shall forward the file on all applications, except applications for a brewer's permit, distiller's permit, class A winery permit, rectifier's permit, wine and beer retailer's permit, manufacturer's license, retail dealer's on-premises license and retail dealer's off-premises license, directly to the fire marshal, and on such excepted applications the building official shall transmit the file to the city health officer.~~

Sec. ~~4.02.003~~ 4.02.004 - Compliance with zoning regulations.

No person shall sell, store or otherwise handle for the purpose of sale, or engage in the business of selling, storing or otherwise handling, any alcoholic beverage in the city, unless the place of business of such person is located in a use district of the city, as established by the city and present or future zoning regulations of the city, in which the sale, storage or otherwise handling for the purpose of sale of such alcoholic beverage is permitted.

Sec. ~~4.02.004~~ 4.02.005 - Distance of premises from church, school or hospital. Separation Requirements from Church, Public or Private School, or Public Hospital

- (a) No person shall sell or engage in the business of selling any alcoholic beverage where the place of business of such person is located within three hundred (300) feet of any church, public or private school, or public hospital: ~~provided, however, that the City Council may provide variances to the three hundred-foot limitation if the City Council determines that the 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, or is not effective or necessary, or for any other reason the 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. For purposes of this section, the measurements of the distance between such businesses and the affected churches, schools, and hospitals shall be done in accordance with state law.~~
- (b) This section does not apply to:
 - (1) a holder of a license or permit who also holds a food and beverage certificate covering premises that are located within three hundred (300) feet of a private school, as the term "private school" is defined by the Texas Alcoholic Beverage Code;
 - ~~(2) Additionally, this section shall not apply to~~ any place of business that is legally selling alcoholic beverages at the same location for a continuous period of one year ~~next~~ preceding the establishment, construction or purchase of property for the

establishment or construction of a church, public or private school, or public hospital; or

- (3) ~~nor shall it apply to~~ businesses that were in operation at the time this section was originally enacted, until such a time as such businesses have a change in ownership.
- (c) For purposes of this section, the measurements of the distance between such businesses and the affected churches, schools, and hospitals shall be done in accordance with state law.
- (b) ~~Whether the grant of a variance from the rule prohibiting a person from selling or engaging in the business of selling any alcoholic beverage within three hundred (300) feet of any church, public or private school or hospital is in the best interest of the community shall be determined by the Council following a public hearing held by the Council to receive public input on the requested variance.~~
- (e) ~~Notice of the required public hearing, set forth in subsection (b) above, shall be provided to all property owners who are located adjacent to the site to which the variance would apply, if granted, including but not limited to notices to all churches, public or private schools, and hospitals in the area that may be potentially affected by the requested variance.~~
- (d) ~~Any variance awarded pursuant to this section shall be by resolution, approved by the City Council for such purpose.~~

Sec.4.02.006 Variance to Separation Requirements

- (a) Pursuant to the State of Texas Alcoholic Beverage Code, City Council of the City of Bastrop has the authority to allow variances to the separation requirement regulations.
- (b) The council may provide variances if, after notice and a public hearing, the council determines that enforcement of the regulation in a particular instance:
 - (1) is not in the best interest of the public;
 - (2) constitutes waste or inefficient use of land or other resources;
 - (3) creates an undue hardship on an applicant;
 - (4) does not serve its intended purpose;
 - (5) is not effective or necessary; or
 - (6) for any other reason the 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.
- (c) The council may consider the written consent to a variance under this section from each church, public or private school, public hospital within 300 feet from the applicant's proposed place of business filed by the applicant with the Planning Department to be a sufficient justification for a variance.

