

ORDINANCE NO. 1-2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMORY, TEXAS 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 AND CONSUMPTION OF BEER AND WINE IN RESIDENTIAL AREAS; REGULATING THE POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PUBLIC OR PRIVATE SCHOOLS, ESTABLISHING PERMITS AND APPLICATION FEES FOR THE PROCESSING OF GRANTING PERMITS AND LICENSES TO APPLICANTS AND/OR FEES TO APPLICANTS FOR SAID LICENSE; REGULATING SIGNS ADVERTISING THE SALE OF BEER, WINE, AND OTHER BEVERAGES; REPEALER AND PROVIDING FOR SEVERABILITY CLAUSE AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION.

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 Emory; and

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

WHEREAS, a voter referendum was held on May 9, 2009 permitting the legal sale of beer and wine for Off-Premises Consumption only by certificate holders only within the city limits of the City of Emory, Texas; and

WHEREAS, a voter referendum was held on May 9, 2009 permitting the legal sale of mixed beverages in restaurants by food and beverage certificate holders only within the City of Emory, Texas; and

WHEREAS, section 109.33 of the Texas Alcoholic Beverage Code authorizes the City of Emory, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a

church, public school, private school, or public hospital; and

WHEREAS, section 109.331 of the Texas Alcoholic Beverage Code authorizes the City of Emory, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a day-care center 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 Emory, 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 Emory, Texas is in the best interest of the citizens of the City of Emory, Texas;

WHEREAS, the meeting at which this Ordinance was enacted, was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Emory, Texas:

Section 1. 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. The following definitions are hereby added to the Comprehensive Zoning Ordinances of the City of Emory, Texas, and are applicable to the provisions of this ordinance:

- 1.: CITY shall mean and refer to the City of Emory, Texas.
- 2: 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-Premises Consumption only, with no drive-through facility.
- 3: 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-Premises 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.

4: PRE-PACKAGED ALCOHOLIC BEVERAGE RETAIL SALES (NO DRIVE THROUGH): Businesses that engage in the sale of pre-packaged alcoholic beverages, for Off-Premises Consumption, with no drive-through facility.

5: PRE-PACKAGED ALCOHOLIC BEVERAGE RETAIL SALES (DRIVE THROUGH): Businesses that engage in the sale of pre-packaged alcoholic beverages, for Off-Premises 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.

6: ALCOHOL BEVERAGE PERMIT: Shall mean an official certificate issued by the City Secretary certifying compliance with this ordinance.

7: ON-PREMISES CONSUMPTION: The sale of an alcoholic beverage for the consumption in a business establishment as permitted herein.

8: OFF-PREMISES CONSUMPTION: The sale of a sealed alcoholic beverage by an establishment permitted herein for the sale of consumption off-premises.

9: MOTEL: Means a building or a group of two (2) or more buildings containing guest rooms or apartments and used primarily for the accommodation of automobile travelers containing a restaurant as defined herein.

10: RESTAURANT: Means a place where meals are prepared and served to the public for consumption on or off the premises.

11: NEIGHBORHOOD CONVENIENCE CENTER: Retail establishments which carry convenience goods, such as groceries, drugs, and some variety items, including grocery stores, markets, supermarkets, and variety stores.

12: 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.

13: 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.

14: 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.

15: DAY-CARE CENTER: Means a child-care facility that provides for more than 12 children less than 14 years of age for less than 24 hours a day.

16: DEALER: As that term is used in Sec 109.33 Texas Alcoholic Beverage Code V.T.C.S. and shall include PERSON as that term is defined herein.

17: OPEN CONTAINER: Means a container that is no longer sealed.

18: PERSON: Means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization of the manager, agent, servant, or employee of any of them.

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

20: PERMITTEE: Means a person who is the holder of a permit provided for in this ordinance, or an agent, servant, or employee of that person.

21: LICENSEE: Means a person who is the holder of a license provided in this ordinance,
or any agent, servant, or employee of that person.

