

ORDINANCE NO. 22-L

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 3, ALCOHOLIC BEVERAGES, OF THE CODE OF ORDINANCES OF THE CITY OF ALVIN, TEXAS, FOR THE PURPOSE OF AMENDING ARTICLE II, LICENSE TO MANUFACTURE, SELL OR DISTRIBUTE BEER; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

WHEREAS, the City Council of the City of Alvin is continually reviewing the provisions of the City Code of Ordinances to ensure that it meets the current needs of the City and reflects current practice; and

WHEREAS, the City Council of the City of Alvin wishes to revise the chapter to conform with the Texas Alcoholic Beverage Code; and

WHEREAS, all references to “V.T.C.A. Alcoholic Beverage Code” shall be amended to read “Texas Alcoholic Beverage Code” within Chapter 3, Alcoholic Beverages.

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

Section 1. That Chapter 3, Alcoholic Beverages, of the Code of Ordinances, City of Alvin, Texas, is hereby amended with the language as follows:

CHAPTER 3, ALCOHOLIC BEVERAGES

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ARTICLE II. LICENSE TO MANUFACTURE, SELL OR DISTRIBUTE BEER

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Sec. 3-12. City license fee—Amount.

Any person holding a license issued by the Texas Alcoholic Beverage Commission for the manufacture, distribution or sale of beer who owns or maintains a place of business located within the City of Alvin in connection with which such license has been issued shall pay the license fees set forth in chapter 28 of this Code.

State law reference(s)—Authority of city to levy a license fee for the sale, distribution, etc., of beer in an amount not exceeding one-half of the state license fee,.Texas Alcoholic Beverage Code § 61.36.

Sec. 3-13. —Payment, due date.

The license fees herein prescribed, shall be paid to the engineering department at the public service facility, Alvin, Texas, and shall be due on or before the same day every two (2) years that the state license fee for the license held by such person authorizing the sale of alcohol (on-site) with subordinate permit as determined by the permit held by the establishment or sale of beer (on-site/off-site) determined by the permit held by the establishment.

Sec. 3-14. Dates of state license to be furnished engineering department.

Upon the effective enactment of this article, each person maintaining a place of business or establishment as referred to in this article, shall furnish to the engineering department the date of expiration of the license such person holds from the State of Texas which authorizes such manufacture, distribution or sale of beer and each person who thereafter obtains a state license, shall furnish the engineering department with information concerning the date of issuance of such license and the date of its expiration. Any person who fails or refuses to furnish the information required in this section, after written request by the engineering department, shall be deemed guilty of a misdemeanor and subject to fine as hereinafter provided.

Sec. 3-15. Failure to pay fee—Cancellation of license.

Should any person fail or refuse to pay the license fee herein prescribed at the time and in the manner prescribed in this article, the engineering department shall, upon the expiration of three (3) days from the date said license fee was due, notify the Texas Alcoholic Beverage Commission of such person’s failure to pay the license fee herein prescribed and request cancellation of the license of such person under the authority of, Texas Alcoholic Beverage Code § 61.36(b).

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Sec. 3-18. Engineering department authorized to require information.

The engineering department is hereby authorized and empowered to require from each person holding a license described herein information as to the name and address of such person, the address of the place of business of such person and any other information reasonably necessary for compliance with the provisions of this article. Failure of any such person to furnish such information to the engineering department shall be deemed a misdemeanor and shall subject such person to the penalties prescribed herein.

Sec. 3-19. Sales near school, church, hospital, dwelling and day-care/child-care facility.

- (a) Except as provided in this subsection, it shall be unlawful for any dealer to sell alcoholic beverages within the corporate limits of the city where the place of business of such dealer is within three hundred (300) feet of a church, public or private school, or public hospital. “Private school” shall have the meaning set forth in Texas Alcoholic Beverage Code § 109.33. This subsection shall not apply to the holder of (i) a license or permit who also holds a food and beverage certificate covering a premise that is located within three hundred (300) feet of a private school; or (ii) a license or permit covering a premise where minors

are prohibited from entering under Texas Alcoholic Beverage Code § 109.53 and that is located within three hundred (300) feet of a private school.

