

ORDINANCE NO. 14-033

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GILMER, TEXAS AMENDING THE CITY ZONING ORDINANCE PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE (TABC), ESTABLISHING REGULATIONS FOR THE PURPOSE OF THE SELLING OF BEER AND WINE AND ALCOHOLIC BEVERAGES WITHIN THE CITY, AND THE OBTAINING OF PERMITS AND LICENSES FOR SAID SALE, AND PROHIBITING AREAS FOR SAID SALE AND PERMITTING AREAS FOR SAID SALE; REGULATING THE SALE OF ALCOHOLIC BEVERAGES NEAR PUBLIC SCHOOLS, PRIVATE SCHOOLS, CHURCHES, DAY-CARE CENTERS AND CHILD-CARE FACILITIES; REGULATING THE SALE OF BEER AND WINE IN RESIDENTIAL AREAS; REGULATING THE POSSESSION AND CONSUMPTION OF ALCHOLIC BEVERAGES NEAR PUBLIC OR PRIVATE SCHOOOLS, ESTABLISHING PERMITS AND APPLICATION FEES FOR THE PROCESSING AND GRANTING OF PERMITS AND LICENSES TO APPLICANTS AND/OR FEES TO APPLICANTS FOR SAID LICENSES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the existing Code of Ordinances of the City of Gilmer does not provide sufficient means to regulate the sale of alcohol within the City's limits; and

WHEREAS, City staff is recommending the creation of rules and regulations relating to the sale of alcohol within the city limits of the City of Gilmer; and

WHEREAS, a voter referendum was held on May 10, 2014 permitting "the legal sale of beer and wine for off-premise consumption only" and "the legal sale of mixed beverages in restaurants by food and beverage certificate holders only" within the city limits of the City of Gilmer, Texas; and

WHEREAS, section 109.32 of the Texas Alcoholic Beverage Code authorizes the City of Gilmer, Texas by ordinance to prohibit the sale of beer, wine and alcoholic beverages in residential areas; and

WHEREAS, section 109.33 of the Texas Alcoholic Beverage Code authorizes the City of Gilmer, Texas by ordinance to prohibit the sale of alcoholic beverages within one hundred (100) feet of a church, public school, private school, or a public hospital; and

WHEREAS, section 109.331 of the Texas Alcoholic Beverage Code authorizes the City of Gilmer, Texas by ordinance to prohibit the sale of alcoholic beverages within one hundred (100) feet of a day-care or child-care facility; and

WHEREAS, section 101.75 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 Gilmer, 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 relating to the sale of alcohol within the city limits of the City of Gilmer, Texas is in the best interest of the citizens of the City of Gilmer, Texas; and

WHEREAS, the City Council finds and declares that the meeting at which this ordinance is considered is open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GILMER, TEXAS, AS FOLLOWS:

SECTION 1.

That 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 as if copied verbatim.

SECTION 2.

That the zoning ordinances of the City of Gilmer are hereby amended by adding the following:

SALE OF ALCOHOLIC BEVERAGES

I. Definitions

City. The City of Gilmer, Texas

School. An organization that provides instruction as. A: an institution for the teaching of children. B. college, university.

Church. Religious building; a building for public worship.

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 by volume but not more than 17% by volume, for off-premise consumption only, with no drive-through facility.

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 of one percent by volume but not more than 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.

Pre-packaged alcoholic beverage retail sales (no drive through). Businesses that engage in the sale of pre-packaged alcoholic beverages for off-premise consumption, with no drive-through facility.

Pre-packaged alcoholic beverage retail sales (drive through). Businesses that engage in the sale of pre-packaged alcoholic beverages, for off-premise consumption, 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.

Alcoholic beverage permit. An official certificate issued by the City Secretary certifying compliance with this ordinance.

On-premise consumption. The sale of an alcoholic beverage for the consumption in a business establishment as permitted herein.

Off-premise consumption. The sale of sealed alcoholic beverages by an establishment permitted herein for the sale of consumption off-premise.

Hotel. The premises of an establishment: (A) where, in consideration of payment, travelers are furnished food and lodging; (B) in which are located; (1) at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; or (2) at least five rooms described by Subparagraph (1) if the building being used as a hotel is a historic structure as defined by Section 442.001, Government Code.

Restaurant. A place where meals are prepared and served to the public for consumption on or off the premises.

Neighborhood convenience center: Retail establishment which carries convenience goods, such as groceries, drugs, and some variety items, including grocery stores, markets, supermarkets and variety stores.

Alcoholic beverage. Alcohol or any beverage containing more than one half of one percent of alcohol by volume which is capable of use for beverage purposes either alone or when diluted.

Beer: A malt beverage containing one half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight.

Child-care facility. As those terms are defined by Section 42.002 of the Texas Human Resources Code 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.

Dealer. As that term is used in Section 109.33 Texas Alcoholic Beverage Code V.T.C.S. and shall include PERSON as that term is defined herein.

Open container. A container that is no longer sealed.

Person. A natural person or association of natural persons, trustee, receiver, partnership, corporation, organization of the manager, agent, servant, or employee of any of them.

Private school. A private school including a parochial school that 1) offers a course of instruction for students in one more grades from kindergarten through grade 12 and 2) has more than 100 students enrolled and attending courses at a single location.

Permittee. A person who is the holder of a permit provided for in this ordinance, or an agent, servant, or employee of that person.

Licensee. A person who is the holder of a license provided in this ordinance, or any agent, servant, or employee of that person.

Wine: The product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.

Wine cooler. 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. A wine cooler may have alcohol content as low as one-half of one percent by volume.

