

VOID.

noted on
by council but not
done in proper forms
for an ordinance

ORDINANCE 137

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.

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, allowing the sale of alcoholic beverages only in areas of the City zoned commercial.
- (b) Sales of alcoholic beverages are further prohibited within three hundred feet (300') of a church, public or private school, or public hospital.
- (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.
- (d) 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.

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.

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.

Adopted October 9, 2012

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