

STATE OF TEXAS §
 §
COUNTY OF SMITH §

FEBRUARY 16, 2010¹

REGULATIONS OF THE COUNTY OF SMITH, TEXAS, FOR THE PURPOSE OF SELLING BEER, WINE, LIQUOR, AND ALCOHOLIC BEVERAGES WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF SMITH; ADOPTING DISTANCE REGULATIONS FROM CHURCHES, PUBLIC HOSPITALS, DAY-CARE CENTERS, CHILD-CARE FACILITIES, PUBLIC AND PRIVATE SCHOOLS; AUTHORIZING A PERMIT FEE; PROHIBITING THE SALE OF BEER, WINE, LIQUOR, AND ALCOHOLIC BEVERAGES IN RESIDENTIAL AREAS; ESTABLISHING THE HOURS OF OPERATION; PROVIDING FOR AN EFFECTIVE DATE, REPEALER, PENALTY CLAUSE AND PROVIDING FOR A SEVERABILITY CLAUSE

WHEREAS, the County of Smith is a political subdivision located in the State of Texas;

WHEREAS, Section 109.33 of the Texas Alcoholic Beverage Code provides that the governing body of a county may enact regulations prohibiting the sale of alcoholic beverages within 300 feet of a church, public or private school, or public hospital;

WHEREAS, Section 109.331 of the Texas Alcoholic Beverage Code provides that the provisions of Section 109.33 relating to a public school also apply to day-care centers and child care centers as those terms are defined in the Texas Human Resources Code;

WHEREAS, the Commissioners Court of Smith County, Texas desires to establish distance regulations for the sale of alcoholic beverages from schools, churches, hospitals, and day-care centers in accordance with the Texas Alcoholic Beverage Code;

WHEREAS, a voter referendum may be held permitting the sale of beer, wine, and/or liquor for off-premise consumption in the unincorporated areas of Smith County;

¹Originally adopted on February 8, 2010, and Section 3.4 amended on February 16, 2010.

WHEREAS, the Commissioners Court of Smith County, Texas desires to prohibit the sale of beer, wine, and liquor in residential areas as permitted by the Texas Alcoholic Beverage Code;

WHEREAS, the Commissioners Court of Smith County, Texas desires to adopt the hours of sale for alcoholic beverages as established by the Texas Alcoholic Beverage Code; and

WHEREAS, the Commissioners Court of Smith County, Texas authorized and levied permit fees for the sale of alcoholic beverages as permitted by the Texas Alcoholic Beverage Code;

NOW THEREFORE BE IT ORDERED BY THE COMMISSIONERS COURT OF SMITH COUNTY, TEXAS:

SECTION 1. The foregoing recitals are incorporated into these Regulations by reference as findings of fact if expressly set forth herein.

SECTION 2. The “Alcoholic Beverages Regulations” for the County of Smith, Texas is adopted and shall read as provided in Attachment “A” attached hereto and incorporated herein as if fully set forth for all purposes.

SECTION 3. That these Regulations shall become effective after its passage by the Commissioners Court.

SECTION 4. These Regulations, upon enactment and effective date, shall control in the event that it conflicts with provisions that may be contained in other Smith County Regulations.

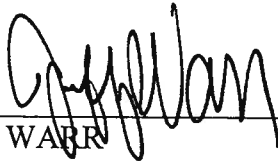
SECTION 5. In the event that any one or more of the provisions, clauses, or words of these Regulations or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provisions, clauses, or words of these Regulations or the application thereof to any other situations or circumstance, and it is intended that these Regulations shall be severable, and that it shall be construed and applied as if such invalid or unconstitutional clause, section, provision, or word had not been included herein.

SECTION 6. That the meeting at which these Regulations was enacted, was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

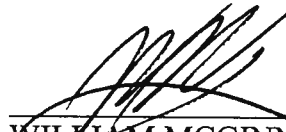
Adopted and Approved by the Smith County Commissioners Court on the 8th day of February, 2010, and amended Section 3.4 on the 16th day of February, 2010.



