

ORDINANCE NO. 313

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FROST, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FROST, TEXAS BY ADDING A SECTION TO CHAPTER 4 SECTION 4:08 ADOPTING REGULATIONS OF LAWFUL SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES.

WHEREAS, the City Council of the City of Frost has determined that certain conditions exist that represent a threat to the public health and safety; and

WHEREAS, in an effort to provide the citizens of Frost with sufficient safeguards to facilitate the protection of neighborhood security,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Frost, Texas, that Chapter 4 of the City Code of Ordinances is hereby amended by adding Section 4:08, which said section reads as follows:

Regulation of Lawful Sale and Consumption of Alcoholic Beverages

Definitions

All definitions of words, terms and phrases as set forth in V.T.C.A., Alcoholic Beverage Code §1.04 *et seq.* are hereby adopted and made a part hereof.

License or Permit Required

- A. It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any alcoholic beverage included mixed beverages within the City unless such person has obtained a license or permit, as applicable (depending upon the requirements under Texas law relative to the product to be sold), from the State of Texas.
- B. The City Council does hereby levy a fee pursuant to V.T.C.A., Alcoholic Beverage Code §61.36 and §11.38, both as described in detail below, which shall be one-half of the state fee upon every person as permitted by V.T.C.A., Alcoholic Beverage Code §61.36 and 11.38, unless prohibited by state law. The license or permit fee, as applicable, shall be paid in cash, cashier's check or money order.

Procedures Regarding Licenses or Permits

- A. It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any alcoholic beverages including mixed beverages within the City of Frost unless such person has obtained a City of Frost License or Permit, as applicable, 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 alcoholic beverage including mixed beverages must complete a City of Frost License or Permit Application and pay the Application Fee as set forth in Part 4 and 5.

- C. The City Secretary shall ensure that the Application complies with this Ordinance, and to ensure that the Applicant has paid all ad valorem taxes. After the City Secretary has verified that zoning is proper, that the Applicant has paid all ad valorem taxes and other City fees and fines and that the Applicant has passed a criminal background check, the City Secretary shall approve the Applicant's application to the Texas Alcohol and Beverage Commission.
- D. After approval by City Council, the Application shall be deemed approved and the City Secretary shall issue a City of Frost License or Permit, as applicable, upon payment by the applicant of the Initial License or Permit Fee as forth in Part 4 and 5.
- E. Applications and Licenses or Permits shall be kept on file in the City Secretary's office.

Application Fee; Initial License or Permit Fee

- A. In order to reimburse the City for its cost in connection with accepting and processing applications to sell alcohol in accordance with this ordinance , an Application Fee in the amount of \$75.00 or such lesser fee as may be authorized by law shall be charged by the City Secretary for accepting any initial License or Permit Application. No License or Permit Application may be accepted unless accompanied by the Application Fee.
- B. As set forth above, the City of Frost Initial License or Permit Fee shall be equal to one-half of the State of Texas fee required by the Texas Alcoholic Beverage Commission of every person that may be issued any State permit or license for the manufacture, distilling, brewing, importing, transporting, storing, distributing of any alcoholic beverage, unless a different fee is allowed or required by state law. Mixed Beverage permits with a Food and Beverage Certificate as referenced in §11.38(d)(3) of the Alcoholic Beverage Code are exempt from the initial permit fee.
- C. The City Secretary shall issue a receipt for the Application Fee and Initial License or Permit Fee and keep a record of the same in the City Secretary's office.

License or Permit Renewal; License or Permit Renewal Fee

- A. All Licenses or Permits shall be renewed annually. All Licenses or Permits shall terminate at midnight on the day before the anniversary date of their issuance, and no License or Permit shall be issued covering a term longer than one (1) year.
- B. Subject to the exception contained in §11.38(d)(3) of the Alcoholic Beverage Code, the City shall require payment of an annual License or Permit Renewal Fee by all establishments selling alcoholic beverages within the City. And, except as limited by §11.38(d)(3) of the Alcoholic Beverage Code, the License or Permit Renewal Fee shall be equal to one-half of the State of Texas fee required by the Texas Alcoholic Beverage Commission of every person that may be issued any State license or permit for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any alcoholic beverage, unless a different

fee is allowed or required by state law. Mixed Beverage permits with a Food and Beverage Certificate as referenced in §11.38(c)(3) of the Alcoholic Beverage Code shall be renewed at the end of the three (3) year period following issuance and annually thereafter.