Ale or malt liquor. A malt beverage containing more than four percent of alcohol by weight.

Mixed beverage. One or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit.

II. Permitted Uses

- (a) Beer and wine retail sales (including drive-through) and pre-packaged alcoholic beverage retail sales (including drive-through) and holding an alcoholic beverage permit issued by the City Secretary of the City of Gilmer will be allowed to operate only in areas that are zoned B-1 (Business District) or B-2 (Business District).
- (b) The sale of alcoholic beverages for on-premise consumption shall only be permitted by restaurants or hotels/motels holding a food and beverage certificate and the restaurant or hotel/motel's gross revenue from the sale of alcoholic beverages shall be less than fifty-one percent of its gross revenue.
- (c) The sale of alcoholic beverages for off-premise consumption shall only be permitted by neighborhood convenience centers that derive fifteen percent or more of its gross revenue from the sale of non-alcoholic products and products not subject to motor fuel tax.

- (d) Mixed beverage sales for on-premise consumption will be allowed to operate only in areas that are zoned B-1 (Business District) and B-2 (Business District).
- (e) Any business, existing or new, that desires to sell any alcoholic beverage within the city limits of the City of Gilmer must obtain an alcoholic beverage permit issued by the City.

III. Sale of alcoholic beverages prohibited near public schools, private schools, churches or hospitals

- (a) It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within one hundred (100) feet of a church, public or private school.
- (b) 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 door to front door and in direct line across intersections.
- (c) The measurement of the distance between the place of business where alcoholic beverages are sold and the public 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.

IV. Sale of alcoholic beverages prohibited near daycare centers and child-care facilities; exception

- (a) It shall be unlawful for any holder of a wine and beer retailers permit or mixed beverage permit, who does not hold a food and beverage certificate to sell alcoholic beverages from or at a place of business within this city within one hundred (100) feet of a day-care or child-care facility.
- (b) This section does not apply to a foster group home, foster family home, family home, agency group home or agency home as those terms are defined by Section 42.002 of the Texas Human Resources Code.
- (c) The measurement of the distance between the place of business where alcoholic beverages are sold and the day-care center or child-care facility shall be in a direct line from the property line of the day-care center or child-care facility to the property line of the place of business and in a direct line across intersections.

V. Requests to City Council for variance of the distance regulations imposed pursuant to this ordinance

Upon application of a dealer, or person authorized to sell alcoholic beverages, desiring to sell alcoholic beverages within the distance restrictions imposed by this ordinance the City Council may, in its sole discretion, allow variances to the distance regulations contained in Section 10-2 if the City Council determines that enforcement of the regulations in a particular instance is not in the best interest of the public, constitutes waste or insufficient use of land or other resources, created 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.

VI. Sale of alcoholic beverages prohibited in residential areas

- (a) 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.

VII. Consumption of alcoholic beverage and possession of an open container near public or private schools; exception

- (a) A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, a public sidewalk or public park, within 1,000 feet of the property line of a facility that is a public or private school including a parochial school that provides all or any part of pre-kindergarten through twelfth grade.
- (b) This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this ordinance.

VIII. Signage

No person may erect or maintain a billboard, electric sign, or any outdoor advertising in violation of any ordinance of the City of Gilmer, or this ordinance

IX. Local fees for license and application

- (a) For on-premise consumption, the City, hereby levies an annual fee in a sum equal to twenty-five percent of the State's third renewal fee for a mixed beverage restaurant permit with a food and beverage certificate, and all other licenses required, as authorized by the Texas Alcoholic Beverage Code, except a temporary or agent's beer license issued for premise locations within the corporate limits of the City.
- (b) For off-premise consumption, the City hereby levies an annual fee in a sum equal to twenty-five percent of the State's fee for a wine and beer retailer's off-premise permit, and all other licenses required, as authorized by the Texas Alcoholic Beverage Code, except a temporary or agent's beer license issued for premises locations within the corporate limits of the City.
- (c) All permits shall be renewed annually. All permits shall terminate at midnight on the day before the anniversary date of their issuance, and no permit shall be issued covering a term longer than one (1) year.
- (d) The City Secretary may cancel a permit if a permittee fails to pay the permit renewal fee. The City Secretary shall send notice of such cancellation to the address on file with the permit application.
- (e) There is hereby levied a \$50.00 administrative processing fee for acceptance, review and verification of all new applications.

- (f) All payments shall be made to the City along with 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.

X. Penalty for violation

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon final conviction thereof shall be fined an amount not to exceed the limit established by state statute.

SECTION 3

That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and are hereby deemed repealed and of no force or effect.

SECTION 4

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 been 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 5

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 Gilmer, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 6

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon final conviction thereof shall be fined an amount not to exceed the limit established by state statute.

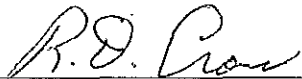
SECTION 7

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.

SECTION 8

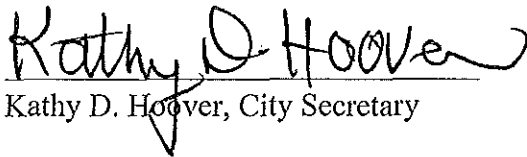
This ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
GILMER, TEXAS on this the 8th day of July, 2014.**



R.D. Cross, Mayor

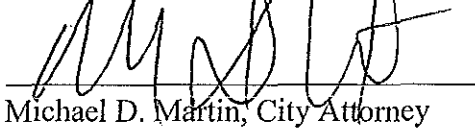
ATTEST:



Kathy D. Hoover, City Secretary



APPROVED AS TO FORM



Michael D. Martin, City Attorney