



ORDINANCE No. 2012-12-17.000:

Rescinds and replaces Ordinances No. 29 (1939), No. 45 (1941), and No. 12-881-2 (1981).

AN ORDINANCE OF THE CITY OF SEAGRAVES PROVIDING FOR THE LEVYING OF LICENSE AND PERMIT FEES FOR THE MANUFACTURING AND BREWING FOR THE PURPOSE OF SALE OR SELLING OR DISTRIBUTING OF BEER AND LIGHT WINES UP TO FOURTEEN PERCENT (14%) BY VOLUME AND FURTHER REGULATING THE SALE OF BEER, WINE, AND ALL ALCOHOLIC BEVERAGES CONTAINING ALCOHOL IN EXCESS OF ONE-HALF OF ONE PERCENT BY VOLUME; PROHIBITING THE MANUFACTURING OR BREWING OR SALE OR DISTRIBUTING OF BEER AND LIGHT WINES UP TO FOURTEEN PERCENT (14%) WITHIN THE CORPORATE LIMITS OF THE CITY OF SEAGRAVES WITHOUT FIRST OBTAINING A RECEIPT SHOWING PAYMENT OF SUCH LICENSE AND PERMIT FEES; MAKING IT UNLAWFUL TO POSSESS ALCOHOLIC BEVERAGES EXCEPT IN THE ORIGINAL UNOPENED CONTAINER IN OR UPON THE PUBLIC HIGHWAYS, ROADS, STREETS, ALLEYS, SIDEWALKS, OR PARKS OF THE CITY OF SEAGRAVES; MAKING IT UNLAWFUL TO CONSUME ALCOHOLIC BEVERAGES IN SUCH PUBLIC PLACES; DECLARING OFFENSES; PROVIDING PENALTIES; REPEALING ALL CONFLICTING ORDINANCES AND DECLARING AN EMERGENCY.

This ordinance is passed pursuant to and is referable to the Texas Alcoholic Beverage Code ("TABC"), and the provisions of such code are hereby adopted insofar as the same are applicable, and shall govern the administration and enforcement of this ordinance.

WHEREAS, the City Council for the City of Seagraves (the Council) finds that the manufacturing and brewing and or sale or distribution of alcoholic beverages within the corporate limits of the City of Seagraves necessitates local regulation and rule; and,

WHEREAS, the Council finds that the consumption or possession of alcoholic beverages in open containers upon the public highways, roads, streets, alleys, sidewalks, and parks has the effect of disrupting, and is injurious to, the public peace, order and safety; and endangers the public health; and

WHEREAS, the Council finds it to be in the public interest to adopt an ordinance to regulate the manufacturing and brewing and or sale or distribution of alcoholic beverages and prohibit such consumption or possession of the same in said public places; and,

WHEREAS, the Council recognizes the need for a clear policy for the fees and penalties associated with these services and activities; and,

WHEREAS, the Council recognizes that previous policy omits Texas Alcoholic Beverage Code, disallows reasonable local penalty, and is generally dated.

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NOW, THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEAGRAVES, TEXAS;

SECTION 2012-12-17.001: AUTHORIZATION.

The City Council is hereby authorized and directed to implement the applicable provisions of this Ordinance upon his determination that such implementation is necessary to protect the public welfare and safety.

SECTION 2012-12-17.002: DEFINITIONS.

For the purposes of this chapter, all definitions, words, terms and phrases set forth in the TABC, as amended from time to time, are hereby adopted and made a part hereof.

SECTION 2012-12-17.003: PERMITS.

(a) Required.

(1) It shall be unlawful for any person to manufacture, distill, brew, sell, possess for the purpose of sale or distribute any beer, liquor, wine or other alcoholic beverage, or otherwise engage in any activity for which a license or permit is required by the Texas Alcoholic Beverage Code, as amended, within the city, unless he or she has a current and unrevoked permit issued by the city. The permit must be displayed in a location that is conspicuous to consumers.

(2) Only one permit is required for business establishments within the city, regardless of the number of permits issued by the Texas Alcoholic Beverage Commission. A city permit is required in addition to temporary permits issued by the Texas Alcoholic Beverage Commission which are valid for no more than three days.

(b) Fees established.

(1) *Biennial permit fee.* The biennial permit fee for issuing a license or permit to operate, conduct, and maintain a business establishment selling alcoholic beverages in the city shall be set by the city council from time to time as amended through minute order, in an amount not to exceed the maximum fee per Texas Alcoholic Beverage permit, which the city is authorized by the Texas Alcoholic Beverage Code, as amended, to charge and collect.

