



To: City Council

From: Michael Barrera, City Manager

Date February 24, 2017

Re: Alcohol Beverage Ordinance Amendment – 2<sup>nd</sup> Reading, as amended.

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**Caption**

**AN ORDINANCE OF THE CITY OF MATHIS, TEXAS PROVIDING FOR LEVY AND COLLECTION OF FEES AND THE ISSUANCE OF LICENSES BY THE CITY OF MATHIS TO PERSONS ENGAGED IN THE SALE, MANUFACTURE OR DISTRIBUTION OF BEER, LIQUOR, WINE OR OTHER ALCOHOLIC BEVERAGES; MAKING IT UNLAWFUL FOR ANY DEALER WHOSE PRINCIPAL BUSINESS IS THE SALE OF BEER TO SELL THE SAME WHERE SUCH PLACE OF BUSINESS IS WITHIN 300 FEET OF ANY CHURCH, HOSPITAL, SCHOOL OR OTHER EDUCATIONAL INSTITUTION OR WHERE SUCH PLACE OF BUSINESS IS LOCATED IN AN AREA OF THE CITY THAT IS NOT ZONED FOR BUSINESS PURPOSES UNDER THE CITY'S ZONING ORDINANCE; PROVIDING FOR THE APPLICATION FOR LICENSES; PROVIDING FOR SPECIAL REQUIREMENTS FOR ISSUANCE OF LICENSES; PROVIDING FOR CLOSING HOURS FOR ON PREMISES ESTABLISHMENTS; SETTING FORTH SPECIAL REGULATIONS; PROVIDING FOR THE REQUIREMENTS OF BUILDINGS; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR A SAVINGS AND SEPARABILITY CLAUSE, CONFLICTS AND AN EFFECTIVE DATE.**

**Purpose**

This ordinance will replace the current alcohol ordinance that regulates alcohol within the City of Mathis.

**Background**

A review by staff of the current alcohol ordinance in effect for the City of Mathis warrants some changes should be made to align the City ordinance with State law regarding the local regulation of alcohol beverages. Material changes made to the ordinance include the method of measurement that should be used in determining required distances from certain facilities, allowing for variances that the City Council determine are necessary and appropriate and requiring a survey be conducted in determining the required distance from certain facilities. Non substantive edits have been made to Sections 7 and Section 12.

## ALCOHOLIC BEVERAGES ORDINANCE NO. 17-02-07

AN ORDINANCE OF THE CITY OF MATHIS, TEXAS PROVIDING FOR LEVY AND COLLECTION OF FEES AND THE ISSUANCE OF LICENSES BY THE CITY OF MATHIS TO PERSONS ENGAGED IN THE SALE, MANUFACTURE OR DISTRIBUTION OF BEER, LIQUOR, WINE OR OTHER ALCOHOLIC BEVERAGES; MAKING IT UNLAWFUL FOR ANY DEALER WHOSE PRINCIPAL BUSINESS IS THE SALE OF BEER TO SELL THE SAME WHERE SUCH PLACE OF BUSINESS IS WITHIN 300 FEET OF ANY CHURCH, HOSPITAL, SCHOOL OR OTHER EDUCATIONAL INSTITUTION OR WHERE SUCH PLACE OF BUSINESS IS LOCATED IN AN AREA OF THE CITY THAT IS NOT ZONED FOR BUSINESS PURPOSES UNDER THE CITY'S ZONING ORDINANCE; PROVIDING FOR THE APPLICATION FOR LICENSES; PROVIDING FOR SPECIAL REQUIREMENTS FOR ISSUANCE OF LICENSES; PROVIDING FOR CLOSING HOURS FOR ON PREMISES ESTABLISHMENTS; SETTING FORTH SPECIAL REGULATIONS; PROVIDING FOR THE REQUIREMENTS OF BUILDINGS; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR A SAVINGS AND SEPARABILITY CLAUSE, CONFLICTS AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MATHIS, TEXAS THAT:

### **SECTION I. Regulations.**

The following ordinance is established regulating the sale and/or consumption of alcoholic beverages in the City of Mathis:

**Section 1. Definitions.** All definitions of words, terms and phrases as set forth in the Alcoholic Beverage Code are hereby adopted, incorporated herein and made a part of this ordinance by reference for all purposes.

**Section 2. License Required.** It shall be unlawful for any person to sell or distribute any beer, liquor, 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, Section 61.36, within the City unless such person has a current and unrevoked license to do so issued by the City. The annual fee for such license shall be in the amount equal to one-half (1/2) the amount of the license or permit fee imposed by the state to engage in a similar activity. All such fees shall be paid in advance for one (1) year at the same time that the state license or permit fees are due, unless such fee is collected or only a portion of the year, in which the fee required shall cover the period of time from the date of the license to the date the state license or permit expires.

**Section 3. State License Necessary.** No license shall be issued to any person until such time that verification of the issuance of the state license has been furnished to the City.

**Section 4. Issuance of License.** Upon payment of the applicable fee to the City and verification and exhibition to the City of a license or permit duly issued by the state to the person paying such fee, the City shall, in the name of the City of Mathis, issue and deliver to such person a city license to engage in the business in the City of the character described in and authorized by the permit or license from the state held by such person. The license so issued in the name of the City of Mathis shall authorize the conduct of such business upon the premises described in the license from the state and shall remain in force only so long as such permit or license from the state remains in force and in no event exceed one (1) year.

