

ORDINANCE NO. 160-2017A

AN ORDINANCE OF THE CITY OF LONE OAK, HUNT COUNTY, TEXAS, AMENDING ORDINANCE #160-2017 RELATING TO THE SALE OF ALCOHOL PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE ESTABLISHING REGULATIONS FOR THE PURPOSE OF THE SELLING OF BEER AND WINE; PERMITS AND LICENSES FOR SAID SALE; PROHIBITING AND PERMITTING AREAS FOR SAID SALE; REGULATING THE SALE AND CONSUMPTION OF BEER AND WINE IN RESIDENTIAL AREAS; REGULATING THE POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PUBLIC SCHOOLS, PRIVATE SCHOOLS, PUBLIC HOSPITALS, CHILD CARE FACILITIES, AND DAY CARE CENTERS; ESTABLISHING PERMITS AND APPLICATION FEES FOR THE PROCESSING OF GRANTING PERMITS AN LICENSES TO APPLICANTS; FEES TO APPLICANTS FOR SAID LICENSE; REGULATING SIGNS ADVERTISING THE SALE OF BEER, WINE, AND OTHER ALCOHOLIC BEVERAGES; THE REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Lone Oak has determined that it is in the best interest of the public health, safety, and general welfare of the public to regulate the sale and consumption of alcoholic beverages with the city limits of the City of Lone Oak, Texas; and

WHEREAS, Texas Alcoholic Beverage Code § 109.331 authorizes the City of Lone Oak, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a church, public school, private school, or public hospital; and

WHEREAS, Texas Alcoholic Beverage Code § 109.33 authorizes the City of Lone Oak, Texas by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a day-care or child-care facility; and

WHEREAS, Texas Alcoholic Beverage Code § 101.75 prohibits the possession of an open container or consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a public or private school; and

WHEREAS, the meeting at which this Ordinance 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.

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

SECTION 1. INCORPORATION OF STATE STATUTES BY REFERENCE AND REPEAL OF EXISTING ORDINANCES

That all of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2. DEFINITIONS

All terms used herein shall have the meaning assigned to them by the Texas Alcoholic Beverage Code, as amended.

SECTION 3. PERMITTED USES

(A) Beer and wine retail sales (no drive-through) and pre-packaged alcoholic beverage retail sales (no drive-through) which hold an alcoholic beverage permit issued by the City Secretary will be allowed to operate only in areas that are zoned C-1 Retail Commercial.

(B) Beer and wine retail sales (drive-through) and pre-packaged alcoholic beverage retail sales (drive-through) are not permitted.

(C) The sale of alcoholic beverages for on-premises consumption shall only be permitted by restaurants or motels holding a food and beverage certificate and the restaurant's or motel's revenue from the sale of alcoholic beverages shall be less than fifty percent of its gross revenue.

(D) The sale of alcoholic beverages for off-premises consumption shall only be permitted by neighborhood convenience centers that derive fifteen percent or more of their gross revenue from the sale of non-alcoholic products and products not subject to motor fuel tax.

(E) Mixed beverage sales for on-premises consumption will be allowed to operate only in areas that are zoned C-1 Retail Commercial.

(F) Any business, existing or new, that desires to sell any alcoholic beverage within the city limits must obtain an alcoholic beverage permit issued by the city.

SECTION 4. REGULATING THE SALE OF ALCOHOLIC BEVERAGES NEAR CHURCHES, PUBLIC OR PRIVATE SCHOOLS, PUBLIC HOSPITALS, DAY-CARE CENTERS OR CHILD-CARE FACILITIES

(A) It shall be unlawful for any dealer to sell alcoholic beverages from or at a place of business within this city within 300 feet of a church, public school, private school, or hospital.

(B) The measurement of the distance between the places 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 door to door and in a direct line across intersections.

(C) 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 property line of the public or private school and the property line of the place of business and in a direct line across intersections.

(D) It shall be unlawful for any dealer who does not hold a food and beverage permit to sell alcoholic beverages from or at a place of business within this city within 300 feet day care center or child care facility.

