

City of Bellaire

ORDINANCE NO. 19-001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AMENDING CHAPTER 3, ALCOHOLIC BEVERAGES, ARTICLE I, IN GENERAL, OF THE CODE OF ORDINANCES OF THE CITY OF BELLAIRE, TEXAS, BY AMENDING SECTION 3-3, USE PROHIBITED IN PUBLIC PARKS AND OTHER PUBLIC PLACES, SECTION 3-4, EXCEPTION TO GENERAL PROHIBITION-SPECIAL PERMIT REQUIRED TO SELL, POSSESS, OR CONSUME ALCOHOLIC BEVERAGES IN CITY-OWNED PUBLIC PLACES, AND SECTION 3-5, SPECIAL PERMIT PROCEDURES, FOR THE PURPOSE OF ALLOWING THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES OTHER THAN BEER AND WINE IN EVELYN'S PARK, AND ESTABLISHING SPECIAL PERMIT PROCEDURES FOR THE SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT SPECIAL EVENTS

WHEREAS, the sale, service and consumption of alcohol within Evelyn's Park is limited to beer and wine in a designated area of the Park pursuant to Section 3-3 of the Code of Ordinances of the City of Bellaire, Texas ("Bellaire City Code"); and

WHEREAS, the City Council has received multiple requests from Evelyn's Park Conservancy for temporary suspensions of Section 3-3 of the Bellaire City Code for various special events; and

WHEREAS, by letter dated November 28, 2018, the Evelyn's Park Conservancy has requested that the City Council amend the Bellaire City Code to allow: 1) the sale and consumption of pre-batched mixed drinks and beverages using spirits at the Café in Evelyn's Park; 2) the sale and consumption of spirited drinks at the Event Center in Evelyn's Park for special events approved by the city manager; and 3) the sale and consumption of beer and wine within the entire property of Evelyn's Park for special events approved by the city manager; and

WHEREAS, the Evelyn's Park Conservancy is a not-for-profit organization that works to enhance positive community involvement through the operation of Evelyn's Park within the City of Bellaire, Texas; and

WHEREAS, the City Council of the City of Bellaire, Texas, finds that amending the Bellaire City Code assists the mission of raising funds to maintain Evelyn's Park and, in turn, directly benefits the City of Bellaire, Texas; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS THAT:

Section 1. *Chapter 3, Alcoholic Beverages, Article I, In General, of the Code of Ordinances of the City of Bellaire, Texas, is hereby amended by revising Section 3-3, Use Prohibited in Public Parks and Other Public Places; Section 3-4, Exception to General Prohibition-Special Permit Required to Sell, Possess, or Consume Alcoholic Beverages in City-Owned Public Places; and Section 3-5, Special Permit Procedures, for the purpose of allowing the sale, service and consumption of alcoholic beverages in Evelyn's Park, subject to certain restrictions and special permitting requirements and procedures. The amended Code shall read as set out in Appendix A, attached hereto. All other portions of Chapter 3 of the City's Code not specifically amended hereby shall remain in full force and effect.*

Section 2. The area within Evelyn's Park where the sale and consumption of beer, wine and pre-batched mixed beverages using spirits is permitted is illustrated in the yellow outline on the map that is attached hereto as Appendix "B".

Section 3. All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict only.

Section 4. If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor

the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

Section 5. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 6. This Ordinance shall be effective immediately upon its passage and adoption.

PASSED, APPROVED and ADOPTED this, the 7th day of January 2019.

SIGNED:

Andrew S. Friedberg, Mayor
City of Bellaire, Texas

ATTEST:

Tracy Dutton, TRMC, City Clerk
City of Bellaire, Texas

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney
City of Bellaire, Texas

Appendix A

(Language to be added shown by underline, language to be deleted shown by strike-out)

Sec. 3-3. - Use prohibited in public parks and other public places.

- (a) *General Prohibition.* Except as provided in subsection (b), or section 3-4, it shall be unlawful for any person or persons to use or consume alcoholic beverages, intoxicating liquors, beer or wine in any public park, public place or other property owned by the city.
- (b) *Evelyn's Park.* Within that portion of Evelyn's Park designated by Ordinance No. 19-001, the sale, service and consumption of beer, wine ~~and, and~~ pre-batched mixed beverages using spirits shall be permitted until 11:00 p.m. provided that the vendor has:
 - (1) Texas Alcoholic Beverage Commission permit;
 - (2) Proof of liability insurance; and
 - (3) License issued by the city pursuant to chapter 3, article II.

Sec. 3-4. - Exception to general prohibition—Special permit required to sell, possess, or consume alcoholic beverages in city-owned public places.

- (a) A person or organization may sell, possess, or consume an alcoholic beverage in a public place, as designated in chapter 12, Community Center, if a special use permit is first obtained from the city manager or his the city manager's designee, in accordance with the procedures set forth in Section 3-5;
- (b) The Nature Discovery Center may, sell, possess or consume alcoholic beverages at its facilities if a special use permit is first obtained from the city manager or his the city manager's designee in accordance with the procedures set forth in section 3-5;
- (c) A person or organization may sell, possess, or consume beer and wine in Evelyn's Park, outside that portion of the Park designated by Ordinance No. 19-001, if a special permit is first obtained from the city manager or the city manager's designee in accordance with the procedures set forth in Section 3-5; and
- (d) A person or organization may sell, possess, or consume spirited drinks within the Event Center at Evelyn's Park if a special permit is first obtained from the city manager or the city manager's designee in accordance with the procedures set forth in Section 3-5.