- C. The City Secretary may cancel a license or permit if a licensee or permittee fails to pay the applicable License or Permit Renewal Fee. The City Secretary shall send notice of such cancellation to the address on file with the License or Permit Application.
- D. A licensee or permittee who sells an alcoholic beverage without first having paid the applicable Licensee or Permit Renewal Fee under this section commits a misdemeanor punishable by a fine of up to \$200.00.
- E. Within 90 days prior to the renewal date, the licensee or permittee shall provide to the City Secretary, in a form acceptable to the City, all information and data which the City, in its sole discretion, believes is necessary to make determinations regarding renewal, including, but not limited to, any information pertaining to gross receipts under Part 8(F)(1-4) of these ordinances. A licensee or permittee's failure to provide adequate information may result in the non-renewal of license or permit.

Hours of Operation

The hours of sale and consumption of alcoholic beverages are those "standard hours" as authorized by Chapter 105 of the Alcoholic Beverage Code.

Sale or Consumption on Premises of Municipal Buildings and City-Owned Property Prohibited

- A. Except as set forth below, it shall be unlawful for any person to sell an alcoholic beverage on the premises of any municipal building or City-owned property.
- B. Except as set forth below, it shall be unlawful for any person to consume an alcoholic beverage on the premises of any municipal building or City-owned property.
- C. This section shall not prohibit the responsible consumption of alcoholic beverages upon any municipal property as the City Council may from time to time specifically exempt from this section, provided that such consumption complies with all other applicable laws.

Regulation of the Sale of Alcoholic Beverages Near Public or Private Schools, Churches, or Hospitals

- A. The City Council hereby enacts regulations applicable in the City, prohibiting the sale of alcoholic beverages under certain circumstances. In addition, the sale of alcoholic beverages is prohibited in any zoning district where food and beverage sales are not allowed. Sales of alcoholic beverages are further prohibited within:
 - 1. one hundred feet (100') of a church, public or private school, or public hospital;
 - 2. one thousand feet (1,000') of a public school if the City Council receives a request from the governing body of the public school; or

3. one thousand feet (1,000') of a private school if the City Council receives a request from the governing body of the private school; or
 4. provided, however, that in the event that the one thousand foot (1000') limitation in subsection (A)(2) is not requested or is not applicable for any reason, then the one hundred foot (100') limitation is nevertheless intended to still be enforceable.
- 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 front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:
1. in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or
 2. if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.
- C. Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with Texas Alcoholic Beverage Commission. A copy of the notice must be submitted to the Commission with the application. This subsection does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under §109.53, Texas Alcoholic Beverage Code.
- D. The City Council may allow variances to the regulation(s) under Subsection (a) if the Council determines that enforcement of the regulation(s) in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates 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 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. Applications for variances shall be made to the City Secretary. The application fee of \$200.00 shall be paid at the time the application is made. The request for variance shall first be considered by the Planning and Zoning Commission, with final approval/denial being made by the City Council.
- E. Subsection (A)(3) does not apply to the holder of:

