

AN ORDINANCE PRESCRIBING METHODS FOR OBTAINING PERMITS AND LICENSES FOR THE MANUFACTURE, DISTRIBUTION AND SALE OF INTOXICATING LIQUOR IN THE CITY OF COMMERCE, TEXAS; DEFINING TERMS; PROHIBITING THE USE OF LIQUOR IN HOUSE PARK; REGULATING PLACE OF BUSINESS WITHIN USE DISTRICTS FOR SALE, STORE OR OTHERWISE OF ALCOHOLIC BEVERAGES IN THE CITY OF COMMERCE, TEXAS; PROHIBITING THE SALE OR ENGAGING IN THE BUSINESS OF SELLING OF ANY ALCOHOLIC BEVERAGES WITHIN 300 FEET OF ANY CHURCH, PUBLIC SCHOOL OR PUBLIC HOSPITAL; PRESCRIBING DUTIES OF THE CHIEF OF POLICE, BUILDING INSPECTOR, HEALTH OFFICER, FIRE MARSHAL, AND CITY ATTORNEY; PROVIDING FOR PERIODIC INSPECTION OF PREMISES AND CHARACTER OF LICENSEES; PRESCRIBING ANNUAL OCCUPATION TAX AND AMOUNT THEREOF AND METHOD OF PAYMENT FOR BREWERS, DISTILLERS, RECTIFIERS, MANUFACTURERS, AND DISTRIBUTORS; PROVIDING FOR ISSUANCE OF RECEIPT, DISPLAY OF RECEIPT AND REFUND OF OCCUPATION TAX; PRESCRIBING A PENALTY FOR VIOLATION HEREOF; PROVIDING FOR CANCELLATION FOR NONPAYMENT OF OCCUPATION TAX; PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:

SECTION 1. DEFINITIONS. The words, terms, definitions and the classes of permits and licenses as defined and used in the Texas Liquor Control Act, as amended, are hereby referred to and adopted, and the same, together with the following words and phrases shall, for the purpose of this Ordinance, have the meanings respectively ascribed to them in this Section.

Church: A building used principally for religious worship and in which persons assemble and congregate to worship at least once each week and which is owned by such congregation of persons or leased by such congregation for a period of more than one (1) year.

Front Door: Any front door leading into a church, public school, public hospital or place of business selling alcoholic beverages.

Public Hospital: A hospital to which the public at large is admitted for medical treatment.

Public School: A school owned and conducted by the State or a political subdivision thereof.

Use District: A "use district" prescribed in the Charter and/or ordinances and present or future zoning ordinances of the City of Commerce, Texas.

SECTION 2. USE OF LIQUOR IN HOUSE PARK. It shall be unlawful for any person to drink or to bring into or have in his possession for the purpose of drinking, any spiritous, vinous, malt, or other intoxicating liquors in that area known as House Park, and being used and enjoyed as a football field and stadium in the City.

SECTION 3. LOCATION OF PLACE OF BUSINESS WITHIN USE DISTRICT. No person shall sell, store or otherwise handle for the purpose of sale, or engage in the business of selling, storing or otherwise handling, any alcoholic beverage in the City, unless the place of business of such person is located in a use district of the City, as established by the Charter and/or ordinances and present or future zoning ordinances of the City, in which the sale, storage or otherwise handling for the purpose of sale of such alcoholic beverage is permitted.

SECTION 4. DISTANCE OF PLACE OF BUSINESS FROM CHURCH, PUBLIC SCHOOL OR PUBLIC HOSPITAL. No person shall sell, or engage in the business of selling, any alcoholic beverage where the place of business of such person is located within three hundred (300) feet of any church, public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in direct line across street intersections where they occur.

