

**ORDINANCE No. 2019-04**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CANTON, TEXAS, ESTABLISHING REGULATIONS FOR THE SALE AND POSSESSION OF ALCOHOLIC BEVERAGES BY PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES NEAR PUBLIC SCHOOLS, PRIVATE SCHOOLS, CHURCHES, OR HOSPITALS; PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES NEAR DAY-CARE CENTERS AND CHILD-CARE FACILITIES; PROHIBITING THE SALE OF BEER IN RESIDENTIAL AREAS; PROHIBITING THE CONSUMPTION OF ALCOHOLIC BEVERAGES AND POSSESSION OF OPEN CONTAINERS NEAR PUBLIC OR PRIVATE SCHOOLS; PROHIBITING THE CONSUMPTION OF ALCOHOLIC BEVERAGES AND POSSESSION OF OPEN CONTAINERS NEAR HOMELESS SHELTERS OR SUBSTANCE ABUSE TREATMENT CENTER; PROVIDING FOR EXTENDED HOURS FOR SALE OF MIXED BEVERAGES; REQUIRING PERMIT FEES AND PERMIT RENEWAL FEES; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.**

**WHEREAS,** section 109.32 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 109.33 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, public school, private school, or public hospital; 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 center 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 one thousand (1,000) feet of the property line of a public school or private school; and

**WHEREAS,** on September 14, 2009, the City Council for the City of Canton, Texas, approved Ordinance No. 2009-29, established regulations regarding the sale of alcoholic beverages near public, private schools, churches or hospitals, day care centers, child care facilities; prohibited the sale of beer in residential areas; prescribed the hours beer may be sold; established regulations concerning the consumption of alcoholic beverages and possession of open containers near public or private schools; and established local fees for licenses under the Texas Alcoholic Beverage Code; and

**WHEREAS,** on November 17, 2009, the City Council for the City of Canton, Texas, approved Ordinance No. 2009-34, establishing TABC- permitted businesses that derive 75% or more of gross revenues from the on-premise sale of alcoholic beverages, as a permitted use in B-2 zoning districts; and

**WHEREAS**, on November 17, 2009, the City Council for the City of Canton, Texas, approved Ordinance No. 2009-35, established regulations regarding the sale of alcoholic beverages near public, private schools, churches or hospitals, day care centers, child care facilities; prohibited the sale of beer in residential areas; prescribed the hours beer may be sold; established regulations concerning the consumption of alcoholic beverages and possession of open containers near public or private schools; and established local fees for licenses under the Texas Alcoholic Beverage Code; and

**WHEREAS**, on March 20, 2012, the City Council for the City of Canton, Texas, approved Ordinance No. 2012-05, establishing the hours of sale of alcoholic beverages; and

**WHEREAS**, on May 20, 2014, the City Council for the City of Canton, Texas, approved Ordinance No. 2014-06, establishing local fees for licenses under the Texas Alcoholic Beverage Code; and

**WHEREAS**, on or about November 8, 2016, the eligible voters of the City of canton, Texas, approved two (2) local option ballot propositions: (1) the legalize the sale of beer and wine for off-premise consumption only; and (2) legalize the sale of mixed beverages in restaurants by food and beverage certificate holders only; and

**WHEREAS**, on November 20, 2018, the City Council for the City of Canton, Texas, approved Ordinance No. 2018-25, prohibiting the sale of alcoholic beverages within 300 feet of public schools, private schools, churches, or hospitals; and

**WHEREAS**, the City Council of the City of Canton, Texas, desire to repeal the aforementioned ordinances and establish one ordinance concerning alcoholic beverages and the City Council finds and determines that the following regulation is necessary in order to protect public health, safety, and welfare of the City of Canton, Texas.

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

**Section 1. FINDINGS INCORPORATED**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**Section 2.**

That City Ordinances of the City of Canton, Texas, is hereby amended to read as follows:

**Alcohol Regulations**

- A. Definitions.** For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**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.

**BEER** means a malt beverage containing one-half (.5%) of one percent or more of alcohol by volume and not more than four (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** means a facility licensed, certified, or registered by the department 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 care for more than 12 children under 14 years of age for less than 24 hours a day.

**DEALER.** The same as that term is used in Sec. 109.33, Texas Alcoholic Beverage Code, V.T.C.S., and shall include **PERSON** as that term is defined herein.

**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, or the manager, agent, servant, or employee of any of them.

**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.

## **B. Permit Required, Permit Fee, and Permit Renewal Fees**

1. *Permit required.* It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any alcoholic beverages within the City unless such person has obtained a City permit from the office of the City Secretary.
2. *Initial permit fee.* After approval by all necessary City departments, the permit application shall be deemed approved and the City Secretary shall issue a City permit upon payment by the applicant of the initial permit fee. The City's initial permit fee shall be equal to one-half ( $\frac{1}{2}$ ) of the state 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 or sale of any alcoholic beverage, unless a different fee is allowed or required by state law. No City permit may be issued unless the initial permit fee is received.
3. *Renewal of permits.* All permits shall be renewed annually unless otherwise provided by state law. 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 unless otherwise provided by state law.
4. *Annual permit renewal fee.* The City shall require payment of an annual permit renewal fee by all establishments selling alcoholic beverages within the City. The permit renewal fee shall be equal to one-half ( $\frac{1}{2}$ ) of the state 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 or sale of any alcoholic beverage, unless a different fee is allowed or required by state law.