1. a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages (a food service establishment);
 2. a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or
 3. a wholesaler's distributor's brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's, permit or license, or any other license or permit held by wholesaler or manufacturer.
 4. In accordance with the Texas Alcoholic Beverage Code, §25.13(d) and, for the purpose of this Subsection (E) of Section 15, "it shall be presumed that a permittee is not primarily operating as a food services establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises." A holder of a mixed beverage permit which has been issued a food and beverage certificate by the Texas Alcoholic Beverage Commission, because the gross receipts of mixed beverages sold by the holder are 50 percent or less of the total gross receipts from the premises, will be considered to be operating primarily as a food service establishment, and to which Subsections A(2) and (3) therefore do not apply.
- F. Subsection (A)(3) does not apply to the holder of:
1. a license or permit issued under Chapter 27, 31, or 72 of the Alcoholic Beverage Code who is operating on the premises of a private school; or
 2. a license or permit covering a premises where minors are prohibited from entering under §109.53 and that is located within 1,000 feet of a private school.
- G. Subsection (A)(1) does not apply to the holder of:
1. a license or permit who also holds a food and beverage certificate covering a premises that is located within 100 feet of a public or private school; or
 2. a license or permit covering a premises where minors are prohibited from entering under §109.53 and that is located within 1,000 feet of a public or private school.
- H. A "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.

Regulation of the Sale of Alcoholic Beverages Near Day-Care Centers or Child-Care Facilities

- A. This section applies only to a permit or license holder under Chapter 25, 28, 32, 69, or 74 of the Alcoholic Beverage Code who does not hold a food and beverage certificate.

- B. Except as provided by this subsection, the provisions of Part 8 relating to a public or private school also apply to a day-care center and a child-care facility as those terms are defined by §42.002, Human Resources Code. Part 8(A)(2) and (C) do not apply to a day-care center or child-care facility.
- C. This section does not apply to a permit or license holder who sells alcoholic beverages if:
 - 1. the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or
 - 2. the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or the license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.
- D. 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 §42.002, Human Resources Code.

Regulations Applicable to the Sale of Alcoholic Beverages

In addition to the other regulations contained in this Section 15, or in other portions of this Code of Ordinances, which apply to the sale of alcoholic beverages in the City, the following regulations are specifically applicable to the sale of alcoholic beverages:

- A. The sale of alcoholic beverages is prohibited in any residential area – specifically including, without limitation, all areas zoned either A, SF-E, SF-1, SF-2, TF, MH-1, MH-2, MF, or PD when the planned development includes residential purposes.
- B. In accordance with §109.32(c) of the Texas Alcoholic Beverage Code, the City Council has determined that, in exercising the authority granted by §109.32 with regard to the regulation of the sale of alcoholic beverages, it is in the best interest of the public health, safety and welfare of the citizens for such regulations to distinguish between retailers selling alcoholic beverages for on-premises consumption and retailers, manufacturers, or distributors who do not sell alcoholic beverages for on-premises consumption.

Failure to Supervise a Minor

- A. A person commits the offense of failure to supervise a minor if such person is the parent, foster parent or guardian of a child under 18 years of age; and
 - 1. Such person recklessly allows such person's residential property, commercial property or rented premises to be used for a gathering of individuals under 21 years of age, and where at such gathering, alcohol or other illegal, controlled substances are served, consumed, ingested or otherwise used by said individuals under 21 years of age; or
 - 2. Such person recklessly allows said child to be in possession of:
 - a. Stolen property; or

- b. A "controlled substance," as that term is defined under Texas law, and where said minor does not have a legal prescription for said controlled substance.
- B. For purposes of this section, a person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. This risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
- C. It is an affirmative defense to an offense under this article if the person took reasonable steps to control the conduct of the child at the time the person is alleged to have committed the offense of failure to supervise a minor. It is also an affirmative defense to prosecution under this section that the adult parent, guardian or spouse of a person under the age of 21 is visibly present when the alcohol is consumed by such person.

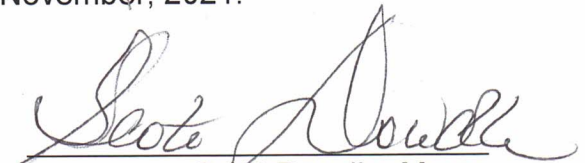
Severability

- A. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.
- B. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect

General Penalty For Violations Of Code

That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punishable by a fine not to exceed Two Hundred (\$200.00) Dollars for each offense.

PASSED AND APPROVED this the 1st day of November, 2021.


Scott Dowdle, Mayor

ATTEST:


Terry McGill, City Secretary