(2) The initial fee shall be the maximum fee which the city is authorized by the Texas Alcoholic Beverage Code, as amended, to charge and collect.



(3) *Exemption.* A mixed beverage permit is *not* exempt from the payment of the fee imposed by this subsection during the three-year period following the issuance of the permit as specified in the Texas Alcoholic Beverage Code, as amended.

(c) Payment of fee.

(1) *Term.* The biennial permit fee shall be collected when the application for such permit is submitted. The biennial permit shall be valid for two years from the date of its issuance, and, if issued, during the calendar year, the biennial permit fee shall be collected in full without reduction. The biennial permit shall be renewed by the applicant biennially thereafter during the time that such applicant is engaged in the business of selling alcoholic beverages within the city. Permit applications shall be filed with the city secretary.

(2) *Issuance of permit.* Upon payment to the city secretary of the applicable fee for a permit required by this chapter and exhibition of a license or permit duly issued by the Texas Alcoholic Beverage Commission to the applicant or person paying such fee, the city secretary, shall, in the name of the city, issue and deliver to such applicant or person a permit to engage in the business within the city of the character described in and authorized by the state permit or license held by such applicant or person. Such permit shall authorize the conduct of such business upon the premises described in the state license or permit and shall remain in force for the term authorized in this section.

SECTION 2012-12-17.004: ZONING COMPLIANCE REQUIRED.

No permit shall be granted under the terms of this chapter unless the location at which the business is sought to be established and maintained is a permitted use under the comprehensive zoning ordinance of the city as of or after the effective date thereof.

SECTION 2012-12-17.005: PROHIBITED SALES.

Except as otherwise specifically allowed by the Texas Alcoholic Beverage Commission or as otherwise provided herein, no alcoholic beverages may be sold within 300 feet of a church, public school or private school, or public hospital. No permit or license shall be issued to any such applicant. Measurement of such distance shall be in accordance with the terms of this chapter and the Texas Alcoholic Beverage Code, as amended.

SECTION 2012-12-17.006: METHODS FOR DETERMINING DISTANCE MEASUREMENT.

(a) *Church or public hospital.* 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.

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(b) *Public or private school.* The measurement of distance between the place of business where alcoholic beverages are sold and a public or private school shall be 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.

SECTION 2012-12-17.007: EXCEPTION TO DISTANCE REQUIREMENTS.

Upon receipt of a request, the city council may consider and grant an exception to reduce the distance requirement contained in section 4-6 above if it determines that enforcement of the distance requirements in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the council, after consideration of the health, safety and welfare of the public and the equities of the situation, determine is in the best interest of the city.

SECTION 2012-12-17.008: HOURS.

(a) *Authority.* Pursuant to authority granted by Ch. 105 of the Texas Alcoholic Beverage Code, as amended, the city does hereby adopt the extended hours prescribed for the sale or offering for sale of any mixed beverage, beer or other alcoholic beverage by a holder of certain types of late hours permit.

(b) *Mixed beverages.* No person shall sell, or offer for sale, mixed beverages at any time not permitted by this subsection.

(1) A mixed beverage permittee may sell and offer for sale mixed beverages between 7:00 a.m. and 12:00 midnight on any day except Sunday. On Sunday a mixed beverage permittee may sell mixed beverages between 12:00 midnight and 1:00 a.m. and between 10:00 a.m. and 12:00 midnight, except that an alcoholic beverage served to a customer between 10:00 a.m. and 12:00 noon on Sunday must be provided during the service of food to the customer.

(2) The holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between 12:00 midnight and 2:00 a.m. on any day.

(c) *Beer.* No person shall sell, offer for sale, or deliver beer at any time not permitted by this subsection.

(1) A person may sell, offer for sale, or deliver beer between 7:00 a.m. and 12:00 midnight on any day except Sunday. On Sunday he may sell beer between 12:00 midnight and 1:00 a.m. and between 12:00 noon and 12:00 midnight, except that permittees or licensees authorized to sell for on-premise consumption may sell beer between 10:00 a.m. and 12:00 noon if the beer is served to a customer during the service of food to the customer.

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(2) A holder of a retail dealer's on-premises late hours license may also sell, offer for sale, and deliver beer between 12:00 a.m. (midnight) and 2:00 a.m. on any day.

(d) *Wine and beer retailers.* The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's permit or a wine and beer retailer's off-premise permit are the same as those prescribed for the sale of beer under subsection (c) above, except that no sale shall be allowed between 2:00 a.m. and 12:00 p.m. (noon) on Sunday.