(E) This section does not apply to a foster group home, foster home, family home, agency group home as those terms are defined by the Texas Human Resources Code § 42.002.

(F) The City Council may allow variances to the distance regulations established above if the City Council 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 that the City Council, after consideration of health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

(G) No variance may be granted under subsection (G) except after a public hearing for which notice has been given as provided in this subsection. Notice of request for a variance shall be given to owners of property within three hundred (300) feet of the business. The notice shall be sent regular United States mail, not less than ten (10) days before the date set for the hearing, to all such owners who have rendered property for the City taxes as the ownership appears on the last approved City tax roll.

SECTION 5. SALE IN RESIDENTIAL AREAS

It shall be unlawful for any person or dealer to sell alcoholic beverages on residential lots, tracts, or parcels of land zoned as residential with this city.

SECTION 6. SIGNAGE

(A) No person may erect or maintain a billboard, electric sign, or any outdoor advertising in violation of any ordinance of the city or this ordinance.

(B) No person may erect or maintain a billboard, electric sign, or any outdoor advertising for the sale or consumption of an alcoholic beverage within the city limits.

(C) No person may erect, post, or display any signs for the sale or consumption of alcoholic beverages or other forms of advertisement inside the alcoholic beverage establishment if same can be viewed from a public street.

SECTION 7. PERMITS REQUIRED: FEES

(A) It shall be unlawful for any person to sell alcoholic beverages within the City unless such person has obtained a permit or license from the Texas Alcoholic Beverages Commission.

(B) On-premises consumption. It is illegal to consume alcohol beverages on-premises where sold.

(C) Off-premises consumption. For off-premises consumption, the City hereby levies an annual fee in a sum equal to fifty percent of the state's fee for a beer retailer's off-premises license or permit and all other licenses or permits required, as authorized by the Texas Alcoholic Beverage Code, except a temporary or agent's beer license issued for premises within the city limits.

(D) Application fee. There is hereby levied a \$300.00, non-refundable, administrative processing fee for acceptance, review, and verification of all new applications.

(E) Payment receipt. All payments shall be made to the city along with the submission of the application. The city shall issue a receipt for display with the state license or permit on the licensed or permitted premises.

SECTION 8. HOURS OF OPERATION

It is unlawful for any person to sell or deliver any alcoholic beverages in the City except within those hours as prescribed by state law.

SECTION 9. PENALTY

(A) Any person who violates or fails to comply with this ordinance, and any person who is the alcohol beverage permit or license holder or who otherwise operates any alcoholic beverage establishment that does not comply with the requirements of this ordinance, and/or any responsible officer of that alcoholic beverage permit or license holder, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than \$500.00. Each day any violation or noncompliance continues constitutes a separate offense.

(B) A violation of any term or provision of this ordinance may be enjoined by civil injunctive relief. The City may, at its sole discretion, seek injunctive and other equitable relief to restrain any violation of this ordinance and may, in addition, pursue any lawful remedies to correct, abate, or punish any violation hereof.

(C) The penalties and remedies provided for in this ordinance are not exclusive of each other or of any other remedy at law or in equity, and all such remedies are declared to be cumulative.

SECTION 10. CONFLICT

All provisions of the Ordinances of the City of Lone Oak in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict, and all other provisions of the Ordinances of the City of Lone Oak not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 11. SEVERABILITY

If any section, article, paragraph, sentence, clause, phrase, or word in this ordinance or application thereto any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance and the City Council hereby

declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full effect and force.

SECTION 12. EFFECTIVE DATE

The fact that the present ordinances and regulations of the City of Lone Oak, Hunt County, Texas, are inadequate to properly safeguard the health, safety, morals, peace, and general welfare of the inhabitants of the City of Lone Oak, Hunt County, Texas, creates an emergency for the immediate preservation of public business, property, health, safety, and general welfare of the public that requires that this ordinance shall become effective from and after the date of its passage and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF LONE OAK,
HUNT COUNTY, TEXAS THIS _____ DAY OF _____, _____.**

Douglas E. Williams, Mayor

ATTEST:

Kathy Voss, City Secretary