

VOID

voted on by council  
Oct 9 but not in  
proper format for an  
ordinance

ORDINANCE ~~135~~  
Numbered wrong

Adopted  
October 9, 2012  
w/exception that  
license fees not  
be collected.

Sec. \_\_\_\_\_. Definitions.

All definitions of words, terms and phrases as set forth in V.T.C.A., Alcoholic Beverage Code §1.04 *et seq.* are hereby adopted and made a part hereof.

Sec. \_\_\_\_\_. License or Permit Required.

- (a) It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine, liquor or mixed beverages within the City unless such person has obtained a license or permit, as applicable (depending upon the requirements under Texas law relative to the product to be sold), from the State of Texas.
- (b) The City Council does hereby levy a fee pursuant to V.T.C.A., Alcoholic Beverage Code §61.36 and §11.38, both as described in detail below, which shall be one-half of the state fee upon every person as permitted by V.T.C.A., Alcoholic Beverage Code §61.36 and §11.38, unless prohibited by state law. The license or permit fee, as applicable, shall be paid in cash, cashier's check or money order.

Sec. \_\_\_\_\_. Procedures Regarding Licenses or Permits.

- (a) It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine, liquor or mixed beverages within the City unless such person has obtained a City of Angus License or Permit, as applicable, from the Office of the City Secretary.
- (b) Any person wishing to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine, liquor or mixed beverages must complete a City of Angus License or Permit Application and pay the Application Fee as set forth in Section \_\_\_\_\_.
- (c) The City Secretary shall review each Application to ensure that the Application complies with this Ordinance, and to ensure that the Applicant has paid all ad valorem taxes. After the City Secretary has verified that location is proper, that the Applicant has paid all ad valorem taxes and other City fees and fines and that the Applicant has passed a criminal background check, the City Secretary shall approve the Applicant's application to the Texas Alcohol and Beverage Commission.
- (d) After approval by the City, the Application shall be deemed approved and the City Secretary shall issue a City of Angus License or Permit, as applicable, upon payment by the applicant of the Initial License or Permit Fee as set forth in Section \_\_\_\_\_.



- (e) Applications and Licenses or Permits shall be kept on file in the City Secretary's office.

**Sec. \_\_\_\_\_ . Application Fee; Initial License or Permit Fee.**

- (a) In order to reimburse the City for its cost in connection with accepting and processing applications to sell alcohol in accordance with this ordinance, an Application Fee in the amount of \$ 25.00, or such lesser fee as may be authorized by law, shall be charged by the City Secretary for accepting any initial License or Permit Application. No License or Permit Application may be accepted unless accompanied by the Application Fee.
- (b) As set forth above, the City of Angus Initial License or Permit Fee shall be equal to one-half of the State of Texas fee required by the Texas Alcoholic Beverage Commission of every person that may be issued any State permit or license for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any beer, wine, liquor or mixed beverage, unless a different fee is allowed or required by state law.
- (c) The City Secretary shall issue a receipt for the Application Fee and Initial License or Permit Fee and keep a record of the same in the City Secretary's office.

**Sec. \_\_\_\_\_ . License or Permit Renewal; License or Permit Renewal Fee.**

- (a) All Licenses or Permits shall be renewed annually. All Licenses or Permits shall terminate at midnight on the day before the anniversary date of their issuance, and no License or Permit shall be issued covering a term longer than one (1) year.
- (b) The City shall require payment of an annual License or Permit Renewal Fee by all establishments selling alcoholic beverages within the City. And, except as limited by §11.38(d)(3) of the Alcoholic Beverage Code, the License or Permit Renewal Fee shall be equal to one-half of the State of Texas fee required by the Texas Alcoholic Beverage Commission of every person that may be issued any State license or permit for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any beer, wine, liquor or mixed beverage, unless a different fee is allowed or required by state law.
- (c) The City Secretary may cancel a license or permit if a licensee or permittee fails to pay the applicable License or Permit Renewal Fee. The City Secretary shall send notice of such cancellation to the address on file with the License or Permit Application.
- (d) A licensee or permittee who sells an alcoholic beverage without first having paid the applicable License or Permit Renewal Fee under this section commits a misdemeanor punishable by a fine of up to \$200.00.
- (e) Within 90 days prior to the renewal date, the licensee or permittee shall provide to the city



Secretary, in a form acceptable to the City, all information and data which the City, in its sole discretion, believes is necessary to make determinations regarding renewal, including but not limited to, any information pertaining to gross receipts. A licensee or permittee's failure to provide adequate information may result in the non-renewal of the license or permit.