SECTION 5. APPLICATIONS. Any person applying for a state permit or state license issued by authority of the Texas Liquor Control Act, or a renewal of such permit or license, or to change the location of the place of business designated in such permit or license, shall present in person to the city clerk the appropriate application forms prescribed by the Texas Alcoholic Beverage Commission and shall file one copy thereof with the city clerk. Such applicant shall file a plan showing the proposed location of the applicant's business in relation to streets, property lines, the nearest church, public school or public hospital, and a portion of the premises to be used by the business; a statement that the applicant's place of business is three hundred (300) feet or more from any church, public school or public hospital, and an

affidavit by the applicant that such information is true and correct. An applicant for a "package store permit," a "wine and beer retailer's permit" and a "retail dealer's on-premises license," shall also provide, on a form to be furnished by the City, information necessary to show compliance by the applicant with the provisions of this Ordinance. Such information shall include, but without limitation, the name, age, height, weight, domicile, fingerprints of the applicant, and all other City permits or licenses held by the applicant.

SECTION 6. DUTY OF CHIEF OF POLICE AND BUILDING INSPECTOR.

The city clerk shall direct the applicant to deliver the filed application and City information form required by Section 5 of this Ordinance, to the chief of police who shall cause an investigation to be made as to the applicant's moral character and also as to the applicant's police or criminal record, if any. On completing this investigation, the chief of police shall forward the application and information form, together with his report of the applicant's personal record, to the building inspector who shall determine the use district in which the proposed business is to be located and the location of the nearest church, public school and public hospital, and the building inspector shall indicate such facts and any other pertinent information by appropriate notation in the applicant's file. If the place of business is located in a use district permitted by the Charter and/or ordinances and present or future zoning ordinances of the City, the building inspector shall immediately advise the city attorney in writing the use district in which the place of business is located and the location of the nearest church, public school and public hospital. The building inspector shall forward the file on all applications, except applications for a brewer's permit, distiller's permit, class "A" winery permit, rectifier's permit, wine and beer retailer's permit, manufacturer's license, retail dealer's on-premises license, and retail dealer's off-premises license, directly to the fire marshal, and on such excepted applications the building inspector shall transmit the file to the city health officer.

SECTION 7. DUTY OF THE CITY HEALTH OFFICER. The city health officer shall investigate the sanitary conditions of the premises on which the proposed business is to be located. He shall place the results of his investigation in the file, and on applications where the place of business is located in a use district of the City as prescribed by the Charter and/or ordinances and present or future zoning ordinances, he shall immediately advise the city attorney in writing of the sanitary conditions. When the health officer's investigation is complete, he shall deliver the file to the fire marshal.

SECTION 8. DUTY OF THE FIRE MARSHAL. The fire marshal shall examine the premises concerned in each application referred to him, at the address for which the permit or license is sought, and determine whether the applicant has available an adequate building which does not constitute a fire hazard or unsafe place. The file shall then be referred by the fire marshal to the city attorney for further action.

SECTION 9. DUTY OF THE CITY ATTORNEY. On receipt of the written notices from the building inspector, health officer and fire marshal, the city attorney shall determine whether the applicant's place of business is located in a use district in which sale, storage or otherwise handling for the purpose of sale of the alcoholic beverages for which the permit or license is sought is prohibited by the Charter and/or ordinances and present or future zoning ordinances of the City, and whether the sale of alcoholic beverages for which the state permit or state license is sought is prohibited by any ordinance of the City at the location of the place of business. The city attorney shall notify the city clerk of his determination and shall advise the city clerk to certify on the application in accordance with the city attorney's determination that the sale of alcoholic beverages for which the permit or license is sought is or is not prohibited at the location of the applicant's place of business.

The city attorney shall examine the files referred to him to determine the following:

1. Whether the applicant is disqualified for any reason

under the provisions of the Texas Liquor Control Act from obtaining the permit or license for which he has applied;

2. Whether the premises on which the business is to be operated are adequate, safe and sanitary, and comply with all the terms of this Ordinance and the Texas Liquor Control Act; and,

3. Whether any legal grounds exist why the permit or license applied for should not be issued to the applicant.

If, from such examination, it appears that the applicant is disqualified, or that the applicant's place of business is inadequate, unsafe, insanitary, or does not comply with all the terms of this Ordinance and the Texas Liquor Control Act, or that any unlawful reason exists why the permit or license should not be issued, it shall be the duty of the city attorney to file a petition with the Texas Alcoholic Beverage Commission or the county judge, in the name of the chief of police of the City, setting forth the grounds of objection to the issuance of the permit or license, requesting a hearing on such application and praying that the application is denied. The city attorney shall appear, present evidence and make arguments at the hearing.

