

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY RETITLING AND AMENDING SECTION 8-16 “SALE OF ALCOHOLIC BEVERAGES FROM A PACKAGE LIQUOR STORE PROHIBITED NEAR CHURCHES, SCHOOLS, AND HOSPITALS”; PROVIDING FOR A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, having considered the recommendation of City Administration and in order to conform to certain amendments adopted this date to the Allen Land Development Code, the City Council of the City of Allen, Texas, finds it to be in the public interest to amend Section 8-16 of the Code of Ordinances of the City of Allen relating to sale of alcoholic beverages near churches, schools and hospitals.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Allen, Collin County, Texas, be and the same is hereby amended by retitling and amending Section 8-16 “Sale of Alcoholic Beverages from a Package Liquor Store Prohibited Near Churches, Schools and Hospitals” to read as follows:

**Sec. 8-16. – Sale of alcoholic beverages prohibited near churches, schools, and hospitals.**

- (a) No person may sell alcoholic beverages if the place of business is within:
  - (1) three hundred feet of a church, public or private school or public hospital;
  - (2) one thousand feet of a public school, if the city council by resolution approves a request from the board of trustees of a school district under Texas Education Code § 38.007 to establish such limitation; or
  - (3) one thousand feet of a private school, if the city council by resolution approves a request from the governing body of the private school to establish such limitation.
- (b) 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.
- (c) For purposes of this section, the phrase “private school” shall have the meaning assigned to it by Section 109.33 of the Texas Alcoholic Beverage Code, as amended.

- (d) For purposes of this section, the phrase “package liquor store” shall mean a premises which holds a package store permit issued by the Texas Alcoholic Beverage Commission pursuant to Chapter 22 of the Texas Alcoholic Beverage Code, as amended.
- (e) This Section shall not be applicable to a package liquor store if:
  - (1) The package liquor store is a hotel that holds a package store permit issued by the Texas Alcoholic Beverage Commission and the sale of liquor pursuant to such permit is solely made to bona fide guests of the hotel in their rooms for consumption in their rooms; or
  - (2) The package liquor store is a premises that holds a package store permit issued by the Texas Alcoholic Beverage Commission and the sole activity performed at the premises pursuant to such permit is the sale of liquor to holders of airline beverage permits as provided in Section 34.05 of the Texas Alcoholic Beverage Code, as amended.”
- (f) Subsections (a)(2) and (3) of this section 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;
  - (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, or winery permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102 of the Texas Alcoholic Beverage Code, as amended.
- (g) Subsections (a)(2) and (3) of this section do not apply to a performing arts facility leased to a nonprofit organization under a policy adopted under Section 11.179, Texas Education Code.
- (h) The city council may allow variances to the regulations set forth in Section 8-16(a) 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 city 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 city.
- (i) Notwithstanding Section 8-16(a), Section 6.03 of the Allen Land Development Code, as amended, shall control the regulation of the distance between private clubs and/or restaurants serving alcoholic beverages and public or private schools, churches, and public hospitals.

**SECTION 2.** All ordinances of the City of Allen, Collin County, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this ordinance is governed by prior law and the Code of Ordinances of the City of Allen, as previously amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinance of the City of Allen, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each, and every day such violation shall continue be deemed to constitute a separate offense.

**SECTION 6.** This ordinance shall take effect immediately, from and after its passage in accordance with its provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 10<sup>TH</sup> DAY OF AUGUST 2021.**

**APPROVED:**

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**Kenneth M. Fulk, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

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**Peter G. Smith, CITY ATTORNEY**  
(kbl:8/3/2021:123838)

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**Shelley B. George, TRMC, CITY SECRETARY**