

**CHAPTER 86: SALE AND PURCHASE OF ALCOHOLIC BEVERAGES**

**General Provisions**

Section

86.01	General Purpose
86.02	Definitions
86.03	Reserved
86.04	Permits Required
86.05	Permit Fees Established
86.06	Payment of Permit Fees
86.07	Issuance of Permits
86.08	Cancellation and Suspension of Permits
86.09	Violations & Procedures for Application & Compliance
86.10	Retail Sales of Alcohol near Churches, Public or Private Schools & Public Hospitals
86.11	Sale of All Alcohol including Mixed Beverages in Residential Area Prohibited
86.12	Selling Of Alcoholic Beverages Restricted To Certain Hours
86.13	Failures to require and properly check identification
86.14	Penalties & Fine Schedule
86.15	Consumption of Alcohol
86.16	Severability
86.17	Publication
86.18	Effective Date

**DIVISION. 1. GENERALLY**

**CHAPTER 86: SALE AND PURCHASE OF ALCOHOLIC BEVERAGES INCLUDING MIXED BEVERAGES**

**§ 86.01 PURPOSE**

The purpose of alcoholic beverage regulations is to protect the public health, safety and welfare of the City's citizens.

**§ 86.02 DEFINITIONS**

For the purposes of this ordinance, all definitions of words, terms and phrases as set forth in the Texas Alcoholic Beverage Code are adopted and made a part of this Ordinance.

*Business.* An establishment, including but not limited to a general merchandise or food store and/or shop of any size or motor vehicle fueling station, filling or service station engaged or an establishment primarily engaged in the selling of alcoholic beverages including mixed beverages to the general public and rendering services incidental to the sale of such goods.

*Church.* A building which is primarily used for religious purposes by a group of persons organized for religious purposes.

*Open Container.* A container that is no longer sealed.

*Permit.* An authorization granted by the City for sale of alcoholic beverages including mixed beverages within the City.

*Person.* A natural or association of natural persons, trustee, receiver, partnership, corporation, limited liability company, organization or the manager, agent, servant or employee or any of them.

*Private School.* A parochial school shall mean a school that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

*Public.* A place that is accessible to or shared by all members of the community.

*Public Hospital.* An establishment that:

- (1) Offers services, facilities, and beds for use for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy;
- (2) Regularly maintains, at a minimum, clinical laboratory services, diagnostic x-ray services, treatment facilities, including surgery or obstetrical care, and other definitive medical or surgical treatment of similar extent; and
- (3) Licensed to operate as a hospital by the Texas Department of State Health Services or its successor.

## **§ 86.03 RESERVED**

### **DIVISION 2. PERMITS**

## **§ 86.04 REQUIRED**

It shall be unlawful for any person to manufacture, distill, brew, sell and/or possess for the purpose of sale any beer, wine or other alcoholic beverage including mixed beverages, 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 the person has a current and unrevoked permit issued by the City.

## **§ 86.05 FEES ESTABLISHED**

- a) The city shall levy and collect one-half of the state fee collected for each permit issued under the Alcoholic Beverage Code for premises located within the corporate limits of the city.
- b) The city shall levy and collect one-half of the state fee for each license, except a temporary or agent's beer license, issued under the Alcoholic Beverage Code for premises located within the corporate limits of the city.
- c) Amended Fee Ordinance- ORDINANCE #: 2014-07-29B, APPENDIX "A" CITY OF OVERTON – SCHEDULE OF FEES is hereby amended to revise "Section X" as follows: The city shall levy and collect one-half of the state fee collected for each permit issued under the Alcoholic Beverage Code for premises located within the corporate limits of the city.

- d) Exemptions. The city adopts those exemptions from the permit fee requirement as provided in the Texas Alcoholic Beverage Code, section 11.38(d).
- e) Application and Inspection Fee. The application and inspection fee for verifying the information needed in applications and for approvals by the City shall be in the amount of \$50.00. ORDINANCE #: 2014-07-29B, APPENDIX “A” CITY OF OVERTON – SCHEDULE OF FEES is hereby amended to revise “Section X- Item 2” that establishes an Application and Inspection fee of \$50.00. APPENDIX “A” SCHEDULE OF FEES may be amended from time to time.

#### **§ 86.06 PAYMENT OF FEES**

All fees required under this Ordinance, except for the application and inspection fee, shall be paid in advance to the City Secretary for a two-year term at the same time that the state biennial fee is due and payable for each respective license and/or permit, including renewals thereof. All payments must be made by cash, cashier’s check, certified check, or money order.

#### **§ 86.07 ISSUANCE OF PERMIT**

- a) The office of the City Secretary shall, in the name of the City, issue and deliver to such applicant or person a permit (a receipt evidencing payment of the fee(s) shall be sufficient proof of a city permit) to engage in a business that sells alcoholic beverages including mixed beverages within the City of the character described in and authorized by the state permit held by such applicant or person. This permit issued in the name of the City shall authorize the conduct of such business upon the premises described in the state permit, and shall remain in full force only so long as the state permit remains in force. The City permit will be issued upon payment to the office of the City Secretary of the applicable fee(s) for a permit as required by this Ordinance and according to state law. The office of the City Secretary shall keep a record of all permits and/or receipts issued under this Ordinance.
- b) The permit shall be valid for only two (2) years from the date of its issuance. All permits issued under the terms of this Ordinance shall terminate at midnight on the day before the anniversary date of its issuance, and no receipt shall be issued covering a longer term than two (2) years. Upon expiration of any permit issued under this Ordinance, the applicant or person shall renew biennially thereafter during the time that such person is engaged in the business of selling alcoholic beverages including mixed beverages within the City.
- c) Permit applications shall be filed with the office of the City Secretary.
- d) All permits issued under this ordinance shall be displayed in a conspicuous place at all times, on the premises for which the permit is issued.