**Section 5. Application of License.** Applications for licenses required herein shall be made by all owners, whether one or more, upon forms prepared and made available by the City and shall contain the following information:

- (a) The name, home address and proposed business address of each person owning any and all interests in the business;
- (b) The hours of operation of business;
- (c) A statement showing what will be sold on the premises and a general description of the nature of the business operation. In the event any article or items for sale or machines or games belonging to any person, other than those persons listed as the owner or operators of the business, is kept on the premises, the list of such articles and items for sale or machines or games and the names of the persons for whom custody is held shall be kept in the office of the manager of the business and shall be kept current in all respects; and
- (d) The application shall be accompanied by a plat or floor plan sketch of the premises and each floor thereof showing the location of the walls and the uses made of the various portions of the building.

The application shall be accompanied by the payment of a nonrefundable application fee of \$25.00, which fee shall be retained by the City and credited to the fee upon the granting of the application or issuance of the license.

**Section 6. Annual Fees.** The annual fees as specified herein which is an amount equal to one-half (1/2) of the amount of the license permit fee imposed by the state includes manufacturers, general distributors, local distributors, retail dealers on premises, retail dealers off premises and private club licenses.

**Section 7. No Patent Restricted.**

- (a) No beer or alcoholic beverage shall be sold within the city by any dealer, if the place of business of such dealer is within 300 feet of any church, hospital, school, or other educational institution or day care center and child care centers as defined by Texas Human Resources Code.
- (b) The distance must be measured under §§ 109.33 and 109.331 of the Texas Alcoholic Beverage Code.

- (c) An applicant seeking a license must furnish a professional survey to the City verifying that the distance requirements of (a) and (b) above have been met.
- (d) The City may at any time prior to the issuance of the license by the state or subsequent renewal file a protest with the state upon reason and belief that the requirements of the state, including the distance requirements and measurements have not been met.

**Section 8. Special Requirements.** Upon issuance of the license, the licensee shall render in accordance with the provisions of the applicable laws regarding rendering of property for taxation and shall pay to the City before the same shall become delinquent, all ad valorem and personal taxes assessed against all property used in the conduct of licensee's business. Failure to discharge the obligations or any one of them shall operate as an automatic revocation of any licenses issued under the provisions of this ordinance. No application for licenses under this ordinance shall be considered or approved nor shall any license be issued until all taxes due and delinquent and owed to the City of Mathis by the person or persons applying for license have paid in full.

**Section 9. Hours of Operation.** It shall be unlawful for persons to engage in the business of selling beer to be consumed on the premises or to offer for sale or sell such beer between the hours of 2:00 o'clock a.m. and 7:00 o'clock a.m. on each day of the week.

**Section 10. Exceptions.**

- (a) *Permit or License Holder for Sale Only, Not Food and Beverage.* Section 9 herein does not apply to a permit or license holder who does not hold a food and beverage certificate and who sells beer if the permit or license holder and the day care center or child care facility are located on different stories of a multi-story building or the permit or license holder and the day care center or child care facility are located in separate buildings and either the permit or license holder or the day care center or child care facility is located on the second story or higher of a multi-story building.
- (b) *Other.* Section 9 herein does not apply to a foster group home, foster family home, family home, agency group home or agency home as defined by Texas Human Resources Code, Section 42.002.

**Section 11. Variances.**

- (a) The City Council may grant a variance to the regulations upon determination that enforcement 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 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.

- (b) The City Council shall hold a public hearing to receive input from the public on the requested variance. The City Secretary shall publish a notice of the public hearing at least ten (10) days prior to the hearing date. Written notice shall also be provided to the church, child care facility, daycare center, school or public hospital located within three hundred (300) feet of the property on which a variance is requested. The notice may be served by deposit with postage paid in the United States mail.

**Section 12. Variances for Festival Events Sponsored in Whole or Part by City.**

The City Council may provide for variances of the ordinance requirements regarding the sale of alcoholic beverages within 300 feet of any church, public hospital or public or private school during a scheduled festival event sponsored in whole or part by the City and allow for the sale of alcoholic beverages within 300 feet of any church, public hospital or public or private school during the scheduled festival event.

**SECTION II. VIOLATIONS.**

Violation of any provisions of this ordinance shall constitute a Class C misdemeanor and each day that a violation continues shall be a separate offense. Conviction of an offense under this ordinance shall be punishable by a fine not to exceed the maximum established by law for each violation.

**SECTION III. INVALIDITY.**

It is the intent of the governing body that every word, phrase, sentence, clause, and paragraph of this Ordinance shall be considered separable and if any of which is judged to be invalid or unconstitutional by a court of competent jurisdiction, then all remaining words, sentences, phrases, clauses, and paragraphs will remain valid and in full effect as if originally enacted without the inclusion of such invalid or unconstitutional provision.

**SECTION IV. CONFLICTS.**

Any provision of any previously enacted ordinance found to be in conflict herewith is expressly repealed to the extent that such conflict exists.

**SECTION V. SEVERABILITY.**

Should any section, subsection, clause or phrase of this Ordinance be declared unconstitutional or invalid by any court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

**SECTION VI. EFFECTIVE DATE.**

This Ordinance shall be effective immediately upon its passage and publication as required by law.

**FIRST READING PASSED AND APPROVED THIS \_\_\_\_\_ OF \_\_\_\_\_, 2017.**

By: \_\_\_\_\_  
Ciri Villarreal, Mayor

ATTEST:

By: \_\_\_\_\_  
Mary Gonzalez, City Secretary

**SECOND READING PASSED AND APPROVED THIS \_\_\_\_\_ OF \_\_\_\_\_, 2017.**

By: \_\_\_\_\_  
Ciri Villarreal, Mayor

ATTEST:

By: \_\_\_\_\_  
Mary Gonzalez, City Secretary