

ORDINANCE NO. 2022-12-136

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 14, "ALCOHOLIC BEVERAGES" OF THE CODE OF ORDINANCES BY ESTABLISHING REGULATIONS FOR THE LAWFUL SALE OF ALL ALCOHOLIC BEVERAGES FOR OFF-PREMISE CONSUMPTION; PROVIDING FOR A PERMIT FEE AND A PERMIT RENEWAL FEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

WHEREAS, on November 8, 2022, the voters of the City of McKinney ("City") voted to legalize the sale of all alcoholic beverages for off-premise consumption only; and

WHEREAS, the sale of beer and wine for off-premise consumption has been legal within the City since 2004, the City ordinances which govern the sale of alcoholic beverages must be modified to include the sale of all alcoholic beverages for off-premise consumption as determined by the election results of the November 8, 2022, Special Local Option Alcohol Election; and in accordance with the Texas Alcoholic Beverage Code; and

WHEREAS, the City has complied with all notices as required by law; and

WHEREAS, the City Council of the City of McKinney, Texas, desires to amend the City Code of Ordinances, Chapter 14, Article III, "Lawful Sale of Alcoholic Beverages," to provide good and efficient government for the benefit of the citizens of the City.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 14, Article III, entitled "Lawful Sale of Alcoholic Beverages," of the McKinney Code of Ordinances, is hereby deleted in its entirety and replaced with a new Chapter 14, Article III, entitled "Lawful Sale of Alcoholic Beverages," to hereafter read as follows:

"ARTICLE III. LAWFUL SALE OF ALCOHOLIC BEVERAGES

Sec. 14-50. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverage means 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.

Ale means a malt beverage containing more than four percent of alcohol by weight.

Beer means 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, and does

not include a beverage designated by label or otherwise by a name other than beer.

Distilled spirits means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and that contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients.

Liquor means any alcoholic beverage, other than a malt beverage, containing alcohol in excess of five percent by volume, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.

Malt liquor means a malt beverage containing more than four percent of alcohol by weight.

Mixed beverage means one or more servings of a beverage composed in whole or in 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, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

Off-premises means locations other than those described in the definition of "premises" in this section.

Premises means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

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

Sec. 14-51. Permit required; procedures.

- (a) It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, distilled spirits, liquor, wine or mixed beverages within the city unless such person has obtained a city permit from the office of the city secretary.
- (b) Any person wishing to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, distilled spirits, liquor, wine or mixed beverages must complete a city permit application.
- (c) The city secretary shall submit each application to the appropriate city departments, as determined by the city manager, to ensure that the application complies with all city ordinances and regulations, including this article.
- (d) After approval by all necessary city departments, the application shall be deemed approved and the city secretary shall issue a city permit.
- (e) Applications and permits shall be kept on file in the city secretary's office.

Sec. 14-52. Permit; permit fee.

- (a) All permits or license fees shall be paid to the city at the same time the state license and permit fees are paid to the state.
- (b) The city shall require payment of a fee by all establishments selling alcoholic beverages within the city. This fee shall be equal to one-half of the state fee required by the state alcoholic beverage commission of every person that may be issued any state permit or license for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any alcoholic beverage except for permits or licenses that are exempt from the city permit or license fee, or different fee is allowed or required by state law.
- (c) The city secretary may cancel a permit if a permittee fails to pay the permit or license fee. The city secretary shall send notice of such cancellation to the address on file with the permit application.
- (d) A permittee who sells an alcoholic beverage without first having paid the permit fee under this section commits a misdemeanor punishable by a fine of up to \$200.00.

Sec. 14-53. Hours of operation.

- (a) The hours of sales of alcoholic beverages in the city shall comply with state law provisions regarding the sale of alcoholic beverages.
- (b) *Wine and beer late hours.* The holder of a retail dealer's on-premise late hours license issued by the State of Texas may sell and offer to sell and serve beer and wine in a restaurant with a food and beverage certificate between the hours of 1:00 a.m. and 2:00 a.m. on Sunday and between 12:00 p.m. and 2:00 a.m. on any other day, provided that the holder complies with the Texas Alcoholic Beverage Code, as it exists or may be amended.
- (c) *Mixed beverage late hours.* The holder of a mixed beverage late hours permit issued by the State of Texas may sell and offer for sale mixed beverages in a restaurant with a food and beverage certificate between the hours of midnight and 2:00 a.m. on any day, provided that the holder complies with the Texas Alcoholic Beverage Code, as it exists or may be amended.

Sec. 14-54. Development standards.

- (a) *All alcoholic beverages for off-premises consumption only.* The sale of all alcoholic beverages is permitted only in a zoning district where retail sales are allowed. The minimum distance between retail stores that offer the sale of all alcoholic beverages for off-premises consumption and the following uses are:
 - (1) *Schools (public and private):* 300 feet. As allowed by state law, a school may petition for 1,000 feet. All measurements of distances are as provided for in state law (property line to property line and in a direct line across intersections). Day cares, universities and colleges are not included in the definition of schools.
 - (2) *Churches:* 300 feet. All measurements of distances are as provided for in state law (along the property lines of the street fronts and from front door to front door, and in a direct line across intersections).
 - (3) *Hospitals:* 300 feet. All measurements of distances are as provided for in state law (along the property lines of the street fronts and

from front door to front door, and in a direct line across intersections).

- (b) *Mixed beverages* in a restaurant by food and beverage certificate holders only. The sale of mixed beverages in a restaurant by food and beverage certificate holders is allowed in any zoning district where restaurants are allowed. The holder of a permit under this subsection shall not be required to meet distance requirements as set forth in subsection (a) of this section.

Sec. 14-55. Exemption.

- (a) Specific events approved by the administrator of the McKinney Performing Arts Center at the Historic Collin County Courthouse shall be exempt from the permit provisions of this article.
- (b) Specific events or programming activities not requiring a special event permit and approved by the director of the parks and recreation department, or his/her designee, to be held on city-controlled parkland or within recreation centers, identified hereinabove, shall be exempt from the permit provisions of this article.”

Section 3. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

Section 4. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 5. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 6. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.

Section 7. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 6TH DAY OF DECEMBER, 2022.

GEORGE C. FULLER, Mayor

ATTEST:

EMPRESS DRANE, City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER, City Attorney