#### **§ 86.08 CANCELLATION AND SUSPENSION OF PERMITS**

A permit issued under this Ordinance may be canceled, denied, or revoked as provided under chapters 11 or 61 of the Texas Alcoholic Beverage Code, as amended. The City shall have all powers, duties and remedies permitted under state law.

## **DIVISION 3. VIOLATIONS AND PROCEDURES**

### **§ 86.09 APPLICATION AND COMPLIANCE**

Before the City Secretary shall sign any city permit or application for a permit under the Texas Alcoholic Beverage Code, as amended, or any biennial renewal, the city permit and application shall be submitted to the appropriate city departments, as determined by the City Manager, to ensure that the city permit and application comply with all city ordinances and regulations and are for premises located in a wet area.

### **§ 86.10 RETAIL SALES NEAR CHURCHES, PUBLIC HOSPITALS AND PUBLIC OR PRIVATE SCHOOLS**

- a) Distance requirements Churches, Day Care or Child Care Centers, Public or Private Schools and Public Hospitals. Alcoholic beverages shall not be sold by a dealer or person whose place of business is within three hundred (300) feet of a church or public hospital.
- b) Measurement requirements Churches and Public Hospitals.
  - (1) 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 a direct line across intersections. In places of business with one or more front doors, measurement shall begin at a point equidistant between the two front doors that are farthest apart.
- c) Measurement requirements Day Care or Child Care Centers Public or Private Schools.
  - (1) The measurement of the distance between the place of business where alcoholic beverages are sold and the 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.
- d) Variance procedures. The City Council may allow variances to the regulation when it determines that enforcement of the regulation 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 license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason, if, after consideration of the health, safety and welfare of the public and the equities of the situation, determines that it is in the best interest of the community.

### **§ 86.11 SALE OF ALL ALCOHOLIC BEVERAGES INCLUDING MIXED BEVERAGES IN RESIDENTIAL AREA PROHIBITED**

The sale of all alcohol including mixed beverages is prohibited at a location that is within residential zoned areas, or within residential zoning districts where residential uses are allowed. Residential areas include properties that allow vertical mixed use developments with a residential component, except the central business district. Under this ordinance, residential areas shall mean any property located in the following districts as described in the city's zoning ordinance, as amended from time to time:

- (1) Single-family residential detached (SF).
- (2) Multiple-family residential (MF).
- (3) HUD-Code manufactured home park district (MH).

**§ 86.12 SELLING OF ALCOHOLIC BEVERAGES RESTRICTED TO CERTAIN HOURS**

Any person, firm, or corporation authorized to offer for sale alcoholic beverages within the city limits will do so only during the hours authorized under V.T.C.A., Alcoholic Beverage Code Chapter. 105. Hours of Sale and Consumption.

**§ 86.13 FAILURES TO REQUIRE AND PROPERLY CHECK IDENTIFICATION**

- (a) All permittees, and/or their employees shall require and properly check identification before selling any alcoholic beverage to any customer to ensure an underage person is not sold and/or does not have in his/her possession alcoholic beverages while in a licensed business.
- (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.

**§ 86.14 PENALTY; OTHER REMEDIES**

- (a) Any person violating or failing to comply with any of the provisions of this ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), unless the violation involves fire safety, zoning, or public health and sanitation, in which case the person shall be fined an amount not to exceed two thousand (\$2,000.00). Each day any violation or noncompliance continues shall constitute separate and distinct offenses. The penalty provided herein shall be cumulative of other remedies provided by state law, and the power of injunction as provided in sections 54.012 and 54.016 of the Texas Local Government Code, as may be amended, may be exercised in enforcing this ordinance, whether or not there had been a complaint filed.
- (b) The penal provisions imposed under this section are cumulative of all other remedies and nonexclusive. These penal provisions shall not be deemed nor construed to limit the availability of any remedy against any person or property otherwise provided by law, including without limitation fines, penalties, closure and injunction. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.
- (c) A person who violates a provision of this ordinance in which a specific penalty is not provided, is guilty of a misdemeanor and, on conviction, is punishable as provided in Section 10.08 of this code. The term “specific penalty,” as used in this section, means a penalty that might be imposed as a result of a criminal prosecution.

## **§ 86.15 CONSUMPTION OF ALCOHOL**

Possession of an open container of an alcoholic beverage or consumption of an alcoholic beverage in any public place inside the city limits of the City of Overton, Texas is prohibited except as provided and under the terms and conditions specified in the following Subsections:

- (a) Possession or consumption of alcoholic beverages is allowed by patrons, lessees or invitees of the Overton Golf Course; and
- (b) Possession or consumption of alcoholic beverages is allowed by lessees and/or their invitees within the confines of the Overton RV Park; and
- (c) Possession or consumption of alcoholic beverages is allowed by Lessees and their invitees of the Overton Community Building subject to the following requirements:
  - (i.) Lessee has completed and filed with the City a properly completed and executed Lease Agreement.
  - (ii.) Lessee has paid the requisite deposit needed to reserve the facility for its intended use.
  - (iii.) Lessee has secured the services of a commissioned licensed police officer to provide security during the event.

## **§ 86.16 SEVERABILITY**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

## **§ 86.17 PUBLICATION**

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

## **§ 86.18 EFFECTIVE DATE**

This Ordinance shall be effective immediately upon its passage and approval.

*(Adopted by Ordinance No. 2014-11-20Am Amended by Ordinance 2015-12-17A)*