

ORDINANCE NO. O-01-05-2020

AN ORDINANCE OF THE ELKHART CITY COUNCIL OF THE CITY OF ELKHART, TEXAS, ESTABLISHING RULES FOR SALE OF ALCOHOLIC BEVERAGES.

PREAMBLE

**WHEREAS** the City Council of the City of Elkhart wishes to establish rules for sale of alcoholic beverages.

**WHEREAS** the City Council of the City of Elkhart has determined that such rules for sale of alcoholic beverages.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKHART, TEXAS, THAT:**

**Definitions.**

*Alcoholic beverage permit.* An official certificate issued by the city secretary certifying compliance with this article.

*Alcoholic beverage.* 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.

*Church.* Religious building; a building for public worship.

*City.* The City of Elkhart, Texas.

*Dealer.* As that term is used in section 109.33 of the Texas Alcoholic Beverage Code, V.T.C.S. and shall include *PERSON* as that term is defined herein.

*Licensee.* A person who is the holder of a license provided in this article, or any agent, servant, or employee of that person.

*Neighborhood convenience center.* Retail establishment which carries convenience goods, such as groceries, drugs, and some variety items, including grocery stores, markets, supermarkets and variety stores.

*Off-premises consumption.* The sale of sealed alcoholic beverages by an establishment permitted herein for the sale of consumption off premises.

*Open container.* A container that is no longer sealed.*Permittee.* A person who is the holder of a permit provided for in this article, or an agent, servant, or employee of that person.

*Person.* A natural person or association of natural persons, trustee, receiver, partnership, corporation, organization or the manager, agent, servant, or employee of any of the aforementioned.

*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.

*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.

School:

*School.* An organization that provides instructions as:

- (1) An instruction for the teaching of children.

### **Beer and Liquor License Fees**

In accordance with the Texas Alcoholic Beverage Code, license fees shall be levied and collected at one-half the state fee for each permit issued for premises located within the City of Elkhart.

### **Alcoholic Beverage License Fee**

City secretary shall issuance the license on the following conditions:

- (1) A nonrefundable application fee of \$75.00 is paid in advance.
- (2) The applicant is 21 years of age or older.
- (3) The applicant is the owner or leaser of the property.

All permits shall be renewed annually. All permits shall terminate at midnight on the day before the anniversary date of their issuance, and no permit shall be issued covering a term longer than one (1) year.

(a) The code enforcement officer shall send notice of such cancellation to the address on file with the permit application.

(b) All payments shall be made to the city along with the submission of the application. The city shall issue a certificate for display with the state license or permit on the licensed or permitted premises. The certificate must be placed for public view.

### **Sale of alcoholic beverages prohibited near public schools.**

(a) It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 100 feet of a school.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the public school shall be in a direct line from the property line of the place of business and in a direct line across intersections.

(c) *Requests to city council for variance of the distance regulations imposed pursuant to this section.* Upon application of a dealer, or person authorized to sell alcoholic beverages, desiring to sell alcoholic beverages within the distance restrictions imposed by this section city council may, in its sole discretion, allow variances to the distance regulations contained in subsections (a) and (b), if the city council determines that enforcement of the regulations in a particular instance is not in the best interest of the public,

constitutes a waste or insufficient use of land or other resources, created 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 city 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.

(d) *Penalty for violation.* Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon final conviction thereof shall be fined an amount not to exceed the limit established by the state statute.

**Consumption of alcoholic beverage and possession of an open container near public or schools; exception.**

(a) A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, a public sidewalk or public park within one thousand (1000) feet of the property line of a facility.

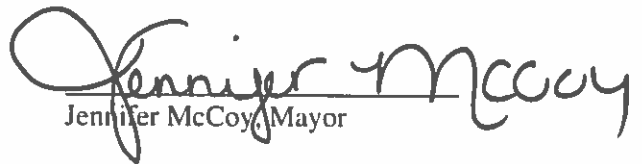
(b) This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this article.

**Sale of alcoholic beverages prohibited in residential areas.**

It shall be unlawful for any person or dealer to sell alcoholic beverages on residential lots, tracts, or parcels within this city.

The provisions of this ordinance shall take effect after its passage and publication as required by law.

**PASSED AND APPROVED** by the City Council of the City of Elkhart on this 4<sup>th</sup> day of May, 2020.

  
Jennifer McCoy, Mayor

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Ami Ashworth, City Secretary