- (b) Except as provided in this subsection, it shall be unlawful for any dealer to sell alcoholic beverages within the corporate limits of the city in any area designated as an “alcohol-free school zone” pursuant to this subsection. Following receipt of a written request from the governing body of a private school for the designation of an alcohol-free school zone, the city council may designate areas within one thousand (1,000) feet of the private school as an alcohol-free school zone. Requests for designation shall be filed with the city secretary and shall be presented to city council as soon as practicable following their filing. Designations under this subsection may be made by City Council motion. The prohibition set forth in this subsection shall not apply to the holder of: (i) a retail on-premises consumption permit or license if less than fifty (50) percent of the gross receipts for the premises is from the sale or service of alcoholic beverages; (ii) a retail off-premises consumption permit or licenses if less than fifty (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 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 Texas Alcoholic Beverage Code Ch. 102. Furthermore, an alcoholic free school zone designated upon request of the governing body of a private school shall have no application to a holder of (i) a license or permit issued under Texas Alcoholic Beverage Code, Chapters 27, 31, or 72, 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 Texas Alcoholic Beverage Code § 109.53 and that is located within one thousand (1,000) feet of a private school.
- (c) This subsection establishes additional criteria regarding the sale of alcoholic beverages and shall apply only to a permit or license holder under the following chapters of the Texas Alcoholic Beverage Code who does not hold a food and beverage certificate: Chapter 25 (Wine and Beer Retailer’s Permit), Chapter 28 (Mixed Beverage Permit), Chapter 32 (Private Club Registration Permit), Chapter 69 (Retail Dealer’s On-Premise License) or Chapter 74 (Brewpub License). Except as provided in this subsection, it shall be unlawful for any dealer specified in this subsection to sell alcoholic beverages within the corporate limits of the city where the place of business is within three hundred (300) feet of a day-care center or child-care facility. For purposes of this section 3-19, “day-care center” and “child-care facility” shall have the meanings set forth in the Texas Human Resources Code § 42.002. This subsection shall not apply to a permit or license holder who sells alcoholic beverages if: (i) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or (ii) 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.
- (d) Notwithstanding the provisions of subsection (a), it shall be unlawful for a bar to locate within five hundred (500) feet of a dwelling, church, public or private school, public hospital, day-care center or child-care facility. For purposes of this section 3-19, “bar” shall mean an establishment that derives seventy-five (75) percent or more of the establishment’s gross revenues from the on-premise sale of alcoholic beverages. “Dwelling” shall mean a house, duplex, apartment, townhouse, condominium, manufactured home, or any other building used for residential purpose. Any person applying for a certificate of occupancy for

a bar must file an affidavit with the building official stating whether the establishment will derive seventy-five (75) percent or more of its gross quarterly (three-month) revenue from the sale of alcoholic beverages for on-premise consumption. Any person owning or operating an establishment that sells or serves alcoholic beverages shall, upon request, supply the building official with any records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale of alcoholic beverages.

- (e) Except as provided in subsection (f) below, for purposes of subsections (a) and (c) the measurement of the distance between the place of business where alcoholic beverages are sold and the church, public hospital, day-care center or child-care facility shall be along the property lines of the street fronts and from front door to front door and in direct line across intersections. For purposes of subsection (d), the measurement of the distance between the bar and the dwelling, church, public or private school, public hospital, day-care center or child-care facility shall be in a direct line from the property line of the bar to the property line of the dwelling, church, public or private school, public hospital, day-care center or child-care facility. Except as provided in subsection (f) below, for purposes of subsection (b) the measurement of the distance between the place of business where alcoholic beverages are sold and the private school shall be (i) in a direct line from the property line of the private school to the property line of the place of business, and in a direct line across intersections; or (ii) 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 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.
- (f) As to any dealer who held a license or permit on September 1, 1983 in a location where a regulation under Texas Alcoholic Beverage Code § 109.33 was in effect on that date, for purposes of subsections (a), (b), (c) and (d), 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.
- (g) This section shall be administered in a manner consistent with the Texas Alcoholic Beverage Code. Furthermore, nothing in this section shall be construed to permit or authorize that which is prohibited by the Texas Alcoholic Beverage Code or any other law.

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Sec. 3-21. Regulation of closing hours.

The hours for the sale and offer for sale or delivery of beer by a holder of a retail dealers on-premises license are extended in accordance with, Texas Alcoholic Beverage Code § 105.05(d)(2) so that holders of retail dealers on-premises late hours licenses may sell or offer for sale and deliver beer between midnight and 2:00 a.m. on any day.

Section 2. That except as amended herein all other provisions of Chapter 3 of the Code of Ordinances, City of Alvin, Texas, shall remain in full force and effect. To the extent of any conflict or inconsistency between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall control.

Section 3. Penalties. Any person, firm, entity or corporation violating any provision of this Ordinance, as it exists or may be amended, shall be guilty of a misdemeanor, and on conviction, shall be fined in an amount not to exceed \$500. Each continuing day's violation shall constitute a separate offence. The City of Alvin retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 4. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 5. Incorporation into Code of Ordinances. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances, City of Alvin, Texas, as an addition, amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 6. Effective Date. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

Section 7. Open Meetings Act. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*. Notice was also provided as required by Chapter 52 of the *Texas Local Government Code* and the *City of Alvin Charter*.

Section 8. Publication. The City Secretary of the City of Alvin is hereby directed to publish this Ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the City of Alvin Charter.

PASSED and APPROVED on the 17th day of March 2022.

THE CITY OF ALVIN, TEXAS

ATTEST

By: _____
Paul A. Horn, Mayor

By: _____
Dixie Roberts, City Secretary