SECTION 10. PERIODIC INSPECTION OF PREMISES AND CHARACTER OF LICENSEES. It shall be the duty of the building inspector, chief of police, fire marshal, and health officer, to cause an inspection to be made periodically of all premises of permittees and licensees, and it shall be the duty of the chief of police to cause the moral character and criminal record of all permittees and licensees to be investigated periodically, and if such inspections or investigations reveal that probable cause for suspension or cancellation of a permit or license exists, such official shall immediately inform the city attorney of such fact and furnish supporting evidence. If, from such evidence, it appears that under the provisions of the Texas Liquor Control Act cause for a suspension or cancellation exists it shall be the duty of the city attorney to petition the Texas Alcoholic Beverage Commission to cancel or suspend such permit or license, and to prosecute diligently such petition.

SECTION 11. ANNUAL OCCUPATION TAX FOR BREWERS, DISTILLERS, RECTIFIERS, ETC. - AMOUNTS. There is hereby levied on every person granted and holding a permit of the classes enumerated in this Section and engaged in the business authorized by such permits in the City an annual occupation tax in the following amounts:

1. For each brewer's permit.....\$500.00
2. For each distiller's permit.....\$500.00
3. For each class "A" winery permit.....\$25.00
4. For each rectifier's permit.....\$500.00
5. For each wholesaler's permit.....\$625.00
6. For each class "B" wholesaler's permit...\$100.00
7. For each package store permit.....\$62.50
8. For each wine only package store permit....\$5.00
9. For each bonded warehouse permit.....\$50.00
10. For each wine and beer retailer's permit..\$15.00
11. For each wine bottler's permit.....\$75.00
12. For each medicinal permit
 - a. In a dry area.....\$5.00
 - b. In a wet area.....\$62.50
13. For each physician's permit.....\$.50
14. For each manufacturer's agent's permit....\$2.50

SECTION 12. ANNUAL OCCUPATION TAX FOR BREWERS, DISTILLERS, RECTIFIERS, ETC. - WHEN PAYABLE. All permit taxes required by this Ordinance, except for wine and beer retailer's permits, shall be paid in advance for one (1) year, unless such tax is collected for only a portion of the year. In such latter event, the tax required shall cover the period of time from the date of the permit to midnight of August 31, succeeding, and only the proportionate part of the tax for such permit shall be collected. The fractional part of any month remaining shall be counted as one (1) month in calculating the tax due.

SECTION 13. ANNUAL OCCUPATION TAX - INDIVIDUAL OUTLETS. A separate permit tax shall be paid for each outlet of liquor in the City.

SECTION 14. ANNUAL OCCUPATION TAX FOR MANUFACTURERS, DISTRIBUTORS, ETC. - AMOUNTS. There is hereby levied on every person granted and holding a license of the classes enumerated in this Section and engaged in the business authorized by such license in the City an annual occupation tax in the following amounts:

1. For each manufacturer's license
 - a. Upon one establishment.....\$250.00
 - b. Upon each additional establishment in excess of one, but not to exceed two.....\$500.00
 - c. Upon each additional establishment in excess of two, but not to exceed five.....\$1,425.00
 - d. Upon each additional establishment in excess of five.....\$2,800.00
2. For each general distributor's license.....\$100.00
3. For each local distributor's license.....\$25.00
4. For each branch distributor's license.....\$25.00
5. For each retail dealer's on-premise license.\$12.50
6. For each retail dealer's off-premise license.\$5.00

SECTION 15. ANNUAL OCCUPATION TAX FOR MANUFACTURERS, DISTRIBUTORS, ETC. - WHEN PAYABLE. The license taxes and taxes for wine and beer retailer's permits required by this Ordinance shall be paid in advance for one (1) year from the date of issuance of the state license.