5. *Cancellation of permit.* The City Secretary may cancel a permit if a permittee fails to pay the permit renewal fee. The City Secretary shall send notice of such cancellation to the address on file with the permit application.
6. *Permit application.* Permit applications shall be kept on file in the City Secretary's office. The City Secretary shall issue a receipt for the initial permit fee and keep a record of the same in the City Secretary's office.
7. *Penalty.* A permittee who sells an alcoholic beverage without first having paid the initial permit fee or permit renewal fee under this section commits a misdemeanor punishable by a fine of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars.

### **C. Hours of Sale of Alcoholic Beverages**

The holder of any of the following licenses or permits issued by the Texas Alcoholic Beverage Commission may permit persons to consume or be served alcoholic beverages on premises for the extended hours between midnight and 2:00 a.m. on any day, if the holder has:

1. a retail dealer's on-premises late hours license;
2. a mixed beverage late hours permit, or
3. a private club late hours permit.

### **D. Gross Receipts**

1. The party or entity operating the business shall, on a monthly basis, on a date coinciding with the date that the same information is furnished to the Texas Alcoholic Beverage Commission, file with the City Secretary an affidavit reflecting gross receipts and sales of the business. The affidavit shall contain a statement reflecting the gross sales attributable to food and gross sales attributable to off premise beer and wine sales.
2. The affidavit shall be accompanied by a letter signed by a certified public accountant licensed to practice in the State of Texas. The letter shall state that the accountant has reviewed the affidavit and that the affidavit is accurate based on the data provided to the accountant by the owner or operator of the business. The letter shall contain the address, telephone number and license number of the certified public accountant.

### **E. Tax Purpose.**

The party or entity shall also file with the City Secretary, on a monthly basis, on a date coinciding with the date that such information is furnished to the Texas Alcoholic

Beverage Commission, the gross receipts and figures furnished to the State of Texas for sales tax and beer and wine tax purposes. This provision applies to any business permitted to sell off premise beer and wine.

**F. Administrative Requirements.**

The party or entity shall also furnish receipts from suppliers upon request of the City Secretary. Such receipts shall, upon request, reflect current sales and operations for up to the previous twelve (12) months from the date of request.

**G. 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 three hundred (300) feet of a church, public or private school, or public hospital.
2. This section does not apply to the holder of:
  - a. a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
  - b. a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that is located within 300 feet of a private school.
3. 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.
4. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:
  - a. 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
  - b. if the permit or license holder is located on or above the fifth story of a multi-story 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.
5. *Variations.* The City Council of the City of Canton, Texas may allow a variance to this section if City Council determines that the enforcement of the regulations in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land and other resources, creates an undue hardship on the 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 determines, after consideration of the health, safety and welfare of the public and the equities of such regulation, that the variance is in the best interest of the community.

**H. 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 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 this city within 300 feet of a day-care center or child-care facility.
2. This section does not apply to a permit or license holder who sells alcoholic beverages if:
  - a. the permit or license holder and the day-care center or child-care facility are located on different stories of a multi-story building; or
  - b. the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multi-story building.
3. 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.
4. 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:
  - a. 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; or
  - b. if the permit or license holder is located on or above the fifth story of a multi-story building, 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, 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.

**I. Sale of Beer Prohibited in Residential Areas.**

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

**J. Consumption of Alcoholic Beverage and Possession of an Open Container Near Public or Private Schools; Exception.**

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 one thousand (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.

2. 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.

**K. Consumption of Alcoholic Beverage and Possession of an Open Container Near Homeless Shelter or Substance Abuse Treatment Center; Exception.**

1. The term "Central Business District" as used in this subsection means a compact and contiguous geographical area of the city used for commercial purposes that has historically been the primary location in the city where business has been transacted.
2. 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 one thousand (1,000) feet of the property line of a homeless shelter or substance abuse treatment center that is not located in the Central Business District.
3. 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.

**L. Penalty**

Any person, firm or corporation violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall upon final conviction thereof be fined in the amount not to exceed five hundred (\$500.00) dollars, each and every day any such violation shall continue shall constitute a separate violation hereunder.

**Section 3. SAVINGS CLAUSE**

All rights and remedies of the City of Canton, Texas are expressly saved as to any and all violations of the provisions of the Ordinance or any other ordinance which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**Section 4. CUMULATIVE CLAUSE**

This Ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Canton, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**Section 5. SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section 6. REPEALER CLAUSE**

Any provision of any prior ordinance of the City whether codified or uncodified, and specifically Ordinances Nos. 2009-29, 2009-34, 2009-35, 2012-05, 2014-06, 2018-25, are hereby repealed in their entirety, but all other provisions of the ordinances of the City whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section 7. EFFECTIVE DATE**

This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Canton, Texas, on this the 21<sup>st</sup> day of May, 2019.

**APPROVED:**

  
Lou Ann Everett, Mayor

**ATTEST:**

  
Debra Johnson, City Secretary

