

ORDINANCE NO. 2016-06

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MT. VERNON, TEXAS AMENDING THE CITY ORDINANCE PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE (TABC), ESTABLISHING REGULATIONS FOR THE PURPOSE OF THE SELLING OF BEER AND WINE AND PERMITS AND LICENSES FOR SAID SALE, AND PROHIBITING AREAS FOR SAID SALE AND PERMITTING AREAS FOR SAID SALE, REGULATING THE SALE OF 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 SERABILITY 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 Mt. Vernon; and

**WHEREAS**, section 109.33 of the Texas Alcoholic Beverage code authorizes the City of Mt. Vernon, 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 Mt. Vernon, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a day-care 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 Mt. Vernon, 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 the sale of alcohol within the city limits of the City of Mt. Vernon, Texas is in the best interest of the citizens of the City of Mt. Vernon, 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 Meeting Act.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Mt. Vernon, Texas:

**Section 1.** The recitals set forth above are hereby found by the City Council to be true and correct, and are corporate 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 Ordinance.

- 1: **CITY** shall mean and refer to the City of Mt. Vernon, 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 engages 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 sealed alcoholic beverage by an establishment permitted herein for the sale of consumption off-premises.
- 9: **HOTEL/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: **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 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 some 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: **DEALER:** As that term is used in Section 109.33 Texas Alcoholic Beverage Code V.T.C.S. and shall include PERSON as that term is defined herein.
- 16: **OPEN CONTAINER:** Means a container that is no longer sealed.
- 17: **PERSON** means a natural person or association of natural persons, trustee, receiver, partnership, and corporation, organization of the manager, agent, servant, or employee of any of them.
- 18: **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.
- 19: **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.
- 20: **LICENSEE:** Means a person who is the holder of a license provided in this ordinance, or any agent, servant, or employee of that person.
- 21: **WINE:** Means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.
- 22: **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 alcohol content as low as one-half of one percent by volume.
- 23: **ALE OR MALT LIQUOR:** Means a malt beverage containing more than four percent of alcohol by weight.
- 24: **MIXED BEVERAGE:** Means one or more servings of a beverage composed in whole or part of an alcoholic 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.
- 25: **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.
- 26: **BILLBOARD:** Means a structure directly attached to the land, a house, or a building have 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.
- 27: **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 Mt. Vernon will be allowed to operate only in areas that are zoned **LR (Local Retail), GB (General Business), II (Industrial) and OC (Outside 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 hotel/motels holding a food and beverage certificate and the restaurant or hotel/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 convenience centers that derive forty percent or more of its gross revenue from the sale of non-alcoholic products and products not subject to motor fuel tax. **Properties in the Central Business District Area (as defined below) may apply to the City Council for a variance from the percentage requirements of this sub-section. The grant or denial of a variance request shall be in the sole and absolute discretion of the City Council.**
- 5: Mixed Beverage Sales for On-Premises Consumption will be allowed to operate only in areas that are zoned **LR (Local Retail), GB (General Business), II (Industrial), and OC (Outdoor Commercial)**.
- 6: There are no distance restrictions for the central business district area **as described as follow (the "Central Business District Area")**: Scott Street to Holbrook Street, north to US Hwy 67 East to the east property line of Teague Hall also known as old Teague Motors. West to Houston Street to Dallas Street west to Taylor Street, south to US Hwy 67 West to English Street and Rusk Street to Dallas Street. (see appendix A)
- 7: Any business, existing or new, that desires to sell any alcoholic beverage within the city limits of the City of Mt. Vernon 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 200 feet of a church, public or private school. This does not apply to the area described in section 3.6.
- 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 places 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 200 feet of a day-care 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 OR PUBLIC PROPERTY; EXCEPTION**

- 1: It shall be unlawful for any person to consume any alcoholic beverage in and around on any public property, including any parking areas which are used generally by the public; or for any person to possess any alcoholic beverage in and on any public property, including any parking areas which are [used] generally by the public unless a conditional use-special event permit, specifying the type(s) of alcohol to be permitted at the special event, is approved by the city council.
- 2: It shall be unlawful for any person to consume, have or possess or have upon their persons or in their possession, any wine, malt or vinous liquors or any other alcoholic beverage regardless of the name and strength thereof or be found in a state of intoxication while attending or being in or upon any school grounds, public school grounds, public school buildings, football grounds and/or stadiums, basketball grounds and/or stadiums, while football games, basketball games, track meets or any other public meetings are being held within said grounds and/or buildings within the city.
- 3: The possession by any person on wine, malt or vinous liquors or any other alcoholic beverage regardless of name and strength shall be prima facie evidence that same is being possessed for unlawful purposes.

**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 Mt. Vernon, 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 Mt. Vernon, Texas.

- 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.
- 3: **Any winery or restaurant may include wine or bar in the name of their business and as registered with the Texas Comptrollers office.**

**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 premise 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. Penalties**

Any violation of this ordinance shall be subject to the penalty as provided for in the Code of Ordinance, Chapter 1, Section 1-5.

**Section 11.** All ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict only.

**Section 12.** 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 13.** 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 Mt. Vernon, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

**Section 14.** This Ordinance shall be in full force and effect from and after the date of adoption.

PASSED and ADOPTED on this 28<sup>th</sup> day of November, 2016

Margaret Sears  
Margaret Sears, Mayor

ATTEST:

Tina Rose  
Tina Rose, City Secretary