

ORDINANCE B-718(A0114)

AN ORDINANCE AMENDING CHAPTER 14, BUSINESSES, ARTICLE II, ALCOHOLIC BEVERAGE ESTABLISHMENTS, DIVISION I, GENERALLY, AND DIVISION II, SALE OF ALCOHOLIC BEVERAGES, OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS, AMENDING THE DEFINITION OF NUDITY; AMENDING RESTRICTIONS ON THE LOCATION OF THE SALE OF ALCOHOLIC BEVERAGES; PROVIDING FOR A VARIANCE FROM THE LOCATION RESTRICTIONS; CLARIFYING THE HOURS FOR THE SALE OF ALCOHOLIC BEVERAGES; PROHIBITING CERTAIN ACTIVITIES AND ESTABLISHMENTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, Chapter 14, Article II, Division I and Division II of the Code of Ordinances, City of Burleson, Texas (2005), contain regulations pertaining to businesses that sell alcoholic beverages; and

WHEREAS, the regulation of alcoholic beverages in the State of Texas is exclusively governed by the Texas Alcoholic Beverage Code, and

WHEREAS, the City Council therefore finds it necessary to amend the City's alcoholic beverage regulations to ensure these regulations are consistent with those established by the Texas Alcoholic Beverage Code, to clarify the regulations, and to prevent unnecessary inhibitions to future economic development in the City of Burleson.

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

SECTION 1.

Chapter 14, Article II, Division I of the Code of Ordinances, City of Burleson, Texas (2005) is hereby amended to read as follows:

"Sec. 14-31. - Permits and licenses; fees.

The city levies and is authorized to collect a fee equivalent to one-half of the state fee, as determined by the Texas Alcoholic Beverage Code, for each permit or

license issued by the Texas Alcoholic Beverage Commission for premises located within the city limits and for which the city is entitled to collect a fee.

Secs. 14-32—14-40. - Reserved.”

SECTION 2.

Chapter 14, Article II, Division II of the Code of Ordinances, City of Burleson, Texas (2005) is hereby amended to read as follows:

“Sec. 14-41. - Definitions.

Alcoholic beverage shall mean an alcoholic beverage as defined in the Texas Alcoholic Beverage Code, and shall specifically include beer, wine and mixed beverages, as those terms are defined in the Texas Alcoholic Beverage Code.

Child-care facility shall mean a facility licensed, certified, or registered by the department of human 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.

Day care center shall mean a child-care facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

Nudity or semi-nudity shall mean less than completely and opaquely covered:

- (1) Human genitals, pubic region, or pubic hair;
- (2) All portions of a female breast below a point immediately above the top of the areola continuing downward to the lowest portion of the breast;
- (3) Human buttock; or
- (4) Any combination of the above.

For purposes of this definition, body paint, body dyes, tattoos, liquid latex and other similar substances, whether wet or dried, shall not be considered an opaque covering.

School, private shall mean a school, including a parochial school, that is not operated by an Independent School District and offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

School, public shall mean any school that is operated by an Independent School District and offers a course of instruction for students in one or more grades from kindergarten through grade 12.

Simulated nudity shall mean a state of dress in which any device or covering is worn and exposed to view that simulates any part of the genitals, buttocks, anus, pubic region, or areola of the female breast.

Sec. 14-42. - Permit required.

- (a) There is hereby levied a permit fee on each premise within the City of Burleson, Texas, for which an alcoholic beverage permit is required under the Texas Alcoholic Beverage Code. The amount of the fee shall be as established by the City of Burleson Fee Schedule, except that said fee shall not exceed one-half the state fee for each permit issued for premises located within the city. This fee shall be paid by the permittee when the application for such permit, or a renewal thereof, is made to the state.
- (b) The City of Burleson adopts those exemptions from the permit and fee requirement as provided in the Texas Alcoholic Beverage Code.

Sec. 14-43. - Sale of beer for off-premises consumption prohibited in residential areas.

The sale of beer for off-premises consumption in residential areas is hereby prohibited, in accordance with section 109.32, Texas Alcoholic Beverage Code. Under this section, residential areas shall mean any property located in the following districts as described in the comprehensive zoning ordinance of the City of Burleson:

- SFR Single-Family Rural.
- SFE Single-Family Estate.
- SF16 Single-Family 16.
- SF10 Single-Family 10.
- SF7 Single-Family 7.
- SFA Single-Family Attached.
- 2F Two-Family.
- MF1 Multi-Family 1.
- MF2 Multi-Family 2.
- MH Manufactured Housing Dwelling.
- MHP Manufactured Housing Park.

Sec. 14-44. - Sale of alcoholic beverages near churches, public hospitals, public or private schools, day care centers, and child-care facilities.