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

23: WINE COOLER: Means 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 an alcohol content as low as one-half of one percent by volume.

24: ALE or MALT LIQUOR: Means a malt beverage containing more than four percent of alcohol by weight.

25: MIXED BEVERAGE: Means 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.

26: **OUTDOOR ADVERTISING:** Means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building so that it is visible by a person of ordinary vision from outside the building.

27: **BILLBOARD:** Means a structure directly attached to the land, a house, or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale, or distribution of alcoholic beverages, whether or not the structure is artificially lighted.

28: **ELECTRIC SIGN:** means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

Section 3. PERMITTED USES

1: Beer and Wine Retail Sales (No Drive Through) and Pre-Packaged Alcoholic Beverage Retail Sales (No Drive Through) and holding an alcoholic beverage permit issued by the City Secretary of the City of Emory will be allowed to operate only in areas that are zoned C-1 Retail Commercial.

2: Beer and Wine Retail Sales (Drive Through) and Pre-Packaged Alcoholic Beverage Retail Sales (Drive Through) are not permitted.

3: The sale of alcoholic beverages for On-Premises Consumption shall only be permitted by restaurants or motels holding a food and beverage certificate and the restaurant or motel's revenue from the sale of alcoholic beverages shall be less than fifty percent of its gross revenue.

4: The sale of alcoholic beverages for Off-Premises 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.

5: Mixed Beverage Sales for On-Premises Consumption will be allowed to operate only in areas that are zoned C-1 Retail Commercial.

6: Any business, existing or new, that desires to sell any alcoholic beverage within the city limits of the City of Emory must obtain an alcoholic beverage permit issued by the City.

Section 4. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR PUBLIC SCHOOLS, PRIVATE SCHOOLS, CHURCHES OR HOSPITALS

1: It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 300 feet of a church, public or private school.

2: 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 front door to front door and in direct line across intersections.

3: 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.

Section 5. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR DAY-CARE CENTERS AND CHILD-CARE FACILITIES; EXCEPTION

1: It shall be unlawful for any holder of a wine and beer retailers permit, mixed beverage permit, retail dealers on premise license or brew pub license who does not hold a food and beverage certificate to sell alcoholic beverages from or at a place of business within this city within 300 feet of a day-care center or child-care facility.

2: 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.

3: 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.

Section 6. SALE OF ALCOHOLIC BEVERAGES PROHIBITED IN RESIDENTIAL AREAS

1: 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.

Section 7. CONSUMPTION OF ALCOHOLIC BEVERAGE AND POSSESSION OF AN OPEN CONTAINER NEAR PUBLIC OR PRIVATE SCHOOLS; EXCEPTION

1: A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 1000 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.

2: 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.

Section 8. SIGNAGE

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

1: No person shall erect or maintain a Billboard, Electric Sign, or any Outdoor Advertising for the sale or consumption of an alcoholic beverage within the city limits of the City of Emory.

2: No person shall erect, post or display any signs for the sale or consumption of alcoholic beverages or other forms of advertisement inside the alcoholic beverage establishment if same can be viewed from a public street.

Section 9. LOCAL FEES FOR LICENSE AND APPLICATION

1: For On-Premises Consumption, the City hereby levies an annual fee in a sum equal to fifty percent of the State's third renewal fee for a mixed beverage 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 premises locations within the corporate limits of the city.

2: For Off-Premises Consumption, the City hereby levies an annual fee in a sum equal to fifty percent of the State's fee for a beer retailer's off-premises license, 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.

3: There is hereby levied a \$150.00 administrative processing fee for acceptance, review and verification of all new applications.

4: 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.

Section 10. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict only.

Section 11. 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 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 12. 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 Emory, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

Section 13. This Ordinance shall be in full force and effect from and after the date of adoption.

PASSED AND ADOPTED on this 19th day of May, 2009.

ATTEST


City Secretary


Mayor

Council Roll Call Vote

Lori Honeycutt	For
Travis Potts	For
Emery Cathey	Against
Carolyn Hill	For
Max Fletcher	For