

Ordinance No. 2009 - 35

An Ordinance of the City of Canton, Texas establishing Business Regulations pursuant to the regulations in the Texas Alcoholic Beverage Code (TABC), regulating the sale of Alcoholic Beverages near public schools, private schools, churches or hospitals; regulating the sale of alcoholic beverages near day care centers and child care facilities; regulating the sale of beer in residential areas; prescribing the hours when beer may be sold; regulating the consumption of alcoholic beverages and possession of open containers near public or private schools; establishing permit and application fees; repealing all ordinances in conflict herewith; providing a severability clause; and providing for said ordinance to take effect from and after its date of passage.

Whereas, Section 109.32 (1) of the Texas Alcoholic Beverage Code authorizes the City of Canton, Texas by ordinance to prohibit the sale of beer in residential areas; and

Whereas, Section 109.32 (2) of the Texas Alcoholic Beverage Code authorizes the City of Canton, Texas by ordinance to prescribe the hours when beer may be sold; and

Whereas, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the City of Canton, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a church or public hospital, and within 1000 feet of a public or private school upon request by the school's governing body; and

Whereas, the City of Canton has received an official request from the Canton Independent School District's Board of Trustees to restrict the sale of alcoholic beverages within 1000 feet of C.I.S.D. schools; and

Whereas, Section 109.331 of the Texas Alcoholic Beverage Code authorizes the City of Canton, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a day care or child care facility; and

Whereas, Section 109.36 of the Texas Alcoholic Beverage Code authorizes the City of Canton, Texas by ordinance to prohibit the possession of an open container or consumption of an alcoholic beverage on a public street, public alley or public sidewalk within 1000 feet of the property line of a homeless shelter or substance abuse treatment facility that is not located in the Central Business District; and

Whereas, Section 101.75 of the Texas Alcoholic Beverage Code authorizes the City of Canton, Texas by ordinance to prohibit the possession of an open container or consumption of an alcoholic beverage on a public street, public alley or public sidewalk within 1000 feet of the property line of a public school or private school; and

Whereas, the City Council of the City of Canton, Texas has determined the following regulations are necessary in order to protect public health, safety and welfare;

Now, therefore, be it ordained by the City Council of the City of Canton, Texas:

SECTION 1. The above recitals are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. Definitions

Alcoholic Beverage means alcohol or any beverage containing more than one half of one percent alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

Beer means a malt beverage containing one half of one percent or more of alcohol by volume and not more than 4 percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

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 Protected 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.

Day Care Center means a child care facility that provides for more than 12 children under 14 years of age for less than 24 hours a day.

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.

Hospital means an establishment that offers services facilities and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and regularly maintains at a minimum, clinical laboratory services, diagnostic x-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

Open Container means a container that is no longer sealed.

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.

Private School means a private school, including parochial school, that: offers a course of instruction for students in one or more grades from kindergarten through grade 12, and has more than 100 students enrolled and attending courses at a single location.

SECTION 3. Sale of Alcoholic beverages prohibited near public, private schools, churches or hospitals

- A. It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 1000 feet of a public or private school, or with 300 feet of a church or public hospital.
- 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.

- C. 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 4. Sale of alcoholic beverages prohibited near day care centers and child care facilities

- A. It shall be unlawful for any holder of a wine or beer retailer's permit, mixed beverage permit, private club registration permit, retail dealer's on premise license or brewpub license who does not hold a food and beverage certificate to sell alcoholic beverages from or at a place of business within 300 feet of a day care center or child care facility.
- B. 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 5. Sale of beer prohibited in residential areas

It shall be unlawful for any person or dealer to sell beer in residential areas within the City.

SECTION 6. Prescribing the hours when beer may be sold

Beer may be sold only from the hours of 7:00 a.m. to midnight Monday through Saturday and from midnight to 1:00 a.m. and noon to midnight on Sunday.

SECTION 7. Consumption of alcoholic beverage and possession of an open container near public or private schools

- A. A person commits an offense if the person possesses an alcoholic beverage in 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 part of prekindergarten through twelfth grade.
- B. A person commits an offense if the person possesses an alcoholic beverage in 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 homeless shelter or substance abuse treatment center that is not located in the Central Business District.
- C. 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 code.

SECTION 8. Local fees for license and application

- A. After all reasonable rules and regulations are met, a license must be obtained from the City of Canton for each separate place of business at a cost equal to fifty percent of the state fee for each license authorized by the Texas Alcoholic Beverage Code, except a

temporary or agent's beer license, issued for premises located within the corporate limits of the city. The permit is renewable every twelve (12) months upon the date of the first issuance.

- B. There is hereby a \$150.00 administrative processing fee for acceptance, review, and verification of all new applications, except for a temporary or agent's beer license.
- C. All payments shall be made to the building department along with the submission of the application or the renewal. The department shall issue a receipt for display with the state license or permitted premises.

SECTION 9. Penalty; Other Remedies

- A. Any person violating or failing to comply with any of the provisions of this Ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), unless the violation involves fire safety, zoning, public health or sanitation then the person shall be fined an amount not to exceed two-thousand dollars (\$2000.00). Each day any violation or noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State law, and the power of injunction as provided in sections 54.012 and 54.016 of the Texas Local Government Code, as may be amended, may be exercised in enforcing this Ordinance whether or not there has been a complaint filed.
- B. The penal provisions imposed under this section are cumulative of all other remedies and non-exclusive. These penal provisions shall not be deemed nor constructed to limit the availability of any remedy against any person or property otherwise provided by law including without limitation fines, penalties, closure, and injunction. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.
- C. A person who violates a provision of this Ordinance in which a specific penalty is not provided, is guilty of a misdemeanor and, on conviction, is punishable by a fine of not less than one-hundred dollars (\$100.00) nor more than one-thousand dollars (\$1000.00) or by confinement in the county jail for not more than one (1) year or by both. The term "specific penalty" as used in this section, means a penalty that might be imposed as a result of criminal prosecution.

State law reference; General enforcement authority of municipalities, V.T.C.A., Texas Local Government Code, Section 54.001, 54.012 and 54.016; General Penalty, V.T.C.A., Texas Alcoholic Beverage Code, section 105.

SECTION 10. Repeal of Conflicting Ordinance

That all ordinances or parts of ordinances in conflict herewith by, and the same are, hereby repealed to the extent of such conflict.

SECTION 11. Severability

If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not effect any other section, paragraph, subdivision, clause,

phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.


SECTION 12. Publication

The caption of this Ordinance shall be published in the official newspaper of the City as required by the City Ordinance and state law.

SECTION 13. Effective Date

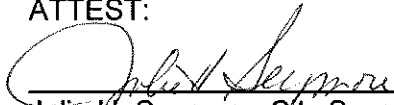
This ordinance shall take effect and shall be in full force from and after its adoption and publication as provided by law.

APPROVED AND ADOPTED by the City Council of the City of Canton this 17th day of November, 2009.



William R. Wilson, Mayor

ATTEST:



Julie H. Seymore, City Secretary