JOEL P. BAKER 02-16-2010
County Judge



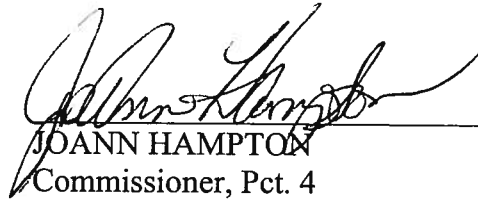
JEFF WARR
Commissioner, Pct. 1



WILLIAM MCGINNIS
Commissioner, Pct. 2



TERRY PHILLIPS
Commissioner, Pct. 3



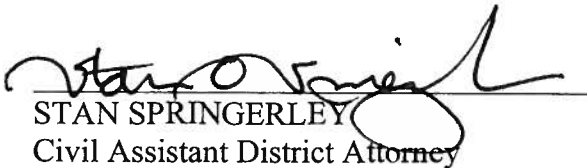
JOANN HAMPTON
Commissioner, Pct. 4

ATTEST:



JUDY CARNES
County Clerk

APPROVED:



STAN SPRINGERLEY
Civil Assistant District Attorney



ATTACHMENT "A"

ALCOHOLIC BEVERAGES REGULATIONS

Section 1. DEFINITIONS

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

- 1) **Alcohol:** Ethyl alcohol, hydrated oxide of ethyl, liquor, spirits of wine, from whatever source or by whatever process produced.
- 2) **Alcoholic Beverage:** Includes all alcohol, distilled spirits, beer, malt beverage, wine or fortified wine as defined in these Regulations.
- 3) **Beer or Malt Beverage:** Any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other product, or any combination of such products in water containing not more than fourteen percent (14%) alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer, and strong beer. Also included are beverages known as "non-alcoholic beer" which is made by fermentation of any infusion or decoction of barley, malt, hops, or other products, and containing less than three percent (3%), but more than zero point one percent (0.1%) alcohol by volume. The term "malt beverage" does not include sake, known as Japanese rice wine.
- 4) **Child-care facility:** A facility licensed, certified, or registered by the Department of Human Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.
- 5) **Day Care Center:** A child-care facility that provides care for more than twelve (12) children under fourteen (14) years of age for less than 24 hours a day.
- 6) **Fortified Wine:** Any alcoholic beverage containing more than twenty-one percent (21%) alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. "Fortified wine" includes, but is not limited to, brandy.
- 7) **Permit:** An authorization granted by the County for the sale of alcoholic beverages within the unincorporated areas of the County.

- 8) **Permitee:** The individual to whom a license is issued or, in the case of a partnership or corporation, all partners, officers, and directors of said partnership or corporation.
- 9) **Person:** Any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private or quasi public.
- 10) **Place of Worship:** A building or structure, or groups of buildings or structures that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.
- 11) **Private School:** A school including a parochial school that is not operated by an Independent School District that offers a course of instruction for students in one or more grades from kindergarten through grade twelve (12) and has more than 100 students enrolled and attending courses at a single location.
- 12) **Public School:** Any school operated by an Independent School District that offers a course of instruction for students in one or more grades from kindergarten through grade twelve (12).
- 13) **Wine:** Any alcoholic beverage containing not more than twenty-one percent (21%) alcohol made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. "Wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term "wine" does not include Fortified Wine or cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage.

SECTION 2. PERMITS

2.1. Permit Required

It shall be unlawful for any person to manufacture, distill, brew, sell possess for the purpose of sale any beer, 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 Smith County, unless the person has a current and unrevoked permit issued by the County.

2.2. Fee Established

- A. The annual permit fee for issuing a license or permit to operate, conduct, and maintain a business establishment selling alcoholic beverages in the County

shall be in an amount that does not exceed one-half of the State fee for which an alcoholic beverage permit is required under the Texas Alcoholic Beverage Code, as amended, to charge and collect.

- B. The County of Smith adopts those exemptions from the permit and fee requirement as provided in the Texas Alcoholic Beverage Code.

2.3. Payment of Fee

The permit fee shall be paid by the permittee to the Tax Assessor/Collector when the application for such permit, or a renewal thereof, is made.

2.4. Issuance of Permit

- A. Upon payment to the Tax Assessor/Collector of the applicable fee for a permit required by these Regulations and exhibition of a license or permit duly issued by the Texas Alcoholic Beverage Commission to the applicant or person paying such fee, the Tax Assessor/Collector, shall, in the name of Smith County, issue and deliver to such applicant or person a permit to engage in the business within Smith County of the character described in and authorized by the State permit or license held by such applicant or person. The permit so issued in the name of Smith County shall authorize the conduct of such business upon the premises described in the State permit, and shall remain in force only so long as such State permit remains in force.
- B. The permit shall be valid only for one (1) year (365 days) from the date of its issuance, and if issued during the calendar year, the permit fee shall be collected in full without reduction.
- C. All permits issued under these Regulations shall expire on December 31st of each year and shall be renewed by the applicant annually thereafter during the time that such applicant is engaged in the business of selling alcoholic beverages within Smith County.
- D. Permit applications shall be filed with the Tax Assessor/Collector.

