

ORDINANCE NO. O-2013-30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "UNIFIED DEVELOPMENT CODE", ARTICLE III., "USE REGULATIONS", DIVISION H., "ALCOHOLIC BEVERAGES" OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY AMENDING DISTANCE REQUIREMENTS FOR SALES OF ALCOHOLIC BEVERAGES NEAR CHURCHES, PUBLIC HOSPITALS, PUBLIC OR PRIVATE SCHOOLS, DAY-CARE CENTERS OR CHILD-CARE FACILITIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, Texas Alcoholic Beverage Code Section 109.33(a)(1) provides that the governing body of an incorporated city or town may enact regulations prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public or private school, or public hospital; and

WHEREAS, Texas Alcoholic Beverage Code Section 109.331 contains specific regulations related to certain kinds of alcohol sales near day-care centers and child-care facilities; and

WHEREAS, Texas Alcoholic Beverage Code Section 109.331 provides that the Section applies to permit or license holders under Texas Alcoholic Beverage Code Chapters 25, 28, 32, 69 or 74; and

WHEREAS, except as otherwise provided, Texas Alcoholic Beverage Code Section 109.331 provides that the provisions of Texas Alcoholic Beverage Code Section 109.33 relating to a public school also apply to day-care centers and child-care facilities; and

WHEREAS, Texas Alcoholic Beverage Code Section 109.33(e) provides that the governing board of a city or town that has enacted a regulation under Section 109.33(a) may allow variances to the regulations under certain circumstances; and

WHEREAS, the City had adopted alcohol distance and variance regulations in the Unified Development Code, Chapter 10, Article III., Division H.; and

WHEREAS, it is important to clarify alcohol distance regulations in the Unified Development Code related to churches, public hospitals, public and private schools, day-care centers and child-care facilities; and

WHEREAS, Texas Local Government Code Section 211.001 provides that the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, Texas Local Government Code Section 211.0003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

WHEREAS, under State law, the City of Tyler has established zoning and subdivision regulations in the Unified Development Code in Chapter 10; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5, of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may license, and regulate persons, corporations and associations engaged in any business, occupation, profession or trade; and

WHEREAS, the City Council is acting under authority of Texas Local Government Code Sections 51.001 and 51.072; and

WHEREAS, the City Council is acting under authority of Tyler City Charter Sections 1, 2 and 6;

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

PART 1: That the City Council hereby makes the following findings, which are incorporated herein as background and to show the analysis used to reach the public need for the following amendments to the City Code.

1. Pursuant to Texas Alcoholic Beverage Code Sections 109.33 and 109.331, the City of Tyler has adopted distance regulations generally prohibiting the sale of alcoholic beverages within 300 feet of churches, public hospitals, public or private schools, day-care centers or child-care facilities, in Section 10-96.

2. As established in the Texas Alcoholic Beverage Code, the distance between the place of business where alcoholic beverages are sold and a public or private school shall generally be measured 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.

3. As established in the Texas Alcoholic Beverage Code, the distance between the place of business where alcoholic beverages are sold and day-care centers or child-care facilities shall generally be measured in a direct line from the property line of the day-care center or child-care facility to the property line of the business, and in a direct line across intersections.

4. The general prohibition against the sale of alcoholic beverages within 300 feet of public or private schools, day-care centers or child-care facilities is not in the best interest in the public, if the building in which alcoholic beverages are to be sold is a minimum of 20,000 square feet in size, if there exists a natural or man-made buffer of the type found in the "Type C" Bufferyard as defined in Section 10-322.c. or the existence of a permanent solid fence or wall at

least six feet (6') in height measured from finished grade to the top of the fence or wall, and if all fences and buffer areas are continuously maintained in a safe and orderly condition.

5. The general prohibition against the sale of alcoholic beverages within 300 feet of public or private schools, day-care centers or child-care facilities constitutes waste and inefficient use of land and other resources, if the building in which alcoholic beverages are to be sold is a minimum of 20,000 square feet in size, if there exists a natural or man-made buffer of the type found in the "Type C" Bufferyard as defined in Section 10-322.c. or the existence of a permanent solid fence or wall at least six feet (6') in height measured from finished grade to the top of the fence or wall, and if all fences and buffer areas are continuously maintained in a safe and orderly condition.

