



City of Whitehouse

ORDINANCE NUMBER 13-0521-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITEHOUSE, TEXAS, PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE, ESTABLISHING REGULATIONS FOR THE PURPOSE OF SELLING BEER AND WINE WITHIN THE CITY, AND AUTHORIZING MIXED BEVERAGES IN RESTAURANTS BY FOOD AND BEVERAGE CERTIFICATE HOLDERS SALES IN CERTAIN ZONES; REGULATING THE CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PUBLIC OR PRIVATE SCHOOLS; LEVYING CITY FEES ON CERTAIN STATE ALCOHOLIC BEVERAGE PERMIT AND LICENSE HOLDERS; REGULATING SIGNS ADVERTISING THE SALE OF BEER AND WINE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION.

WHEREAS, City Council is recommending the creation of rules and regulations relating to the sale of beer and wine within the city limits of the City of Whitehouse; and

WHEREAS, the Texas Alcoholic Beverage Code generally pre-empts municipal regulation of alcoholic beverages, except where expressly authorized therein; and

WHEREAS, Section 109.32 of the Texas Alcoholic Beverage Code authorizes the City of Whitehouse, Texas by ordinance to prohibit the sale of beer and wine in residential areas; and

WHEREAS, a voter referendum was held on May 11, 2013, 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 Whitehouse, Texas; and

WHEREAS, a voter referendum was held on May 8, 2010, permitting the legal sale of mixed beverages in restaurants by food and beverage certificate holders on premises located within the City of Whitehouse, Texas; 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 Whitehouse, 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 beer and wine within the city limits of the City of Whitehouse, Texas is in the best interest of the citizens of the City of Whitehouse, Texas;

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

NOW, THEREFORE, LET IT BE ORDAINED by the City Council of the City of Whitehouse, 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 Whitehouse, Texas, and are applicable to the provisions of this Ordinance:

1. CITY: Shall mean and refer to the City of Whitehouse, Texas.
2. BEER AND WINE RETAIL SALES: 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.
3. ON-PREMISES CONSUMPTION: The sale of an Alcoholic Beverage for the consumption in a business establishment as permitted herein.
4. OFF-PREMISES CONSUMPTION: The sale of a sealed alcoholic beverage by an establishment permitted herein for consumption off-premises.
5. 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.
6. RESTAURANT: Means a place where meals are prepared and served to the public for consumption on or off the premises.
7. 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.
8. DEALER: As that term is used in Sec 109.33 of the Texas Alcoholic Beverage Code and shall include PERSON as that term is defined herein
9. OPEN CONTAINER: Means a container that is no longer sealed.
10. PERSON: Means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.
11. 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.
12. LICENSEE: Means a person who is the holder of a license provided in this Ordinance, or any agent, servant, or employee of that person.

13. WINE: Means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.
14. 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.
15. ALE or MALT LIQUOR: Means a malt beverage containing more than four percent of alcohol by weight.
16. 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.
17. 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.
18. ELECTRIC SIGN: Means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise an Alcoholic Beverage business by a person who manufactures, sells, or distributes Alcoholic Beverages or to advertise an Alcoholic Beverage.
19. 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.

SECTION 3

1. The City of Whitehouse allows holders of permits and licenses allowing for the sale of Beer, Malt Liquor and Wine, who have paid the City fees required by Section 6 herein, to operate on premises located within the City which are zoned Retail/Office Low Intensity (C-L), Retail/Office Medium Intensity (C-M), Retail/Office High Intensity (C-H), Town Center – Main Street (TC-MS) and Town Center – Highway 110 (TC-110).
2. Drive-through sales of Beer and Wine are permitted to the extent allowed by state law.
3. On-Premises Consumption shall only be permitted by Restaurants or Motels holding a food and beverage certificate whose revenue from the sale of Alcoholic Beverages shall be less than fifty percent of its gross revenue.
4. On-Premises Consumption will be allowed only in areas that are zoned Retail/Office Low Intensity (C-L), Retail/Office Medium Intensity (C-M), Retail/Office High Intensity (C-H), Town Center – Main Street (TC-MS) and Town Center – Highway 110 (TC-110).

5. A wholesaler or distributor holding a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, or general, local or branch distributor's license may sell alcoholic beverages on premises located within the City which are zoned Retail/Office Low Intensity (C-L), Retail/Office Medium Intensity (C-M), Retail/Office High Intensity (C-H), Town Center – Main Street (TC-MS) and Town Center – Highway 110 (TC-110), in accordance with and pursuant to the Texas Alcoholic Beverage Code.
6. Any business, existing or new, that desires to sell any Beer and Wine within the city limits of the City of Whitehouse must be properly licensed or permitted as required by the Texas Alcoholic Beverage Code and have paid the City fees required by Section 6 herein. Failure to remit the City fees may result in sanctions under the Texas Alcoholic Beverage Code including, but not limited to, denial or cancellation of the license or permit.

SECTION 4

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 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 education.
2. This section does not apply to the possession of an Open Container or the consumption of an Alcoholic Beverage at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this ordinance.

SECTION 5

No person may erect or maintain a Billboard, Electric Sign, or any Outdoor Advertising in violation of any ordinance of the City of Whitehouse, 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 Whitehouse.

SECTION 6

1. For On-Premises Consumption, the City hereby levies a bi-annual fee in a sum equal to fifty percent of the State's fee for each license or permit issued for premises located within the City, as authorized by Section 11.38(a) of the Texas Alcoholic Beverage Code. This fee shall be paid bi-annually upon issuance or renewal of the Texas Alcoholic Beverage Commission permit.
2. For Off-Premises Consumption, the City hereby levies a bi-annual fee in a sum equal to fifty percent of the State's fee for each license or permit issued for premises located within the City, as authorized by Section 11.38(a) of the Texas Alcoholic Beverage Code. This City's bi-annual fee applies to all permits and licenses authorized by the Texas Alcoholic Beverage Code, including the following, non-exclusive list: Wine only Package Store Permit [Q], Beer Retailer's Off Premise License [BF], and a Wine and Beer Retailer's Off Premise License [BQ]. This fee shall be paid bi-annually upon issuance or renewal of the Texas Alcoholic Beverage Commission permit.

3. There is hereby levied a \$150.00 administrative processing fee for acceptance, review and verification of all new applications relating to the sale of Alcoholic Beverages.
4. All fee payments shall be made to the City Secretary of the City immediately upon the granting or renewal of State permits as required by the Texas Alcoholic Beverage Code. The City Secretary shall issue a receipt which the license or permit holder shall display with the state license or permit, on the licensed or permitted premises.

SECTION 7

All ordinances, or parts of ordinances, relating to alcohol, herewith are repealed.

SECTION 8

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 9

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

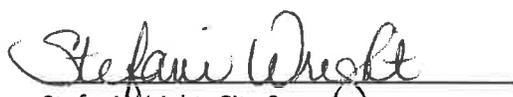
SECTION 10

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

PASSED AND ADOPTED ON THIS 21ST DAY OF MAY 2013.


John D. Hogden, Jr., Mayor

ATTEST:


Stefani Wright, City Secretary