**Sec. \_\_\_\_\_. Hours of Operation.**

- (a) Except as provided herein, the hours of sales of alcoholic beverages in the City shall be standard hours and comply with State Law provisions.
- (b) No person may sell, offer for sale or deliver any liquor:
  - (1) on New Year's Day, Thanksgiving Day or Christmas Day;
  - (2) on Sunday; or
  - (3) before 10 a.m. or after 9 p.m. on any other day.
- (c) When Christmas or New Year's Day falls on a Sunday, subsection (b)(1) above applies to the following Monday.

**Sec. \_\_\_\_\_. Sale, Consumption on Premises of Municipal Buildings and City-Owned Property Prohibited.**

- (a) It shall be unlawful for any person to sell an alcoholic beverage on the premises of any municipal building or City-owned property.
- (b) It shall be unlawful for any person to consume an alcoholic beverage on the premises of any municipal building or City-owned property.

**Sec. \_\_\_\_\_. Regulation of the Sale of Alcoholic Beverages in Residential Areas and Near Public or Private Schools, Churches, or Hospitals.**

- (a) The City Council hereby enacts regulations applicable in the City, prohibiting the sale of alcoholic beverages in the City's residential areas. The City's Residential Area is hereby declared to be the entire City of Angus except: \_\_\_\_\_

For purposes of this ordinance, a building or property is located on the four (4) areas located above only if it has a recognized street address on that street, road or highway.

- (b) Sales of alcoholic beverages are further prohibited within:
  - (1) three hundred feet (300') of a church, public or private school, or public hospital;



- (2) one thousand feet (1,000') of a public school, if the City Council receives a request from the board of trustees of the school district under §38.007, Education Code;
- (3) one thousand feet (1,000') of a private school if the City Council receives a request from the governing body of the private school; or
- (4) provided, however, that in the event that the one thousand foot (1000') limitation in either subsection (a)(2) or (a)(3) is not requested or is not applicable for any reason, then the three hundred foot (300') limitation is nevertheless intended to still be enforceable.

(c) 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 direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

- (1) 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
- (2) 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.

(d) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with Texas Alcoholic Beverage Commission. A copy of the notice must be submitted to the Commission with the application. This subsection does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under §109.53, Texas Alcoholic Beverage Code.

(e) The City Council may allow variances to the regulation(s) under Subsection (a) if the Council determines that enforcement of the regulation(s) 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 the Council, 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. Applications for variances shall be made to the city



Secretary. The application fee of \$200.00 shall be paid at the time the application is made.

(f) Subsections (a)(2) and (3) do not apply to the holder of:

- (1) a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages (a food service establishment);
- (2) a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or
- (3) a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's, permit or license, or any other license or permit held by a wholesaler or manufacturer.
- (4) In accordance with the Texas Alcoholic Beverage Code, §25.13(d) and, for the purpose of this Subsection (f) of this Section \_\_\_\_\_, "it shall be presumed that a permittee is not primarily operating as a food services establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises." A holder of a mixed beverage permit which has been issued a food and beverage certificate by the Texas Alcoholic Beverage Commission, because the gross receipts of mixed beverages sold by the holder are 50 percent or less of the total gross receipts from the premises, will be considered to be operating primarily as a food service establishment, and to which Subsections (a)(2) and (3) therefore do not apply.

(g) Subsection (a)(3) does not apply to the holder of:

- (1) a license or permit issued under Chapter 27, 31, or 72 of the Alcoholic Beverage Code who is operating on the premises of a private school; or
- (2) a license or permit covering a premise where minors are prohibited from entering under §109.53 and that is located within 1,000 feet of a private school.

(h) Subsection (a)(1) does not apply to the holder of:

- (1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
- (2) a license or permit covering a premise where minors are prohibited from entering under §109.53 and that is located within 300 feet of a private school.

(i) A "private school" means a private school, including a parochial school that:



- (1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
- (2) has more than 100 students enrolled and attending courses at a single location.

