

ORDINANCE NO. 2005-5-15

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS AMENDING SECTION 3-2 (SALE OR MANUFACTURE OF BEER OR WINE NEAR CHURCH, SCHOOL, HOSPITAL); SECTION 3-3 (MANUFACTURING, IMPORTING, TRANSPORTING, SELLING, ETC.--UNLAWFUL IN DISTRICTS ZONED RESIDENTIAL); SECTION 3-4 (SAME—FEES; RECEIPT; LENGTH OF VALIDITY); AND SECTION 3-5 (LICENSE APPLICATION REVIEWED BY DEPARTMENT OF CODE ENFORCEMENT) OF CHAPTER THREE (ALCOHOLIC BEVERAGES) OF THE CITY OF PLANO CODE OF ORDINANCES, AS HAS BEEN PREVIOUSLY AMENDED; PROVIDING DISTANCE REGULATIONS AND PERMIT AND FEE REQUIREMENTS APPLICABLE TO THE RETAIL SALE OF ALCOHOLIC BEVERAGES IN THE CITY OF PLANO; PROVIDING A PENALTY CLAUSE, REPEALER CLAUSE, SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.**

**WHEREAS**, on May 7, 2005, a local option election was held in the City of Plano, Texas for the purpose of authorizing the legal sale of alcoholic beverages in restaurants by mixed beverage permit with food and beverage certificate; and

**WHEREAS**, a majority of those voting in the local option election voted in favor of authorizing the sale of alcoholic beverages at restaurants in Plano by mixed beverage permit and food and beverage certificate; and

**WHEREAS**, Chapter 109, Subchapter C of the Texas Alcoholic Beverage Code authorizes the governing body of an incorporated city or town to enact regulations prohibiting the retail sale of alcoholic beverages within 300' of a church, public or private school, or public hospital; and

**WHEREAS**, Chapter 3 (Alcoholic Beverages) of the City of Plano Code of Ordinances does not address the sale of alcoholic beverages by mixed beverage permit and should be updated; and

**WHEREAS**, the City Council of the City of Plano has determined that it is in the best interest of the City of Plano and its citizens to prohibit the sale of alcoholic beverages within 300' of a church, public or private school, or public hospital; and

**WHEREAS**, the City can best enforce these distance regulations by requiring that all establishments in Plano desiring to sell alcoholic beverages under a mixed beverage permit apply to the City of Plano for a city permit authorizing mixed beverage sales with food & beverage certificate at each proposed location; and

**WHEREAS**, the City will incur costs in administering the permitting program and may charge an appropriate fee for the permit to offset these costs in accordance with Section 11.38 Tex.Alcoh.&Bev.Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**Section II.** Section 3-2 (Sale or manufacture of beer or wine near church, school, hospital) of Chapter 3 (Alcoholic Beverages) of the City of Plano Code of Ordinances is hereby amended to read in its entirety as follows:

"Section 3-2. Sale of Alcoholic Beverages Near Church, School or Public Hospital.

No person shall sell alcoholic beverages if the place of business is within three-hundred feet (300') of a church, public or private school, or public hospital except as provided by the Texas Alcoholic Beverage Code. The sale of alcoholic beverages is also prohibited within one-thousand feet (1000') of a private school if the City Council adopts by resolution a request for the 1000' separation from the governing body of a private school. 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:

- (a) 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
- (b) 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.

**Section III.** Section 3-3 (Manufacturing, importing, transporting, selling, etc. – unlawful in districts zoned residential).

"Section 3-3. Manufacturing, importing, transporting, selling, etc.—Unlawful in districts zoned residential.

It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any alcoholic beverages in any residentially zoned district within the City of Plano.

**Section IV.** Section 3-4 (Same – Fees; receipt; length of validity) of Chapter 3 (Alcoholic Beverages) of the City of Plano Code of Ordinances is hereby amended to read in its entirety as follows:

"Section 3-4. Permit Required; Fees.

No person shall sell alcoholic beverages within the city without first paying the appropriate fee to the City Secretary and obtaining a city permit to sell alcoholic beverages at a specific location. The fee shall be equal to one-half of the fee charged by the State for the particular license issued by the Texas Alcoholic Beverage Commission, except when said fee is waived according to the provisions of the Texas Alcoholic Beverage Code. Following payment of the fee and approval of the permit application, as set forth herein, the City Secretary shall issue a permit for that location for a period of one year."

**Section V.** Section 3-5 (License application reviewed by department of code enforcement) of Chapter 3 (Alcoholic Beverages) of the City of Plano Code of Ordinances shall be amended to read in its entirety as follows:

"Section 3-5. Permit Application Review; Certificate of Wet/Dry Status

Prior to issuing a city permit to applicant for the proposed location, the city secretary shall certify whether the location is located in an area that is wet and that the sale of alcoholic beverages at this location is not prohibited by Charter or ordinance. The City Secretary shall keep a record of all permits and certificates issued under this Chapter."

**Section VI.** Any person, firm or corporation found to be violating any term or provision of this Ordinance shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

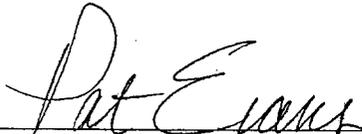
**Section VII.** All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of these Ordinances are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of these Ordinances, shall remain in full force and effect.

**Section VIII.** The repeal of any ordinance or part of ordinances affected by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.

**Section IX.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other provision of this Ordinance.

**Section X.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**DULY PASSED AND APPROVED** this 17th day of May, 2005.

  
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Pat Evans, MAYOR

ATTEST:

  
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Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

  
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Diane C. Wetherbee, CITY ATTORNEY