SECTION 3. THE SALE OF ALCOHOL BEVERAGES IN SMITH COUNTY

3.1. Sale of Beer and Wine Prohibited in Residential Areas

The sale of off-premises beer, wine, and liquor in residential areas is hereby prohibited. Under this Section, residential areas shall mean any property located near any residential component of an approved planned development as shown in the filed plat thereof.

3.2. Sale of Alcoholic Beverages near Churches, Public Hospitals, Public or Private Schools

A. Churches and Public Hospitals.

1. The sale of alcoholic beverages within 300 feet of a church or public hospital is hereby prohibited.
2. 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 direct line across intersections.

B. Public schools, private schools and day care/child care facilities

1. The sale of alcoholic beverages within a minimum of 300 feet of a public or private school is hereby prohibited, and may be extended pursuant to paragraph 5 below.
2. The sale of alcoholic beverages within 300 feet of a day care or child care facility is hereby prohibited.
3. The measurement of the 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 school to the property line of the place of business, and in a direct line across intersections.
4. The measurement of the distance between the place of business where alcoholic beverages are sold and a day care or child care facility shall be in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections.
5. The sale of alcoholic beverages within 1000 feet of a public or private school is hereby prohibited upon receipt of a request from that school district or private school opting in to the Smith County Subdivision Regulations and having the request recorded in the minutes of the Commissioners Court.

3.3. Exceptions

- A. The above regulations prohibiting the sale of alcoholic beverages within specified distances from churches, public hospitals, public schools, private schools, day care and child care facilities are subject to any and all conditions and exceptions established in the Texas Alcoholic Beverage Code.
- B. Upon receipt of a variance request, Smith County may consider and grant an exception to reduce the distance requirements contained in Section 3.2. if the County 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 County, 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 County.

3.4. Hours of Sale of Alcoholic Beverages

A. Beer and Wine Permit

The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's off-premise permit as established by Section 105.04 of the Texas Alcoholic Beverage Code, are the same as those prescribed for the sale of beer under Section 105.05 of the Texas Alcoholic Beverage code, except that no sale shall be allowed between 1:00 a.m. and noon on Sunday. The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's off-premise permit shall be established by Section 105.05 as follows:

1. Monday through Saturday: A wine and beer retailer's off-premise permittee may sell, offer for sale, or deliver wine and beer between the hours of midnight and 1:00 a.m. and between the hours of 7:00 a.m. and midnight on any day except Sunday.
2. Sunday: A wine and beer retailer's off-premise permittee may sell, offer for sale, or deliver wine and beer between the hours of midnight and 1:00 a.m. and between the hours of noon and midnight, except that permittees or licenses authorized to sell for on-premise consumption may sell wine and beer between 10:00 a.m. and noon if the wine and beer is served to a customer during the service of food to the customer.

B. Mixed Beverage Permit

The hours of sale for mixed beverages shall be as established by Section 105.03, Texas Alcoholic Beverage Code, as follows:

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

SECTION 4. NO OUTSIDE CONSUMPTION

- A. It is prohibited for customers to leave the premises with open alcoholic beverages and it is the licensee's responsibility to ensure that no open beverages are sold and carried out.
- B. It is prohibited for customers to gather outside an alcoholic beverage establishment and consume alcoholic beverages.

C. It is prohibited for the manager or any employee to allow persons to gather outside the property boundaries of an alcoholic beverage establishment and consume alcoholic beverages.

SECTION 5. FAILURE TO REQUIRE AND PROPERLY CHECK IDENTIFICATION

A. It shall be a violation not to require and properly check identification to ensure an underage person is not sold or have in his/her possession, alcoholic beverages while in a licensed establishment.

B. "Identification" in this Section shall mean any document issued by a governmental agency containing a description of the person, such person's photograph and giving such person's date of birth and shall include, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.

SECTION 6. PENALTY

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of these Regulations shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), and each day any violation or noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, including injunctive power, may be exercised in enforcing these Regulations whether or not there has been a complaint filed.