**Sec. \_\_\_\_\_. Regulation of the Sale of Alcoholic Beverages Near Day-Care Centers or Child-Care Facilities.**

- (a) This section applies only to a permit or license holder under Chapter 25, 28, 32, 69, or 74 of the Alcoholic Beverage Code who does not hold a food and beverage certificate.
- (b) Except as provided by this subsection, the provisions of Section \_\_\_\_\_ relating to a public or private school also apply to a day-care center and a child-care facility as those terms are defined by §42.002, Human Resources Code. Sections 14.408(a)(2) and (c) do not apply to a day-care center or child-care facility.
- (c) This section does not apply to a permit or license holder who sells alcoholic beverages if:
  - (1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or
  - (2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or the license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.
- (d) This section does not apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by §42.002, Human Resources Code.

**Sec. \_\_\_\_\_. Regulation of On-Premises Sales and Consumption of Alcoholic Beverages.**

- (a) The on-premises sales and consumption of alcoholic beverages is prohibited in the residential area of the city, as defined herein.

**Sec. \_\_\_\_\_. Regulations Applicable to the Sale of Alcoholic Beverages.**

- (a) In addition to the other regulations contained in this Article, or in other portions of this Code of Ordinances, which apply to the sale of alcoholic beverages in the City, the following regulations are specifically applicable to the sale of alcoholic beverages:
  - (1) The sale of alcoholic beverages is prohibited in any residential area.
  - (2) In locations in the City in which the sale of alcoholic beverages is not prohibited at



all times, retailers selling alcoholic beverages for on-premises consumption may not sell alcoholic beverages before 11:00 a.m. on weekdays and noon on Saturdays and Sundays, or after midnight on any day.

(3) In locations in the City in which the sale of alcoholic beverages is not prohibited at all times, retailers, manufacturers, or distributors selling alcoholic beverages for off-premises consumption cannot sell alcoholic beverages before 7:00 a.m. on any day other than Sunday and noon on Sundays, or after 11:00 p.m. on weekdays and midnight on Saturdays and Sundays.

(b) In accordance with §109.32(c) of the Texas Alcoholic Beverage Code, the City Council has determined that, in exercising the authority granted by §109.32 with regard to the regulation of the sale of beer and wine, it is in the best interest of the public health, safety and welfare of the citizens for such regulations to distinguish between retailers selling beer and wine for on-premises consumption and retailers, manufacturers, or distributors who do not sell beer and wine for on-premises consumption.

**Sec. \_\_\_\_\_ . Failure to Supervise a Minor**

(a) A person commits the offense of failure to supervise a minor if such person is the parent, foster parent to guardian of a child under 18 years of age; and

(1) Such person recklessly allows such person's residential property, commercial property or rented premises to be used for a gathering of individuals under 21 years of age, and where at such gathering, alcohol or other illegal, controlled substances are served, consumed, ingested or otherwise used by said individuals under 21 years of age; or

(2) Such person recklessly allows said child to be in possession of:

(A) Stolen property; or

(B) A "controlled substance," as that term is defined under Texas law, and where said minor does not have a legal prescription for said controlled substance.

(b) For purposes of this section, a person acts recklessly, or is reckless with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. This risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(c) It is an affirmative defense to an offense under this article if the person took reasonable steps



to control the conduct of the child at the time the person is alleged to have committed the offense of failure to supervise a minor. It is also an affirmative defense to prosecution under this section that the adult parent, guardian or spouse of a person under the age of 21 is visibly present when alcohol is consumed by such person.

- (d) That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.
- (e) That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.
- (f) That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punishable by a fine not to exceed Five hundred (\$500.00) Dollars for each offense.



fraudulent will be invalidated by the courts. The courts can inquire into the validity of ordinances. The courts usually will not substitute their judgment for that of the city council; but if an ordinance is not in compliance with lawful requirements, the courts may overturn it.

## Form of the Ordinance

State law does not prescribe the form of an ordinance, other than to require that it contain an ordaining clause (Local Government Code Section 52.002) and to require the publication of either the complete text or caption of every ordinance that establishes penalties for violations (Local Government Code Section 52.011). But a form for ordinances has evolved by custom and is now used by most cities.