6. The general prohibition against the sale of alcoholic beverages within 300 feet of a public or private school, day-care center or child-care facility does not serve its intended purpose, if the building in which alcoholic beverages are to be sold is a minimum of 20,000 square feet in size, if there exists a natural or man-made buffer of the type found in the "Type C" Bufferyard as defined in City Code Section 10-322.c. or the existence of a permanent solid fence or wall at least six feet (6') in height measured from finished grade to the top of the fence or wall, and if all fences and buffer areas are continuously maintained in a safe and orderly condition.

7. The general prohibition against the sale of alcoholic beverages within 300 feet of a public or private school, day-care center or child-care facility is not effective or necessary, if the building in which alcoholic beverages are to be sold is a minimum of 20,000 square feet in size, if there exists a natural or man-made buffer of the type found in the "Type C" Bufferyard as defined in City Code Section 10-322.c. or the existence of a solid permanent fence or wall at least six feet (6') in height measured from finished grade to the top of the fence or wall, and if all fences and buffer areas are continuously maintained in a safe and orderly condition.

8. The proposed size of structures selling alcoholic beverages, and distances from structures to property lines, are controlling factors and are sufficient to protect the safety and welfare of the public.

9. That the design and location requirements contained herein ensure that the safety of the public is protected.

10. That the sale of alcoholic beverages are limited to specific commercial districts, thus helping to ensure that the safety of the public is protected.

11. The proposed use of all structures, and their dimensions and floor areas, are sufficient to protect the public.

12. The regulations herein related to the location and dimensions of natural or man-made barriers, screening and buffering, are sufficient to protect the public.

13. That the specific requirements contained herein for screening, landscaping and dimensions of buildings in which alcoholic beverages are sold, all ensure that the impact of the special use is minimal and that little or no adverse effects occur to nearby property.

14. The City Council hereby takes note that violations of the zoning regulations in the Unified Development Code can be enforced by criminal penalties under the Tyler City Code.

15. That following notice and after conducting a public hearing, and after consideration of the health, safety and welfare of the public and the equities of the situation, the City Council expressly finds that the requirements contained herein are in the best interest of the community.

PART 2: That Chapter 10, "Unified Development Code", Article III., "Use Regulations", Division H., "Alcoholic Beverages", is hereby amended to read as follows:

Sec. 10-96. Sale of alcoholic beverages near churches, public hospitals, public or private schools, day-care centers or child-care facilities; distance requirements.

a. Churches and public hospitals.

1. The sale of alcoholic beverages within three hundred (300) feet of churches or public hospitals is unlawful and is hereby prohibited, unless a variance has been obtained pursuant to subsection d. of this Section.

2. As established in State law, the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be measured along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.

b. Public and private schools.

1. The sale of alcoholic beverages within three hundred (300) feet of public or private schools is unlawful and is hereby prohibited, except when the requirements of subsection 2. of this subsection b. are met, or unless a variance has been obtained pursuant to subsection d. of this Section. Said distance restriction may be extended pursuant to State law.

2. The sale of alcoholic beverages less than three hundred (300) feet of public or private schools is permissible and is allowed by right if all of the following requirements are met:

(a) The building in which the alcoholic beverages are sold has a minimum of 20,000 square feet in size; and

(b) A natural or man-made buffer exists, and continues to exist, between the premises on which the alcoholic beverages are being sold and the public or private school use. For purposes of this subsection, the term "buffer" shall mean one of the following:

i. A permanent fence and/or wall at least six feet (6') in height, measured from finished grade to top of fence or wall, combined with any of the types of "Type C" Bufferyard as defined in Section 10-322.c.; or

ii. A permanent fence and/or wall at least six feet (6') in height, measured from finished grade to the top of the wall or fence; or

iii. A permanent fence and/or wall combined with an embankment, berm or hill, creating an effective buffer at least six feet (6') in height; and

iv. All fences and buffer areas must be continuously maintained in a safe and orderly condition.

3. As established in State law, the distance between the place of business where alcoholic beverages are sold and public or private schools shall be measured as follows:

- (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 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.

4. Pursuant to State law, and as used in this subsection, the term "private school" shall mean a private school, including a parochial school, that:

- (a) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
- (b) has more than 100 students enrolled and attending courses at a single location.

5. Exceptions. Pursuant to State law, the regulations in this subsection b. do not apply to a license or permit holder who also holds a food and beverage certificate covering a premise that is within 300 feet of a private school. Pursuant to State law, this subsection b. does not apply to the holder of a license or permit covering a premise where minors are prohibited from entering under Texas Alcoholic Beverage Code Section 109.53 or successor, and that is located within 300 feet of a private school.

c. Sales near day-care centers or child-care facilities.