§ 4.02.007 – Variance to Separation Requirements Process

- (a) To obtain a variance under this section, an applicant must submit an application to the Planning Department, on a form approved by the director, requesting a variance to the separation requirements of 4.02.005, showing justification under section 4.02.006(b) of this section.
 - (1) The Planning Department shall distribute notice of public hearing by:

- A. Publication in a newspaper of general circulation in the location in which the variance is requested;
- B. Mail not fewer than 15 days before the date of the council's public hearing to all property owners within 300 feet of the premise; and.
- C. Notify the police department.
- (2) Applicant must comply with the following:
 - A. post a sign that shall include the type of action pending and contact number and be at least one (1) square foot and visible from street;
 - B. verify placement of the signs in writing to the Planning Department;
 - C. respond to complaints regarding the signs to the department within 24 hours; and
 - D. a person may not remove a sign posted by the department under this section before the earliest date city council action may be taken on the application.
- (3) City Council shall hold a public hearing, after which a determination will be made to grant or deny the variance request.
- (4) Any variance granted pursuant to this section shall be by resolution, approved by City Council.
- (5) If the city council denies a variance with prejudice, the director of the Planning Department may not accept an application for the same or a substantially similar variance request earlier than 12 months after the date the previous variance request was denied. provided, however, that the City Council may provide variances to the three hundred foot limitation if the City Council determines that the enforcement of the regulation in a particular instance for a license or permit,

Sec. ~~4.02.005~~ **4.02.008- Permit and license fees; issuance of city permit.**

- (a) Unless state law exempts a permittee or licensee from payment of a fee established by this section, a permittee or licensee must pay the City an annual permit or license fee of one-half the amount of the state fee for each permit and license authorizing the sale of alcoholic beverages. There is hereby levied an annual permit fee and an annual license fee in the amount of one half (1/2) the state fee for each permit or license issued, except as prohibited by Texas Alcoholic Beverage Code.
- (b) Such fee shall be paid in advance for one year to the City Secretary ~~within thirty (30) days from the date payment was due to be paid to the county tax assessor/collector or no later than the 30th day after the date said state permit or license fee is due.~~ alcoholic beverage commission for said state permit fee or state license fee.
- (c) The permit may be cancelled if the permittee has not paid a fee levied under this section. A permittee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200. Upon the payment of the applicable tax or fee prescribed to the city and exhibiting a permit duly issued by the state to the applicant, the City Secretary shall, in the name of the city, issue and deliver to such applicant a permit to engage in business in the city of the character described in and authorized by the permit or license from the state held by such applicant, and the permit so issued in the name of the city shall authorize the conduct of such business upon the premises described in the permit or license from the

~~state and shall remain in force only so long as such permit or license from the state remains in force.~~

- (d) The City Secretary shall issue and deliver a receipt under this section to the permittee or licensee authorizing the sale of alcoholic beverages under this chapter and a state permit or license, if the permittee or licensee:
 - (1) pays the fees established by Subsection (a); and
 - (2) exhibits the permit or license issued by the state.
- (e) The permit issued in the name of the city shall authorize the conduct of such business upon the premises described in the permit or license from the state and shall remain in force only so long as such permit or license from the state remains in force.
- (f) The following are exempt from the fee authorized in this section:
 - (1) agent's, airline beverage, passenger train beverage industrial, carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permits;
 - (2) a wine and beer retailer's permit issued for a dining, buffet, or club car; and
 - (3) a mixed beverage permit during the three-year period following the issuance of the permit.

Sec. ~~4.02.006~~ 4.02.009- Hours of sale and consumption.

- (a) No person shall sell or offer for sale any beer, wine, or mixed beverages during the following periods of time:
 - (1) On Sunday, at any time between the hours of 1:00 a.m. and 12:00 noon, unless it is between the hours of 10:00 a.m. and 12:00 noon and ~~or between the hours of 1:00 a.m. and 10:00 a.m. if~~ the alcoholic beverage is provided during the service of food to the customer.
 - (2) On any other day, at any time between the hours of 12:00 midnight and 7:00 a.m.
- (b) No person shall consume or hold for the purpose of consumption in ~~any public place~~ the Form Based Code, Downtown Mixed Use and Historic Main Street Character zones any alcoholic beverages during the following periods of time:
 - (1) On Sunday at any time between the hours of 1:15 a.m. and 12:00 noon.
 - (2) On any other day at any time between the hours of 12:15 a.m. and 7:00 a.m.
- (c) Any sale, consumption or possession of beer, mixed beverages or alcoholic beverages, as permitted by this section, shall be subject to all applicable laws and ordinances, and nothing in this section shall be construed as permitting or otherwise authorizing any act in contravention of any state or federal statute or any ordinance of the city.

Sec. ~~4.02.007~~ 4.02.010- Inspection of premises.