- (a) *Churches and public hospitals.*

- (1) The sale of alcoholic beverages within 300 feet of a church or public hospital is hereby prohibited.
 - (2) The measurement of the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.
- (b) *Public schools, private schools, day care centers and child-care facilities.*
 - (1) The sale of alcoholic beverages within 300 feet of a public or private school is hereby prohibited.
 - (2) The sale of alcoholic beverages within 300 feet of a day care center or child-care facility is hereby prohibited. This prohibition does not apply to a permit or license holder who holds a food and beverage certificate, in accordance with Sec 109.331(a), Texas Alcoholic Beverage Code.
 - (3) The measurement of the distance between the place of business where alcoholic beverages are sold and a public school, private school, day care center or child-care facility shall be:
 - (A) in a direct line from the property line of the public school, private school, day care center, or child-care facility to the property line of the place of business, and in a direct line across intersections; or
 - (B) 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 school, private school, day care center, or child-care facility 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) *Exceptions.* The above regulations prohibiting the sale of alcoholic beverages within specified distances from churches, public hospitals, public schools, private schools, day care centers, and child-care facilities are subject to any and all conditions and exceptions established in the Texas Alcoholic Beverage Code.
- (d) *Variances.*
 - (1) Upon application, the City Council may grant a variance from the prohibitions in this Section if the City Council determines that 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, 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.
 - (2) An application for variance under this Section shall be submitted to the City Secretary, along with the application fee, and shall clearly identify the

provision from which a variance is requested and the reason why such variance should be granted.

- (3) No application for a variance under this Section may be granted except after a public hearing for which notice has been given, not less than ten days prior to the hearing date, both in the official city newspaper and by regular United States mail to property owners within 300 feet of the place of business which requests a variance. The notice shall be sent to all such owners who have rendered their property for city taxes as the ownership appears on the last approved city tax roll. The notice area for a variance request relating to a public hospital or church shall be measured in a direct line from the front door of the place of business. The notice area for a variance request relating to a public or private school shall be measured in a direct line from the property line of the place of business.
- (4) The fee for an application for a variance shall be \$125 or the amount established in the City of Burleson Fee Schedule.

Sec. 14-45. - Hours of sale of alcoholic beverages.

- (a) *Mixed beverage permittee.* The hours of sale for mixed beverages shall be as established by Section 105.03, Texas Alcoholic Beverage Code, as follows:
 - (1) *Monday through Saturday:* A mixed beverage permittee may sell and offer for sale mixed beverages between midnight and 2:00 a.m. and between 7:00 a.m. and midnight.
 - (2) *Sunday:* A mixed beverage permittee may sell and offer for sale mixed beverages between midnight and 2:00 a.m. and between 10:00 a.m. and midnight, except that an alcoholic beverage served to a customer between 10:00 a.m. and 12 noon on Sunday must be provided during the service of food to the customer.
- (b) *Wine and beer retailer off-premise permittee.* The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's off-premise permit are the same as those prescribed for the sale of beer under Section 105.05 of the Texas Alcoholic Beverage Code, except that no sale shall be allowed between 2:00 a.m. and noon on Sunday. The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's off-premise permit shall be as established by Section 105.04, Texas Alcoholic Beverage Code, as follows:
 - (1) *Monday through Saturday:* The holder of a wine and beer retailer's off-premise permit may sell, offer for sale, or deliver wine and beer between midnight and 2:00 a.m. and between 7:00 a.m. and midnight, as authorized by the state permits and licenses held.
 - (2) *Sunday:* The holder of a wine and beer retailer's off-premise permit may sell, offer for sale, or deliver wine and beer between the hours of midnight

and 2:00 a.m. and between noon and midnight, as authorized by the state permits and licenses held.

Sec. 14-46. - Certain establishments prohibited.

An establishment that derives 75 percent or more of its gross revenue from the on-premises sale of alcoholic beverages is prohibited from operating within the city, in accordance with Section 109.57(d), Texas Alcoholic Beverage Code.

Sec. 14-47. - Certain activities prohibited.

No patron or employee of an establishment that serves or permits the consumption of alcohol shall appear on the premises of said establishment in a state of nudity, semi-nudity or simulated nudity.

Secs. 14-48—14-60. - Reserved.”

**SECTION 3.
CUMULATIVE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas (2005), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 4.
SEVERABILITY**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.
PENALTY**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 6.
SAVINGS PROVISION**

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of any ordinances affecting alcoholic beverages which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7.
PUBLICATION**

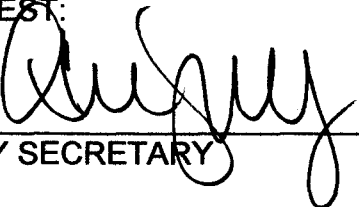
The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson after the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

**SECTION 8.
EFFECTIVE DATE**


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

PASSED AND APPROVED ON THIS 3rd DAY OF February, 2014.

ATTEST:



CITY SECRETARY



MAYOR

EFFECTIVE: February 9, 2014

APPROVED AS TO FORM AND LEGALITY:



City Attorney

FIRST READING: 1.21.14