SECTION 16. ANNUAL OCCUPATION TAX - INDIVIDUAL PLACES OF BUSINESS. A separate license tax as required by this Ordinance shall be paid for every place of business where the business of manufacturing or selling beer is conducted.

SECTION 17. PAYMENT OF TAX AND ISSUANCE OF RECEIPT. An applicant to whom a state permit or state license has been issued shall immediately after issuance of the state permit or state license, and before engaging in the business authorized by such permit or license, present such permit or license to the tax assessor and collector of the City and pay the City occupation tax levied by this Ordinance to the director of finance. Upon presentation by the applicant to the tax assessor and collector of a permit or license duly issued by the state to the applicant and

payment of the applicable tax herein prescribed, the tax assessor and collector shall issue to such applicant in the name of the City, a receipt for such payment, which receipt shall contain the number, name and expiration of the state permit or state license, the name of the permittee or licensee, the trade name of the permittee or licensee, the address of the business, the date of issuance and an acknowledgment of receipt of the tax.

SECTION 18. DISPLAY OF RECEIPT. The tax receipt issued by the City tax assessor and collector, upon payment of the taxes levied, as required by this Ordinance, shall be displayed at all times in a conspicuous place within the licensed place of business.

SECTION 19. REFUND OF TAX. No refund of a permit or a license tax paid to the City under the terms of this Ordinance shall be made for any reason by the City, except when the permittee or licensee is prevented from continuing in business by reason of the result of a local option election or by an amendment of the Charter and/or ordinances, and present or future zoning ordinances of the City, changing the use district in which the place of business is situated.

SECTION 20. CANCELLATION FOR NONPAYMENT OF TAX. No permittee or licensee shall engage in the business authorized by his permit or license without first having paid to the City the occupation tax levied by this Ordinance. It shall be the duty of the city attorney to petition the Texas Alcoholic Beverage Commission to cancel the state permit or state license of any permittee or licensee who shall engage in the business authorized by the permit or license of such person without first having paid the taxes levied by this Ordinance.

SECTION 21. SAVINGS CLAUSE. If any section, part or provision of this Ordinance is declared unconstitutional or invalid, then, in that event, it is expressly provided, and it is the intention of the City Commission in passing this Ordinance, that all other parts of this Ordinance shall not be affected thereby and shall remain in full force and effect.

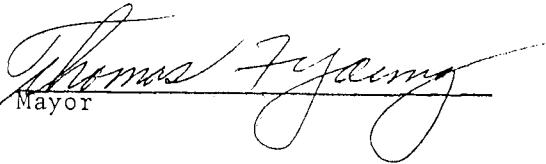
SECTION 22. PENALTY. Any person who shall violate any of the provisions of this Ordinance shall be deemed guilty of a

misdemeanor and upon conviction thereof shall be fined not exceeding \$200.00, and each and every day of such violation shall be deemed a separate and complete offense.

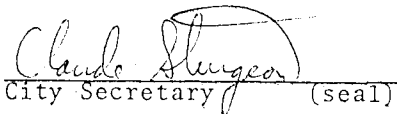
SECTION 23. DECLARING AN EMERGENCY. Whereas, an emergency is apparent for the immediate preservation of order, health, safety, and general welfare of the public, this Ordinance shall be effective from and after the date of its passage and publication as made and provided by the Charter of the City of Commerce, Texas.

PASSED AND APPROVED this the 18th day of April, A. D. 1972.

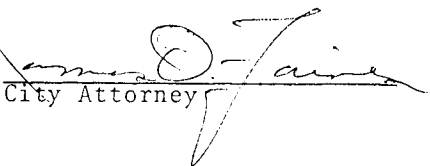
CITY OF COMMERCE, TEXAS


Mayor

ATTEST:


City Secretary (seal)

APPROVED AS TO FORM:


City Attorney