

ORDINANCE NO. 1243-07-21

AN ORDINANCE OF THE CITY OF HONDO, TEXAS AMENDING ARTICLE 5.03 "ALCOHOLIC BEVERAGES" OF THE HONDO CODE OF ORDINANCES TO AMEND THE PROHIBITION AGAINST THE SALE OF ALCOHOLIC BEVERAGES NEAR CHURCHES AND PUBLIC AND PRIVATE SCHOOLS BY ALLOWING CITY COUNCIL, AFTER A PUBLIC HEARING, TO CONSIDER VARIANCES THERETO; DECLARING A PUBLIC PURPOSE; INCORPORATING RECITALS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Alcoholic Beverage Code ("TABC") Section 109.33(a) authorizes City Council to enact regulations, which prohibits the sale of alcoholic beverages within 300 feet of a church or a public or private school; and

WHEREAS, on October 20, 2008, the City Council adopted Ordinance No. 905-10-08, providing among other things, a prohibition on the sale of alcoholic beverages within city limits of Hondo, Texas, and within 300 ft. of any church, public hospital or public schools or day-care center or child-care facility; and

WHEREAS, TABC Section 109.33(e), provides that a city that has enacted a regulation under TABC Section 109.33(a) may also allow variances to the regulation 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 the court or governing board, 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;

WHEREAS, since the adoption of Ordinance No. 905-10-08; the city council now finds that the absolute prohibition against the sale of alcoholic beverages near schools and hospitals will interfere with the development of local restaurants, national chain restaurants, and drug stores, due to the proximity of real property conducive to such development to churches and public and private schools; and

WHEREAS, the city council has taken notice of TABC Section 109.33(e), and finds that enforcement of the regulation in a particular instances is not in the best interest of the public, constitutes waste or in efficient 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, would not be detrimental to the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HONDO:

SECTION 1. AMENDMENT. Section 5.03.004 Sale near church, hospital, public school, day-care center or child-care facility is amended to read as follows:

(a) It shall be unlawful for any person to sell or engage in the business of selling alcoholic beverages within the city where the place of business is within 300 feet of any church, public hospital or public schools or day-care center or child-care facility. 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 a direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public schools and day-care or child-care facility shall be in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections. (Ordinance 905-10-08, sec. 2, adopted 10/20/08; 2009 Code, sec. 4.03.004)

(b) As authorized by Texas Alcoholic Beverage Code Section 109.33(e), City Council may consider an application for a variance to the prohibition against the sale of alcoholic beverages within 300 feet of any church, private school or public school only if City Council finds that the application satisfies any of the following criteria:

1. The proposed sale of alcoholic beverages would constitute no more than [30] percent of the establishment's annual gross revenues. On or before March 15 of the year following the granting of a variance, and every March 15 thereafter, the owner of the establishment for which the variance was granted shall submit to the city secretary all necessary documentation to verify that during the preceding calendar year indicating that no more than 30 percent of the establishment's annual gross revenues were generated by the sale of alcoholic beverages. If the documentation shows that more than 30% the establishment's annual gross revenues was generated by the sale of alcohol, then the variance will be immediately terminated;
2. Prior to City Council considering the application, an authorized representative of the church, public hospital or public schools or day-care center or child-care facility located within 300 feet of the proposed alcohol sales has provided the city manager with written confirmation that the affected church, public hospital or public schools or day-care center or child-care facility has no objection to the granting of the variance;
3. The granting of the variance will not have a negative effect on the health, safety or welfare of the public;
4. Violations of the conditions on the variance are punishable by criminal fine and any and all remedies available at law and or equity including but not limited to revocation of the variance.

SECTION 2. PUBLIC PURPOSE. The City Council declares that the Ordinance is in the public interest and is necessary for the good government, peace, and order of the municipality.

SECTION 3. INCORPORATION OF RECITALS. The City Council finds the recitals contained in the preamble to this Ordinance are true and correct and incorporates them as findings of fact.

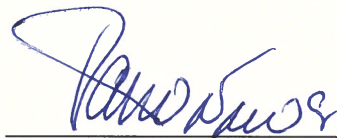
SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void; and that in lieu of each clause or provision of this Ordinance that is invalid, illegal, or unenforceable there be added by the Mayor as necessary with the approval of the City Attorney as to form, and as a part of the Ordinance a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

SECTION 5. REPEALER. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. OPEN MEETINGS. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as a required by the Open Meetings Act, Chapter 551, Local Government Code.

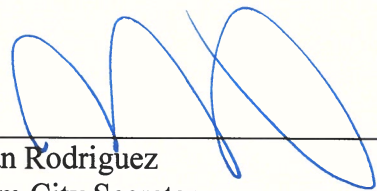
SECTION 7. EFFECTIVE DATE. This ordinance shall be effective from and after its approval and passage in accordance with the Texas Local Government Code and the city charter.

PASSED AND APPROVED this 12th day of July, 2021.



JAMES W. DANNER SR.
Mayor

ATTEST:



Megan Rodriguez
Interim City Secretary