

CITY OF WHEELER  
ORDINANCE NO. 233

AN ORDINANCE OF THE CITY OF WHEELER, TEXAS, ADOPTING RULES AND REGULATIONS REGARDING ALCOHOLIC BEVERAGES, ENTITLED "SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES"; REQUIRING A PERMIT FOR AND RESTRICTING THE LOCATION OF BUSINESSES SELLING ALCOHOLIC BEVERAGES; PROVIDING FOR A PENALTY OR FINE OF NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500) FOR EACH OFFENSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Wheeler, Texas ("City"), a general law municipality, is authorized by state law to adopt and implement necessary and reasonable ordinances in the best interests of its citizenry; and

WHEREAS, on November 4, 2014, the City of Wheeler held a local Liquor Option Election; and

WHEREAS, the voters in the City of Wheeler voted in favor of the legal sale of all alcoholic beverages including mixed beverages in the City of Wheeler; and

WHEREAS, the Texas Alcoholic Beverage Code authorizes the City Council of the City of Wheeler, Texas ("City Council"), to require permits for the sale or distribution alcoholic beverages and to collect a fee for such permits; and

WHEREAS, the Texas Alcoholic Beverage Code authorizes the City Council to impose restrictions regarding the location of businesses that sell alcoholic beverages to create a zone of protection around certain land uses; and

WHEREAS, the City Council has determined that the adoption of regulations regarding such businesses is in the best interest of and best serves the public health, safety, and welfare of the residents of the City of Wheeler, Texas;

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

Section 1. FINDINGS INCORPORATED

All of the above recitals are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

## Section 2. ADOPTION OF NEW SECTION 9-6

From and after the effective date of this Ordinance, a new Section 9-6, entitled "Sale and Distribution of Alcoholic Beverages," is hereby adopted to the Code of Ordinances of the City of Wheeler, which shall read as follows:

### "Section 9-6 Sale and Distribution of Alcoholic Beverages

Sec. 9-6.01 Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

**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.

**Ale and Malt Liquor** - a malt beverage containing more than four percent of alcohol by weight.

**Beer** - a malt beverage containing one-half of one 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.

**Off-premise or Off-premises** - locations other than those described in the definition of "premises" in this section.

**Premises** - the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, include any adjacent premises if they are directly or indirectly under the control of the same person.

#### **Residential Area:**

(A) an area designated as a residential zoning district by a governing ordinance or code;

(B) an area in which the actual land use is predominantly one of private residences;

(C) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least seventy-five percent (75%) of the front footage along the block face; and or

(D) a subdivision for which a plat is recorded in the real property records of the county and a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

***Wine and Vinous Liquor*** - means the product (or libation) obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries or honey, and includes wine coolers.

#### Sec. 9-6.02 Permit Required: Procedures.

A. It shall be unlawful for any person or establishment to import, transport or store for the purposes of sale, to distribute or to sell any beer or wine for off-premise consumption within the City unless such person has obtained a City permit from the Office of the City Secretary.

B. Any person or establishment wishing to import, transport or store for the purposes of sale, to distribute or to sell any beer or wine for off-premise consumption must complete a City permit application and pay the application fee as set forth in Section 9-6.03.

C. The City Secretary shall submit each application to the appropriate City departments, as determined by the Mayor, to ensure that the application complies with all City ordinances and regulations, including this Section 9-6.02.

D. Upon investigation and determination of compliance with all applicable ordinances and payment of the initial permit application fee as set forth in Section 9-6.03, the City Secretary shall issue to the applicant the proper permit, which shall state on its face the location, type of business for which it is issued, and the date when it will expire. The permit shall be posted in a prominent place, visible to the customers of the establishment.

E. Applications and permits shall be kept on file in the City Secretary's Office.

#### Sec. 9-6.03 Administrative and Application Fees.

A. Administrative Processing Fee. As determined from time to time by the City Council, an administrative processing fee shall be charged by the City Secretary for accepting any permit application or permit renewal application. A permit application or permit renewal application shall be accompanied by the administrative processing fee.

B. Initial City Permit. The initial City permit fee amount shall be equal to one-half the state fee amount required by the Texas Alcoholic Beverage Commission ("TABC") of every person who may be issued any state permit or license for the importing, transporting, storing for purposes of sale, distributing or sale of any beer or wine for off-premise consumption, unless a different fee amount is allowed or required by state law. The fee amount shall not exceed the maximum amount permitted by applicable State law. Receipt of the initial City permit fee is required prior to issuance of a City permit.



C. Renewal City Permit. The City shall require payment of an annual renewal City permit fee by any person or establishment who possesses a current permit to import, transport or store for purposes of sale, distribute or sell any beer or wine for off-premise consumption within the City. The renewal City permit fee amount shall be equal to one-half of the state fee amount required by the TABC for importing, transporting, storing for purposes of sale, distributing or sale of any beer or wine for off-premise consumption, unless a different fee amount is allowed or required by state law. The fee amount shall not exceed the maximum amount permitted by applicable State law. Receipt of the renewal permit fee is required prior to issuance of a City permit.

D. The City Secretary shall issue a receipt for payment of the administrative processing fee, initial application permit fee and renewal permit fee and keep a record of the fees.

#### Sec. 9-6.04 Permit Renewal.

A. 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 year.

B. If a permittee fails to pay the renewal City permit fee, its permit shall be automatically cancelled. The City Secretary shall send notice of such cancellation to the address on file with the permit application and to the TABC.