It shall be the duty of the building official, ~~Chief of Police, and~~ fire marshal ~~and health officer~~ to cause an inspection to be made periodically of all premises of permittees and licensees under this article.

Sec. ~~4.02.008~~ 4.02.011- Permitted locations.

- (a) Establishments for the sale and consumption of beer and/or wine may be located in the following areas and none other (except as noted in section 4.02.005):
- (1) Sale for consumption of beer and wine, on-premises, in food service establishments that derive ~~less than fifty (50)~~ **no more than sixty (60)** percent of their gross revenue from on-premises sale and consumption of alcoholic beverages may be located in areas within the municipal limits ~~with the following zoning designations as authorized by the Use Regulations in the Zoning Ordinance.:~~
 - ~~(A) The central business district;~~
 - ~~(B) The commercial tourism district;~~
 - ~~(C) The commercial 1 district (light);~~
 - ~~(D) The commercial 2 district (heavy).~~
 - (2) Notwithstanding the provisions noted above in subsection (1) of this section, sale for consumption of beer and wine, on-premises, is allowed in the following areas:
 - (A) Property fronting on State Highway 95 from the northern city limits line to the intersection of State Highway 71, which is zoned commercial-1, commercial-2, ~~commercial tourist~~, industrial park or light industrial.
 - (B) Property fronting on State Highway 71 and property fronting on parallel frontage roads to State Highway 71 from the western city limits line to the eastern city limits line, which is zoned commercial-1, commercial-2, ~~commercial tourist~~, industrial park or light industrial.
 - (C) Property fronting on Loop 150 from the western bank of the Colorado River to the intersection of Loop 150 and State Highway 71, which is zoned commercial-1, commercial-2, ~~commercial tourist~~, industrial park or light industrial.
 - (D) Property fronting on Loop 150 from the intersection of Water Street and Loop 150 east to the intersection of Loop 150 and State Highway 71, which is zoned commercial-1, commercial-2, ~~commercial tourist~~, industrial park or light industrial.
 - (E) Property fronting on State Highway 21 from the intersection of Loop 150 and State Highway 21 to the eastern city limits line, which is zoned commercial-1, commercial-2, ~~commercial tourist~~, industrial park or light industrial.
 - (F) ~~Property zoned central business district.~~ As authorized by the Schedule of Permitted Uses in the Downtown Bastrop Form-Based Code.
 - (3) Sale for consumption of beer and wine, off-premises. Any establishment within the city limits that is located in an area that is zoned:
 - (A) Commercial-1, commercial-2, ~~commercial tourist~~, industrial park or light industrial; and
 - (B) ~~Central business district so long as the beer and wine products sold in the central business district are "Texas-made" products and the display of such alcoholic products occupies less than 20% of the retail sales floor space of the establishment.—~~Downtown Bastrop Form-Based Code Downtown Mixed Use, Historic Main Street, Civic/Cultural Arts, Commercial Mixed Use, Live/Work, Neighborhood Tourism, and Neighborhood Services character zones as permitted in the Schedule of Permitted Uses so long as the beer and wine products sold are "Texas-made" products and the display

of such alcoholic products occupies less than 20% of the retail sales floor space of the establishment.

- (b) Pursuant to a special option election held on February 5, 2005, the sale of mixed beverages on-premises is permitted in any establishment that has acquired a valid food and beverage certificate from the state alcoholic beverage commission, or successor agency, and that is located within the city limits in an area appropriately zoned for restaurant use.
- (c) The sale and consumption of alcoholic beverages, whether beer, wine or mixed beverages, shall be allowed at the City of Bastrop's Convention Center and Exhibit Hall, when done in full compliance with the city's approved policies and procedures, and when in compliance with state permitting laws and regulations.

Sec. ~~4.02.009~~ 4.02.012- Authority to close places of sale during riot.

Whenever any riot or mob violence has occurred, or there is reasonable cause to apprehend an outbreak thereof within the city, or in the vicinity thereof, the mayor shall have and is hereby vested with the power to immediately issue a proclamation ordering the closing of all places within the city which sell or in any way deal in beer, until such time as, in his or her judgment, the public peace and safety no longer require such restrictions.