Sec. 3-5. - Special permit procedures.

- (a) Permit required. It is unlawful for any person or organization to sponsor, hold, or conduct a special use or activity involving the sale, possession, and/or consumption of alcoholic beverages in the city-owned public places; as designated in Chapter 12, Community Center, identified in Section 3-4 ~~of this code~~ without first receiving a permit from the city.
- (b) Permit process. A person or organization seeking the issuance of a special permit to sell, possess, or consume alcoholic beverages in the city-owned public places, identified in Section 3-4 ~~as designated in Chapter 12, Community Center, of this code~~ shall file an

application with the city manager or his the city manager's designee. A complete application must be filed not less than 30 [days] nor more than 180 days before the date of the proposed special use or activity. The application must be signed by the person or persons responsible for the special use or activity and must include the following information:

- (1) The name, address, and telephone number of the person and/or organization and its officers applying for the permit;
 - (2) If the use or activity is to be conducted for, on behalf of, or by any person other than the applicant, the name, address, and telephone number of that person;
 - (3) The exact nature of the special use or activity for which the permit is being sought, including the number and type of special uses or activities planned;
 - (4) The date and hours for which the permit is desired;
 - (5) The number and types of vendors that will be present.
 - (6) The city-owned public facility desired to be used to carry out the proposed special use or activity;
 - (7) An estimate of the anticipated number of people expected to attend;
 - (8) The arrangements that will be made for traffic control, security, medical care, and other services or facilities to support the special use;
 - (9) Whether there will be a charge for the special use and the basis upon which persons may or may not be admitted to the event if other than a charge;
 - (10) A description of any structures that will be used or erected to support the special use or activity;
 - (11) The circumstances under which alcoholic beverages will be sold, served, or possessed; and
 - (12) Any other information the city determines is necessary to evaluate the application and determine whether it meets the requirements of this chapter and other applicable chapters of this code.
- (c) Fees and deposits. The city may establish and collect fees, deposits, and bonds to pay for or ensure the payment of costs incurred by the city relating to the use of a city-owned public place for a special use or activity, including costs incurred for trash cleanup and removal, providing security, protection or medical care, for the administration of this chapter or any other applicable chapter of this code, and for any other necessary or related services that arise directly from the use of any city-owned public place. Additionally, the city will require the person or group to have liability insurance for the special use, event, or activity.
- (d) Permit decision. The city will make a decision on the special use permit application as promptly as possible after the applicant has provided all the information required by the application, but in no case later than ten business days after the date a complete application is submitted. A special use permit shall not be issued unless it is first found that:
- (1) The proposed sale, possession, and/or consumption of alcoholic beverages will not unreasonably interfere with or detract from the public health, safety, or welfare;
 - (2) The special use or activity for which the applicant is seeking the permit will not involve youth sports or other youth activities in which any of the participants will be under 18 years of age;

- (3) The proposed sale, possession, and/or consumption of alcoholic beverages is not reasonably likely to result in or create a clear and present danger of violence by the application or by other persons or property resulting in serious harm to the public; and
 - (4) The public place where the applicant proposes its activity or function has not been reserved for another activity or use at the day and hour requested in the application, during which the sale, possession, and/or consumption of alcoholic beverages by the applicant and his or her guests would be incompatible.
- (e) Conditions. The city manager or his designee may impose reasonable conditions on special use permits issued to ensure compliance with city rules, regulations, and this chapter or other applicable chapters of this Code. If such conditions are imposed, the permit issued will contain in writing all the conditions and requirements that apply to the special use or activity.
- (f) Denial of special use permits. If the city manager or his designee refuses to issue a permit as authorized by this chapter, the city manager or his designee will specify in writing the provisions of this chapter upon which the refusal was based as well as any factual information in support of the determination. Said provisions may include, but are not limited to, the following:
 - (1) The application submitted is not sufficient or complete, provides false information, does not comply with this chapter or a regulation approved hereunder, or was not submitted with any required documents, fees, or deposits;
 - (2) The time or location for the proposed special use or activity conflicts with the time or place of either a city-sponsored special use for which a permit has been issued or an application was already pending and there is insufficient space in the city-owned public place to accommodate both events;
 - (3) The applicant has failed to arrange or provide for adequate parking, trash cleanup, security, or other arrangements to ensure that the special use or activity will be safe, secure, and healthful for the participants thereof;
 - (4) The special use or activity does not comply with this chapter, state, or federal laws or regulations, or a reasonable condition imposed by the city manager or his designee for issuance of a permit;
 - (5) The applicant has held a prior special use for which the applicant failed to comply with a requirement of this chapter, failed to pay any required fees, charges, or deposits, failed to comply with all of the conditions of the permit, failed to pay or remedy damage incurred to public property, created a dangerous condition or situation, or failed to comply with reasonable requests of the city manager or his designee, or otherwise violated the purpose or intent of this chapter;
 - (6) The special use or activity is being held primarily for commercial purposes; and/or
 - (7) The proposed special use or activity would present an unreasonable danger to the health or safety of the applicant, special use or activity attendees, or other users of the city-owned public place.
- (g) Posting and exhibiting permits. The special use permit issued under this chapter shall be posted in the area where the special use or activity is conducted and produced and exhibited upon the demand of any law enforcement officer or authorized parks and recreation employee.

Appendix B

