

**CITY OF FARMERSVILLE  
ORDINANCE # 2009 -09**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING ARTICLE 5 OF THE CODE OF ORDINANCES, ENTITLED "BUSINESS AND COMMERCE," BY REPLACING CURRENT SECTION 5.102 ENTITLED "RESERVED" WITH A NEW SECTION 5.102 ENTITLED "MANUFACTURE, SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES" TO READ AS FOLLOWS; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Texas Alcoholic Beverage Code authorizes the City Council of the City of Farmersville, Texas, to require permits for the manufacture, sale or distribution of alcoholic beverages and collect a fee for such permits; and

**WHEREAS**, the Texas Alcoholic Beverage Code authorizes the City Council of the City of Farmersville, Texas, 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 of the City of Farmersville, Texas, finds and determines that having regulations in place regarding such businesses before a potential election is called within any precinct of the City regarding the sale of alcoholic beverages is in the best interest and public health, safety, and welfare of the citizens of the City of Farmersville, Texas.

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

**SECTION I:** Incorporation of premises. The above and foregoing premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION II:** That Article 5 of the City Code of the City of Farmersville, Texas, is hereby amended by replacing current Section 5.102 in its entirety with a new Section 5.102 entitled "Manufacture, Sale and Distribution of Alcoholic Beverages" which shall read as follows:

**Sec. 5.102 Manufacture, Sale and Distribution of Alcoholic Beverages**

**Sec. 5.102.1 Definitions.**

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them herein, except where the context clearly indicates 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.

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

**Beer** - means 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.

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

**Mixed Beverage** - means one or more servings of a beverage composed in whole or in part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

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

**Premises** - means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are

directly or indirectly under the control of the same person.

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

**Sec. 5.102.2 Permit Required; Procedures.**

**A.** It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine or mixed beverages within the City unless such person has obtained a City permit from the Office of the City Secretary.

**B.** Any person wishing to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine or mixed beverages must complete a City permit application and pay the application fee as set forth in Section 5.102.3.

**C.** The City Secretary shall submit each application to the appropriate City departments, as determined by the City Manager, to ensure that the application complies with all City ordinances and regulations, including this Section 5.102.

**D.** Upon investigation of compliance with all applicable ordinances and payment of the initial permit fee as set forth in Section 5.102.3, the City Secretary shall issue to the applicant the proper license, which shall state on its face the location, type of business for which it is issued, and the date when it will expire. The license 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. 5.102.3 Application Fee; Initial Permit Fee.**

**A.** An application fee as determined from time to time by City Council shall be charged by the City Secretary for accepting any permit application or permit renewal application. No permit application or permit renewal

application may be accepted unless accompanied by the application fee.

**B.** The City initial permit fee shall be equal to one-half 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 beer, wine or mixed beverage, unless a different fee is allowed or required by state law. In no event shall the fee exceed the maximum amount permitted by the Legislature of the State of Texas. No City permit may be issued unless the initial permit fee is received.

**C.** The City Secretary shall issue a receipt for the application fee and initial permit fee and keep a record of the same in the City Secretary's office.

**Sec. 5.102.4 Permit Renewal; Permit Renewal Fee.**

**A.** All 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.** 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 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 beer, wine or mixed beverage, unless a different fee is allowed or required by state law. In no event shall the fee exceed the maximum amount permitted by the Legislature of the State of Texas.

**C.** 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.

**D.** A permittee who sells an alcoholic beverage without first having paid the permit renewal fee under this Section commits a misdemeanor punishable by a fine of up to \$200.00.

**Sec. 5.102.5 Hours of Operation.**

The hours of sales of alcoholic beverages in the City shall comply with state law provisions regarding the hours of sale of alcoholic beverages.

**Sec. 5.102.6 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 100 students enrolled and attending courses at the location in question.

**B.** The sale of alcoholic beverages for on 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 100 students enrolled and attending courses at the location in question.

**C.** 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 Texas Alcoholic Beverage Commission ("TABC") under Chapter 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.

**D.** 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.

**E.** 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.

**F.** 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.

**G. 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 is not in the best interests of the public, constitutes waste or inefficient

use of land or other resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, or is not effective or necessary, or that a previous permit was issued for the premises in error and enforcement of the regulation would be inequitable, or 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.

2. 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 this subsection 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 owner who have rendered their property for City taxes as the ownership appears on the last approved City tax roll.

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

**Sec. 5.102.7 Reporting Requirements.**

A. The owner, operator or person in control of an establishment licensed by the State for on-premise alcoholic beverage consumption, which is located in a zoning district in which bars are not permitted, may be required to file with the City Manager's Office an affidavit on a form provided by the City Manager. The affidavit shall reflect gross sales for the preceding twelve (12) month period (or for the period since the restaurant began its operation, whichever time period is shorter), and each affidavit shall show gross sales of food and gross sales of alcoholic beverages, as those terms are defined in the Zoning Ordinance, as separate figures.

**B.** The person operating an establishment subject to the reporting requirements of this Section may be required to file with the City Manager's Office a copy of the filings supplied to the State of Texas for sales tax and a copy of any tax return required by the Texas Alcoholic Beverage Code.

**C.** Legally nonconforming uses having no limitations imposed by ordinance or by the Zoning Board of Adjustments on the amount of alcoholic beverages sold shall not be subject to this Section's reporting requirements.

**D.** Submission of the aforementioned data shall not constitute a waiver of any claim of confidentiality regarding public access to the information.

**E.** The person operating an establishment subject to the reporting requirements of this Section shall permit the City Manager or his designee to view and copy the books, records and receipts relative to sale of food and alcoholic beverages at any time after four (4) hours notice; and such permission shall not be construed to constitute a waiver of any claim of confidentiality the operator may have.

**F.** No person shall fail to keep a record in the manner required by this Section, fail to file any return in the manner required by this Section, keep a false record, or file a false return.

**Sec. 5.102.7 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 obtained and maintained in effect a City permit and a TABC permit at all such times, paid the fee(s) herein levied, and/or timely filed a true and correct report required by the City commits a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00. In addition, the City Secretary shall report such failure to pay to the Texas Alcoholic Beverage Commission.

**SECTION III:** Savings. This Ordinance shall be cumulative of all other ordinances of the City, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has

been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

**SECTION IV:** Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION V:** Penalty. Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10.00 nor more than \$200.00. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

**SECTION VI:** Effective Date. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by Texas law.

**PASSED AND APPROVED** by the City Council of the City of Farmersville, Texas this the 9th day of June, 2009.

APPROVED:

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Donald C. Smith, Mayor

ATTEST:

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Eddie Sims, City Secretary

APPROVED AS TO FORM:

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Alan D. Lathrom, City Attorney