Although the actual drafting of an ordinance is best left to the city attorney, councilmembers should be familiar with the basic form. This includes:

- (1) The number of the ordinance. This information is good to have for indexing and ready reference.
- (2) The caption, which briefly describes the subject of the ordinance and the penalties provided for its violation. Although an ordinance is valid without a caption, this is a useful feature because it provides a simple way of determining what is included in the ordinance without reading the entire document. Also, if the ordinance does not have a caption, Section 52.011 of the Local Government Code requires that the ordinance be published in its entirety if it provides a penalty for violations. Conversely, a penal ordinance may be published by caption only if the caption states the penalty for violations.
- (3) A preamble, which is optional, may be included in cases in which the council wants the courts to understand the reasons the ordinance was passed.
- (4) The ordaining clause, which is required by law.
- (5) The body of the ordinance, which usually is broken down into sections according to subjects. This contains the command of law as ordained by the council.
- (6) The penalty clause, which fixes the penalty for violating the ordinance. Under state law, the maximum penalty the council may establish for violating an ordinance dealing with fire safety, zoning, or public health (except for dumping refuse) is a fine of \$2,000 per day for each day the ordinance is violated. The maximum penalty the council may establish for violating an ordinance governing the dumping of refuse is \$4,000 per day. For ordinances dealing with other violations, the maximum

fine is \$500 per day. Cities do not have the power to punish violators by sending them to jail.

- (7) The final part of the ordinance is the statement that it was passed and approved, giving the date of passage, the signature of the mayor, and a space for the city clerk or secretary to sign and attest to the fact that the ordinance was actually adopted. Some cities also require the city attorney to approve the form of the ordinance. All required signatures must be present on the ordinance or it may be declared void.



The following ordinance illustrates these seven components:

**Ordinance No. 125**

**AN ORDINANCE OF THE CITY OF ANYWHERE, TEXAS ESTABLISHING WATER CONSERVATION REQUIREMENTS AND PROVIDING A PENALTY FOR VIOLATIONS.**

WHEREAS, because of the conditions prevailing in the City of Anywhere, the general welfare requires that the water resources available to the City be put to the maximum beneficial use and that the waste or unreasonable use be prevented; and

WHEREAS, lack of rain has resulted in a severe reduction in the available water supply to the City, and it is therefore deemed essential to the public welfare that the City Council adopt the water conservation plan hereafter set forth.

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANYWHERE, TEXAS:

**SECTION 1. AUTHORIZATION.**

The City Manager or his designee is hereby authorized and directed to implement the applicable provisions of this Ordinance upon his determination that such implementation is necessary to protect the public welfare and safety.

**SECTION 2. APPLICATION.**

The provisions of this Ordinance shall apply to all persons, customers, and property served with City of Anywhere water wherever situated. No customer of the City of Anywhere water system shall knowingly make, cause, use, or permit the use of water received from the City for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this ordinance, or in an amount in excess of that use permitted by the conservation stage in effect pursuant to action taken by the City Manager or his designee in accordance with the provisions of this Ordinance.

**SECTION 3. CONSERVATION REQUIREMENTS.**

From May 1 to September 30 of each year and upon implementation by the City Manager and publication of notice, the following restrictions shall apply to all persons:

(a) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except on a designated day which shall be once every five days, and only then during the hours of 8:00 p.m. and 12:00 noon. Provided, however, irrigation of lawns, gardens, landscaped areas, trees, shrubs or other plants is permitted at anytime if: (i) a hand-held hose is used; (ii) a hand-held, faucet filled bucket of five (5) gallons or less is used; or (iii) a drip irrigation system is used.

(b) The washing of automobiles, trucks, trailers, boats, air-

planes and other types of mobile equipment, the refilling or adding of water to swimming and/or wading pools and the use of water for irrigation of golf greens and tees is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 noon.

(c.) The washing or sprinkling of foundations is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 midnight.

(d) The following uses of water are defined as "waste of water" and are absolutely prohibited: (i) allowing water to run off into a gutter, ditch, or drain; (ii) failure to repair a controllable leak; and (iii) washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas except to alleviate immediate fire hazards.

**SECTION 4. PENALTY.**

Any person, corporation or association violating any provision of this Ordinance shall be deemed guilty of an offense, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00). The violation thereof shall be deemed a separate offense, and shall be punished accordingly. Provided, however, compliance may be further sought through injunctive relief in the District Court.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

/s/ \_\_\_\_\_  
Mayor

ATTEST:

/s/ \_\_\_\_\_  
City Secretary/ Clerk

APPROVED AS TO FORM:

/s/ \_\_\_\_\_  
City Attorney

CAPTION

PREAMBLE

ORDAINING CLAUSE

BODY

BODY (CONTINUED)

PENALTY CLAUSE

CONCLUSION