

ORDINANCE NO. 2012-09-25-001

Amendment 2010-11-23-001

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, LEVYING FEES ON HOLDERS OF PERMITS AND LICENSES ISSUED UNDER THE STATE ALCOHOLIC BEVERAGE CODE; PROVIDING FOR REFERRAL AND REVIEW PROCEDURES; PROVIDING FOR THE CHIEF OF POLICE TO MAKE RECOMMENDATIONS; PROVIDING PENALTY AND OPEN MEETING CLAUSES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, THAT:

Section 1. State Law Authority. 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.

Section 2. Definitions. For the purpose of this Ordinance, 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 3. License and Permit Fees.

(a) Pursuant to the authority granted to cities in Section 11.38, TABC, there is hereby prescribed and levied a permit fee for each premises located within the City of Kempner (the "City") that is required to obtain and hold a permit issued under the provisions of Chapter 11, TABC. Such fee is hereby established as an amount equal to one-half (50%) of the state permit fee payable for and with respect to each such premises, save and except the applicable exemptions to the fee identified in Section 11.38(d), as amended, shall apply.

(b) Pursuant to the authority granted to cities in Section 61.36, TABC, there is hereby prescribed and levied an license fee for each premises located within the City that is required to obtain and hold a permit issued under the provisions of Chapter 61, TABC. Such license fee is hereby established as an amount equal to one-half (50%) of the state license fee payable for and with respect to each such premises.

Section 4. Payment of Fees. All fees required pursuant to this Ordinance shall be paid in advance to the City Secretary for at the same time that the state renewal fee is due and payable. The City Secretary shall issue an appropriate receipt for the payment of each such fee and the holder of the state permit or license involved shall display such receipt in some conspicuous place on the premises in the same manner that the applicable state license or permit is displayed.

Section 5. Review and Recommendation. For the purposes of obtaining a recommendation as provided for in Section 11.41, TABC, every person, firm or entity making application for a permit, pursuant to Chapters 11 or 61, TABC, within the City, shall be required to provide such information as may be reasonably required, including a copy of the application made to the Alcoholic Beverage Commission (the "Commission") and a personal history, to the Chief of Police. The Chief of Police shall review such application and materials, make such reasonable investigation as is deemed prudent, and make a written recommendation pursuant to Section 11.41, TABC. In the event the Chief of Police makes written objection to the issuance of any such permit or license, such recommendation shall be communicated to the Commission and no city permit or license shall be issued by the City on such application until such time, if any, as the Commission shall grant the requested permit or license.

Section 6. Hours of Operation. A permittee or licensee operating a authorized bar or private club within the City limits may sell and allow persons to consume or be served alcoholic beverages on the premises on during all other hours as may be permitted by the TABC.

Section 7. Cancellation and Suspension of Permits. A permit or license issued pursuant to this ordinance may be canceled, denied or revoked as provided in Subchapter C of Chapters 11 or 61, TABC. The City shall have all powers, duties and remedies permitted in Chapter 11 or 61, TABC.

Section 8. Violations and Penalties. A licensee or permittee who sells an alcoholic beverage without first having paid the fees levied under this Ordinance or who fails to pay the full amount of the fees levied under this Ordinance when due commits a misdemeanor punishable by a fine of not less than \$10.00 or more than \$200.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein. Any violation of this ordinance may be used as grounds for cancellation, suspension or denial of a permit.

Section 9. Sale of Alcoholic Beverages Near School, Church, or Hospital.

(a) Prohibition on Sale of Alcoholic Beverages. It shall be unlawful for any person to sell either wholesale or retail, any alcoholic beverage (as defined by the Texas Alcoholic Beverage Code) within three hundred (300) feet of a church, public school, private school, or public hospital.

(b) Measuring Distance.

- (1) Church or Public Hospital. The measurement of the distance between the place of business where the alcoholic beverage is 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.
- (2) Public or Private Schools. The measurement of the distance between the

place of business where the alcoholic beverage is sold and the public or private school shall be:

- (A) 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
- (B) if the 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.

(c) TABC Controls. In the event of a conflict between the method of measuring distance set forth in this ordinance and set forth Section 109.33, TABC, as amended, the measurement set forth in the TABC shall control.

Section 10. Sales Beer in Residential Area Prohibited. It shall be unlawful for any person to sell, either wholesale or retail, beer within any residential area of the City.

Section 11. Penalty. Any person who shall violate any of the provisions of Sections 9 or 10, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

Section 12. Amendment and Repeal of Ordinances. All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of the most restrictive ordinance shall govern.

Section 13. Severability. If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 14. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in the manner set forth in and required by the Local Gov't Code.

Section 15. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND ADOPTED this the 25th day of September, 2012.

CITY OF KEMPNER, TEXAS

Attest:

Gene Isenhour, Mayor

Frances Spinney, City Secretary