

ORDINANCE NO. 2021-003

AN ORDINANCE OF THE TOWN OF BROCK, TEXAS, ADOPTING REGULATIONS RELATED TO THE SALE OF ALCOHOLIC BEVERAGES WITHIN THE TOWN OF BROCK, TEXAS; PROVIDING FOR DEFINITIONS; REGULATING THE SALE OF ALCOHOLIC BEVERAGES NEAR A CHURCH, SCHOOL OR PUBLIC HOSPITAL; ADOPTING A PERMIT REQUIREMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Brock, Texas is a General-Law Municipality located in Parker County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas (“Town”); and

WHEREAS, the Town held a local option election on May 1, 2021 to consider the issue of legalizing the sale of all alcoholic beverages including mixed beverages; and

WHEREAS, the voters of the Town voted in favor of the issue and the election was properly canvassed; and

WHEREAS, the City Commission of the Town of Brock, Texas (“City Commission”) has investigated and determined that it will be advantageous, beneficial and in the best interest of the citizens of the Town to adopt regulations related to the sale of alcoholic beverages as authorized by the Texas Alcoholic Beverage Code; and

WHEREAS, it is the purpose of this Ordinance to put in place such regulations as are necessary to preserve and promote the public health, safety, and welfare of citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE TOWN OF BROCK, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated as if fully set forth herein.

SECTION 2: Adoption of Ordinance Regulating the Sale of Alcoholic Beverages within the Town of Brock, Texas. The Regulation of the Sale of Alcoholic Beverages within the Town of Brock, Texas shall be as follows:

- A. **Definitions.** Unless the context otherwise requires, the following terms as used in this ordinance shall be construed according to the definitions given below:
- 1) **Alcoholic beverage.** Any spirits, wine, beer, ales, or other liquid containing more than one-half of one percent of alcohol by volume, which is fit for beverage purposes.

- 2) Public place. Any place to which the public, or a substantial group of the public, has access and includes, but is not limited to streets, alleys, highways, public parks, in the common areas of schools, hospitals, churches, apartment houses, office buildings, transport facilities and shops.

B. Sale of Alcoholic Beverages Near a Church, School or Public Hospital

- 1) No person, as defined by the Texas Alcoholic Beverage Code, as amended, shall sell alcoholic beverages if the place of business is within three hundred (300) feet of a church, public or private school, or public hospital except as provided by the Texas Alcoholic Beverage Code, as amended. The sale of alcoholic beverages is also prohibited within one thousand (1,000) feet of a private school if the City Commission adopts by resolution a request for the one thousand (1,000) foot separation from the governing body of a private school. The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:
 - i. 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
 - ii. If a permit or license holder 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, 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.
- 2) Variances. The City Commission may allow variances to the distance restrictions set forth in this ordinance, subject to the applicant following the procedures of this subsection, pursuant to section 109.33(e) of the Texas Alcoholic Beverage Code.
 - i. Application. An applicant for a variance shall submit the following information to the City clerk:
 1. The name of the owner of the property where the business selling alcoholic beverages will be located.
 2. The name and address of the applicant for the alcoholic beverage license or permit.
 3. The type of alcoholic beverage license or permit sought from the Texas Alcoholic Beverage Commission.
 4. The name and address of the church, public or private school or public hospital that creates the need for the variance.
 5. A survey showing the location and distances of the business where alcoholic beverages will be sold; the property lines and front door of the business where alcoholic beverages will be sold; the location of the church, public or private school or public hospital; and the property lines and front door of the church, public or private school or public hospital.