1. Pursuant to State law, this subsection c. only applies to a permit or license holder under Chapter 25 (Wine and Beer Retailers Permit), 28 (Mixed Beverage Permit), 32 (Private Club Registration Permit), 69 (Retail Dealer's On-Premise License) or 74 (Brewpub License) of the Texas Alcoholic Beverage Code, who does not hold a food and beverage certificate.

2. Pursuant to State law, and as used in this subsection c., the term "day-care center" shall mean a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week. Pursuant to State law, and used in this subsection, the term "child-care facility" shall mean a facility licensed, certified, or registered by the Texas Department of Human 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 that it offers.

3. (a) The sale by a permit or license holder described in subsection c.1. of alcoholic beverages within three hundred (300) feet of day-care centers or child-care facilities is unlawful and is hereby prohibited, except when the requirements of subsection (b) of this subsection c.3. are met, or unless a variance has been obtained pursuant to subsection d. of this Section.

(b) The sale of alcoholic beverages less than three hundred (300) feet of day-care centers or child-care facilities is permissible and is allowed by right if all of the following requirements are met:

(1) The building in which the alcoholic beverages are sold is a minimum of 20,000 square feet in size; and

(2) A natural or man-made buffer exists, and continues to exist, between the premises on which the alcoholic beverages are being sold and the day-care center or child-care facility use. For purposes of this subsection, the term "buffer" shall mean one of the following:

i. A permanent fence and/or wall at least six feet (6') in height measured from finished grade to top of fence or wall, combined with any of the types of "Type C" Bufferyard as defined in Section 10-322.c.; or

ii. A permanent fence and/or wall at least six feet (6') in height, measured from finished grade to the top of the wall or fence; or

iii. A permanent fence and/or wall combined with an embankment, berm or hill, creating an effective buffer at least six feet (6') in height; and

iv. All fences and buffer areas must be continuously maintained in a safe and orderly condition.

4. As established in State law, the distance between the location where alcoholic beverages are sold by a permit or license holder described in subsection c.1. and a day-care center or child-care facility shall be measured 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.

5. Exceptions. Pursuant to State law, this subsection c. does not apply to a permit or license holder described in subsection 1. 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.

6. **Exceptions.** Pursuant to State law, this subsection c. 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 Texas Human Resources Code Section 42.002, or successor.

d. **Variances.** Pursuant to State law, the City Council may waive the distance requirements in this Section 10-96 as set forth in this subsection d. The City Council may, after notice and a public hearing, grant a variance to the distance requirements herein through the issuance of a Special Use Permit pursuant to Chapter 10, Article IX., Division A., and if the City Council determines that enforcement of the distance requirement in a particular instance:

1. is not in the best interest of the public; or
2. constitutes waste or inefficient use of land or other resources; or
3. creates an undue hardship on an applicant for a license or permit; or
4. does not serve its intended purpose; or
5. is not effective or necessary; or
6. 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 that the variance is in the best interest of the community.

In making a determination under this subsection d., the City Council may also take into account the standards set forth in Sections 10-726 – 10-728, or any other factors that it considers relevant to its consideration. The prohibition in Section 10-728.d., prohibiting the granting of a variance through issuance of a Special Use Permit, shall not apply to variances granted under this Section. The provision in Section 10-728.d., authorizing the Planning Director to grant minor changes to the conditions imposed in a Special Use Permit, shall not apply to variances granted under this Section.

e. **Grandfathered Uses.** If at the time an original alcoholic beverage permit or license is granted for the premises, the premises is lawfully in use or otherwise satisfies the requirements regarding distance from churches, public hospitals, public or private schools, day-care centers or child-care facilities in effect at that time, the premises will be deemed to satisfy the distance requirements for all subsequent renewals of a license or permit. This includes any requirements which would come into play on the sale or transfer of the premises or the business on the premises in which new original alcoholic beverage licenses or permits are required. (Ord. No. O-2012-89; 11/13/12) (Ord. No. O-2013-30; 4/10/13)

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the

newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be April 12, 2013.

PASSED AND APPROVED this the 10th day of April, A.D., 2013.

Barbara Bass

BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

Cassandra Brager

CASSANDRA BRAGER, CITY CLERK

APPROVED:

Gary C. Landers

GARY C. LANDERS, CITY ATTORNEY