(e) Hours of consumption.

(1) No person shall consume or possess with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12:00 p.m. (noon) and on any other day between 2:15 a.m. and 7:00 a.m. Proof that an alcoholic beverage was possessed with intent to consume in violation of this section requires evidence that the person consumed an alcoholic beverage on that day in violation of this section.

(2) Notwithstanding any other provision of this chapter or the Texas Alcoholic Beverage Code, Ch. 105 as amended, in addition to any other period during which the sale and consumption of alcohol is authorized under this chapter:

a. A licensed or permitted premises located at a festival, fair, or concert may sell alcoholic beverages between 10:00 a.m. and 12:00 p.m. (noon); and

b. A person may consume alcoholic beverages at a festival, fair, or concert between 10:00 a.m. and 12:00 p.m. (noon).

SECTION 2012-12-17.009: POSSESSION OR CONSUMPTION IN CERTAIN PLACES PROHIBITED:

(a) It shall be unlawful for any person to transport, carry, possess, or have any alcoholic beverage in or upon or about any motor vehicle in or upon the public highways, roads, streets, alleys, sidewalks, or parks within the City of Seagraves, except when such alcoholic beverage is in the original unopened container. Provided however, that this section shall not apply to any alcoholic beverage that is locked in the trunk or fixed compartment of a motor vehicle in such a manner as to be inaccessible from the interior or to any person riding in such vehicle,

(b) It shall be unlawful for any person to have in his or her possession any alcoholic beverage, except in the original unopened container, in or upon any public highway, road, street, alley, sidewalk, or park within the City of Seagraves.



(c) It shall be unlawful for any person to consume any alcoholic beverage in or upon any public highway, road, street, alley, sidewalk, or park within the City of Seagraves.

(d) In this section, "unopened container" has the meaning assigned in Section 109.35 of the TABC.

SECTION 2012-12-17.010: PENALTY.

(a) Consumption of alcoholic beverage on premises licensed for off-premises consumption.

(1) A person commits an offense if the person knowingly consumes liquor or beer on the premises of a holder of a wine and beer retailer's off-premise permit or a retail dealer's off-premise license.

(2) A person is presumed to have knowingly violated Subsection (1) of this section if the warning sign required by either Section 26.05 or 71.10 of TABC is displayed on the premises.

(3) A violation of this section is punishable by a fine of not less than \$25 nor more than \$200.

(b) Consumption of alcoholic beverage on public property.

(1) A person commits an offense if the person knowingly consumes liquor or beer on public property as defined in section 2012-12-17.009 of this policy.

(2) A violation of this section is punishable by a fine of not less than \$25 nor more than \$200.

(c) Consumption of alcoholic beverages near schools.

(1) A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a facility that is a public or private school, including a parochial school, which provides all or any part of prekindergarten through twelfth grade.

(2) This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of TABC.

(3) An offense under this section is a Class C misdemeanor.

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(4) In this section, "open container" has the meaning assigned in Section 109.35 of the TABC.

(d) The City of Seagraves reserves the right to punish any violations of this ordinance with prejudice within the limits of TABC and Title 10, Chapter 49 of the Texas Penal Code and any future revision thereto whit.

SECTION 2012-12-17.011: CUMULATIVE AUTHORITY.

The provisions of this ordinance are to be cumulative of all other ordinances, if any, or parts of ordinances, if any governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION 2012-12-17.012: SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Seagraves hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 2012-12-17.013: PUBLICATION.

The City Secretary is hereby authorized and directed to publish this ordinance in the manner and for the length of time prescribed by law.


SECTION 2012-12-17.014: IMPLEMENTATION.

The fact that the possession of opened alcoholic beverages on the public highways, roads, streets, alleys, sidewalks, and parks has disrupted, and is injurious to, the public peace, order and safety, and is dangerous to the public health, moreover, due to the fact that the public peace of the City of Seagraves may be jeopardized as a result of the unlawful manufacture, sale, or distribution of said alcoholic beverages an emergency is hereby declared and the requirement for an ordinance to be read and approved at two separate meetings of the City Council be suspended and that this ordinance be approved upon one reading.

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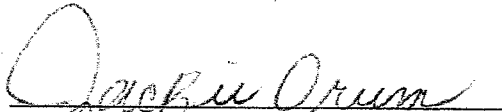
PASSED AND APPROVED this 17 day of December, 2012

CITY OF SEAGRAVES



Brace Huse, Mayor

ATTEST:



Jackie Orum, City Secretary

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