6. A statement of why the variance meets the standards set forth in subsection (5).
 7. Any other information the City clerk deems necessary.
- ii. Fee. A nonrefundable fee of five hundred and no/100 dollars (\$500.00) must be paid to the City clerk when the application for a variance is filed.
 - iii. Notification signs.
 1. Signs required to be posted. An applicant is responsible for procuring and posting signs providing notice of the application for a variance on the property that is the subject of the application. The City clerk shall establish the criteria for the required size and content of the sign.
 2. Number and placement of signs required. The number and placement of the required signs shall be determined by the City clerk or his/her designee.
 3. Posting of signs. The applicant shall post the required number of notification signs on the premises, as that term is defined in Section 11.49 of the Texas Alcoholic Beverage Code, within fourteen (14) days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public. The applicant must remove the signs within three (3) days after a final decision is made on the application or within three (3) days after the application is withdrawn. No sign permit is required for the posting of such signs.
 4. Failure to comply. The applicant must provide verification with photographs that the required signs are posted on the premises seven (7) days prior to the scheduled public hearing date. If the City Commission determines that the applicant has failed to comply with the provisions of this subsection, it shall take no action on the application other than to postpone the public hearing for at least four (4) weeks or deny the applicant's request. If the hearing is postponed, the required notification signs must be posted within twenty-four (24) hours after the case is postponed and comply with all other requirements of this subsection.
 5. Illegal removal of signs. A person commits an offense if he or she intentionally or knowingly removes a notification sign that has been posted pursuant to this subsection. It is a defense to prosecution under this subsection that the sign was no longer required to be posted pursuant to this subsection at the time of its removal.
 - iv. Hearing. The City clerk shall set a date for a public hearing before the City Commission within sixty (60) days after a complete application is filed. Not less than ten (10) days before the public hearing, the City clerk shall:

1. Publish notice of the public hearing in a newspaper of general circulation.
 2. Provide notice of the public hearing to the church, public or private school or public hospital that creates the need for a variance.
- v. Standard for approval. The City Commission may, but is not required to, grant variances to the distance regulations set forth herein, if the City Commission finds that enforcement of the distance regulations:
1. Is not in the best interest of the public;
 2. Constitutes waste or inefficient use of land or other resources;
 3. Creates an undue hardship on an applicant for an alcoholic beverage license or permit;
 4. Does not serve their intended purpose;
 5. Is not effective or necessary; or
 6. For any other reason that the City Commission, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.
- vi. Conditions. City Commission may impose reasonable conditions on the granting of a variance and may require development pursuant to a site plan.
- vii. Action on application. When an application has been denied by the City Commission pursuant to this subsection or when the applicant has withdrawn an application after public notice of the hearing has been given, the applicant may not submit a new application for the same variance for a period of 6 months from the date of the denial or withdrawal unless the application is denied without prejudice.
- viii. Renewal and transfer. A variance granted pursuant to this subsection is valid for subsequent renewals of the alcoholic beverage license or permit. A variance granted pursuant to this subsection may not be transferred to another location or to another alcoholic beverage license or permit holder.

C. Permits

1) Permit required and annual permit fee established.

- 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 other alcoholic beverage within the Town without first paying the appropriate fee to the City clerk and obtaining a Town permit to sell alcoholic beverages at a specific location. The fee shall be equal to one-half of the fee charged by the state, as amended, for the particular license issued by the Texas Alcoholic Beverage Commission ("TABC"), except when said fee is waived according to the provisions of the state alcoholic beverage code. Following payment of the fee and approval of the permit application, as set forth herein, the City clerk shall issue a permit for that location for a period of one year. Such permit fee shall be paid to the City clerk annually.

2) Permit application review/certificate of wet/dry status.

- a. Prior to issuing a Town permit to applicant for the proposed location, the City clerk shall certify whether the location is located in an area that is wet and that the sale of alcoholic beverages at this location is not prohibited by or ordinance. The City clerk shall keep a record of all permits and certificate[s] issued under this ordinance.

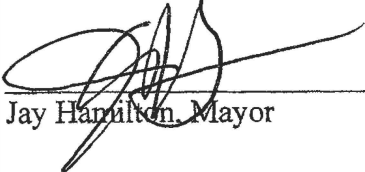
SECTION 3: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Brock hereby declares that is would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 4: Savings and Repealing. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

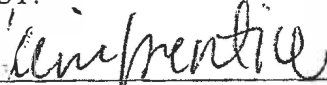
SECTION 5: Penalty. It is the intent of the City Commission of the Town of Brock in adopting this Ordinance that an offense under this Ordinance be a strict liability offense; in the prosecution of an offense under this Ordinance, no pleading or proof of intent shall be required to establish the guilt of an accused. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the Town from filing suit to enjoin the violation.

SECTION 6: Effective Date. This Ordinance shall take effect immediately upon and after its passage and publication as provided by law.

DULY PASSED AND APPROVED BY THE CITY COMMISSION OF THE TOWN OF BROCK, TEXAS this 15th day of July, 2021.



Jay Hamilton, Mayor

ATTEST:


Kerri Prentice, City Clerk