C. A permittee who sells an alcoholic beverage without first having paid the permit renewal fee under this Section commits a Class C misdemeanor punishable by a fine of up to \$200.00 or as provided in the general provisions of the Code of Ordinances.

#### Sec. 9-6.05 Hours of Operation.

The hours of sales of alcoholic beverages in the City shall comply with State law regarding the hours of sales of alcoholic beverages for the permit issued by the State of Texas.

#### Sec. 9-6.06 Residential Area.

The sale of alcoholic beverages for off-premise consumption is not permitted in a residential area.

#### Sec. 9-6.07 Restriction on Locations of Places of Business.

A. The sale of alcoholic beverages for off-premise consumption is not permitted within three hundred feet (300') of:

1. a church, public school, or public hospital; or.

2. a private school that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and which has more than one hundred (100) students enrolled and attending courses at the location in question.

B. The sale of alcoholic beverages is not permitted within three hundred feet (300') of a "day-care center" or a "child-care facility" as those terms are defined by Section 42.002 of the Texas Human Resources Code. This provision only applies to a place of business selling alcoholic beverages pursuant to a permit issued by the TABC under Chapters 25, 28, 32, 69 or 74 of the Tex. Alco. Bev. Code, and which does not also hold a food and beverage certificate from the TABC.

C. The measurement of the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.

D. The measurement of the distance between a place of business where alcoholic beverages are sold and a 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 place of business 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, and in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the place of business is located.

E. The measurement of the distance between the place of business where alcoholic beverages are sold and a day-care center or a child-care facility shall be calculated in the same manner as used for a public or private school, with the following exceptions (in which event the place of business in question is exempted from the distance requirements):

1. the place of business selling alcoholic beverages and the day-care center or child-care facility are located on different stories of a multistory building; or

2. the place of business selling alcoholic beverages and the day-care center or child-care facility are located in separate buildings and either the place of business selling alcoholic beverages or the day-care center or child-care facility is located on the second story or higher of a multistory building.

F. Variance for Alcohol Sales.

1. The City Council may allow a variance to this Section if it determines that the enforcement of the regulation in a particular instance:

- a. is not in the best interests of the public;
- b. constitutes waste or inefficient use of land or other resources;
- c. creates an undue hardship on the applicant for a license or permit;
- d. does not serve its intended purpose, is not effective or necessary; or
- e. would be inequitable because a previous permit was issued for the premises in error.

2. The City Council may allow a variance to this Section for any other reason the City Council determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community.

3. No variance may be granted under this subsection except after a public hearing for which notice has been given. Notice of a request for a variance from the distance requirements of this Section 9-6.07 shall be given to owners of property within three hundred feet (300') of the business. The notice area for a variance request relating to a church or public hospital shall be measured in a direct line from the front door of the place of business. The notice area for a variance request relating to a public or private school shall be measured in a direct line from the property line of the place of business. The notice shall be sent via regular United States mail not less than ten (10) days before the date set for hearing, to all such owners who have rendered their property for City taxes as the ownership appears on the last approved City tax roll.

4. The City Council may assess a reasonable fee for the administrative costs associated with processing a variance request under this subsection.

**Sec. 9-6.08 Convenience Store and Drive-through Sales of Beer and Wine for Off-Premise Consumption.**

A. A convenience store may not contain less than 1,000 square feet of retail space.

B. A retail establishment may not offer drive-in, drive-up, drive-through, or walk-up sales or service of pre-packaged, sealed, unopened beverages, with the exception of bottled water, juice or milk.

C. For purposes of this section, the terms drive-in, drive-up, drive-through, or walk-up do not prohibit the service of food or beverages to customers:

1. who physically leave their vehicles and enter a building to make the purchase; or
2. as part of a drive-through restaurant in connection with the sale or service of food to the customer.



#### Sec. 9-6.09 Signs.

A retail establishment holding a permit under this Chapter shall be subject to compliance with the Texas Alcoholic Beverage Code, as it exists or may be amended and shall not be permitted to have exterior signs advertising the sale of alcoholic beverages other than those authorized under the Texas Alcoholic Beverage Code, Chapter 151 Signs.

#### Sec. 9-6.10 Violations of Ordinance.

A person, firm, corporation or association of persons subject to the licensing or reporting provisions of this Section who sells an alcoholic beverage without having first obtained and maintained in effect a City permit and a TABC permit at all such times, paid the fee(s) herein levied, commits a Class C misdemeanor punishable by a fine not to exceed Five Hundred Dollars (\$500.00). In addition, the City Secretary shall report such failure to pay to the Texas Alcoholic Beverage Commission.

### Section 3. PENALTY CLAUSE

Any person, firm or corporation violating any of the provisions or terms of this Ordinance or the Code of Ordinances as amended hereby shall be deemed guilty of a Class C misdemeanor, and upon conviction shall be punished by a fine of not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, and each and every day such violation shall continue shall constitute a separate offense.

### Section 4. 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 5. REPEALER CLAUSE

Any provision of any prior ordinance of the City, whether codified or uncoded, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncoded, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.


Section 6. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption by the City Council and publication as may be required by governing law.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Wheeler, Texas, on this the 17<sup>th</sup> day of November, 2014.

  
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Bob McCain, Mayor

ATTEST:

  
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KELLI HAMPTON  
CITY OF WHEELER, City Secretary