

ORDINANCE NO. 12521-1

**AN ORDINANCE OF THE CITY OF ROPESVILLE, TEXAS, ADOPTING RULES AND REGULATIONS REGARDING ALCOHOLIC BEVERAGES, ENTITLED "SALE OF ALL ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION ONLY"; 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 Ropesville, Texas ("City"), a General Law Type A municipality, is authorized to adopt and implement necessary and reasonable ordinances in the best interests of its citizenry; and

**WHEREAS**, on November 3, 2020, the City of Ropesville held a local Liquor Option Election; and

**WHEREAS**, the voters in the City of Ropesville voted in favor of the legal sale of all alcoholic beverages for off-premises consumption only in the City of Ropesville; and

**WHEREAS**, the Texas Alcoholic Beverage Code authorizes the City Council of the City of Ropesville, Texas ("City Council"), to require permits for the sale of all alcoholic beverages for off-premise consumption 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 Ropesville, Texas;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROPESVILLE, 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. 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.

## **Section 3. Permit Required.**

A. Unless the state law exempts a permittee or licensee from payment of a fee established by this section, a permittee or licensee shall pay the city an annual permit and license fee of one-half the amount of the state fee for each permit and license authorizing the sale of alcoholic beverages.

B. An applicant shall pay the fees established under subsection A to the city secretary's office no later than the 30<sup>th</sup> day after the date the applicant's payment of a state permit or license fee is due.

C. A permittee or licensee who sells an alcoholic beverage at a business location before the applicant pays the fees established by this section commits a class C misdemeanor punishable in accordance with this chapter.

D. The city secretary shall issue and deliver a receipt under this section to the permittee or licensee authorizing the sale of alcoholic beverages under this article and a state permit or license, if the permittee or licensee

- 1) Pays the fees established by subsection (A); and
- 2) Exhibits the permit or license issued by the state.

**Section 4. 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 of one-half the amount of the state fee for each permit and license authorizing the sale of alcoholic beverages, 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 \$500.00.

**Section 5. Hours of Operation.**

The hours of sales of alcoholic beverages for off-premises consumption only in the City shall comply with State law and the permit issued by the State of Texas.

**Section 6. Residential Area.**

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

**Section 7. 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 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.

F. 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.

G. 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.

H. 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.
- I. 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 public notice has been given.

**Section 8. Signs.**

A retail establishment holding a permit under this Ordinance 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.

**Section 9. 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 10. Penalty.**

Any person found in violation of any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not greater than \$500.00. This penalty provision shall be

in addition to any other legal or equitable remedies available to the City to enforce this article. Each day that a violation occurs is a separate offense.

**Section 11. Effective Date.**

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

**Section 12. Repealed.**

All other terms and provisions of the Code of Ordinances of the City of Ropesville, not in conflict herewith and not hereby amended shall remain in full force and effect.

**Section 13. Severability.**

If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Ropesville, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

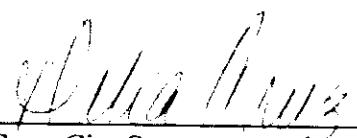
**Section 14. Publication.**

The City Secretary of the City of Ropesville is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

Passed and approved this 25 day of January, 2021.

  
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Brenda Rabel, Mayor

ATTEST:

  
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Delia Cruz, City Secretary