

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE, AS AMENDED, BY AMENDING ASECTION 6.03.2 “PRIVATE CLUBS – OPERATIONAL REGULATIONS” SECTION 6.03.5 “RESTAURANTS WITH FOOD AND BEVERAGE CERTIFICATES—GEOGRAPHIC LOCATIONS” TO CONFORM SAID SECTIONS TO AMENDMENTS IN STATE LAW RELATING TO THE SERVICE OF ALCHOLIC BEVERAGES “TO-GO” BY HOLDERS OF A FOOD AND BEVERAGE CERTIFICATE; AMENDING SECTION 6.06.11 “SOLAR PANELS” TO ELIMINATE REGULATIONS PRE-EMPTED BY STATE LAW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all persons interested and in the exercise of its legislative discretion, the City Council has concluded that the Allen Land Development Code Zoning Regulations of the City of Allen, Texas, as previously amended, should be further amended as follows.

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

SECTION 1. Article VI “Special Zoning Provisions” of the Allen Land Development Code, is amended as follows:

A. Section 6.03.2 “Private Clubs – Operational Regulations” is amended to read as follows:

Sec. 6.03.2. - Private clubs—Operational regulations.

1. A private club that holds a private club registration permit and a food and beverage certificate pursuant to Chapter 32 of the Texas Alcoholic Beverage Code may provide service of alcoholic beverages from a drive-in window, curb service, or drive-through service for off-premise consumption only in accordance with Section 32.155 of the Texas Alcoholic Beverage Code.
2. Except as provided in paragraph 3, below, a private club shall only provide inside service of alcoholic beverages for on-premise consumption.
3. A private club may serve alcoholic beverages on the exterior of a restaurant provided such service occurs in an attached patio or garden area accessible by customers only from the main dining area of the restaurant.
4. The private club operator shall maintain a valid state license for the sale of alcoholic beverages.

B. Section 6.03.5 “Restaurants with Food and Beverage Certificates—Geographic Locations” is amended to read as follows:

Sec. 6.03.5. - Restaurants with food and beverage certificates—Geographic locations.

1. Restaurants may serve alcohol for on-site consumption by right if they are located on property that was within the city limits as of May 15, 2004. For restaurants located on property that was annexed after May 15, 2004, a private club specific use permit (SUP) must be obtained for the ability to serve alcohol.
2. Restaurants holding a mixed beverage permit with a food and beverage certificate pursuant to Chapter 28 of the Texas Alcoholic Beverage Code may provide service of alcoholic beverages from a drive-in window, curb service, or drive-through service for off-premise consumption only in accordance with Section 28.1001 of the Texas Alcoholic Beverage Code.
3. Restaurants are permitted by right as indicated in section 4.20.2.
4. Restaurant/private clubs will be allowed to continue operation as before May 15, 2004, with the same rules in effect at that time.
5. The following distance separation criteria are effective for restaurants serving alcoholic beverages holding a food and beverage certificate:
 - a. Cannot locate closer than 300 feet to a church or hospital. 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.
 - b. Cannot locate closer than 300 feet to a school (public or private). The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:
 - i. 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
 - ii. 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.
6. The distance separation criteria set forth in section 6.03.5.5 shall not apply to a restaurant located on property within the prohibited areas described in section 6.03.5.5 if:
 - a. The restaurant is classified as a "restaurant (no drive-in or through)" or "restaurant (with drive-through)" as defined in Appendix A;
 - b. The applicant for a permit or license from the Texas Alcoholic Beverage Commission to serve alcoholic beverages on such property obtains and delivers to the city a letter signed by an officer of the school (whether public or private), church, or hospital located within the prohibited distance consenting to the location of a restaurant serving alcoholic beverages with a food and beverage certificate on the property identified, said letter including identifying the property to which the exception is to apply and containing a representation that the officer signing the letter is fully authorized to act on behalf of the school, church, or hospital and its governing body when signing and delivering said letter of consent to the city; and

- c. The applicant who obtained the letter required by paragraph b. of this section 6.03.5 obtains a license or permit to sell alcoholic beverages on the property on or before the 180th day after the date said letter was signed.

Subject to the provisions of V.T.C.A., Alcoholic Beverage Code § 109.59, as amended, the exception granted in accordance with this section 6.03.5 shall terminate if the license or permit from the Texas Alcoholic Beverage Commission to serve alcoholic beverages in the establishment on the property to which the exception applied expires or is terminated. Nothing in this section 6.03.5 shall be construed as prohibiting the city council from exercising its discretion to grant a variance to the provisions of section 6.03.5 as authorized by V.T.C.A., Alcoholic Beverage Code § 109.33(e).

C. Section 6.06.11 “Solar Panels” is amended to read as follows:

Sec. 6.06.11. - Solar panels.

An applicant's submittal for a building permit, and electrical permit, for locating a solar panel within the city must demonstrate compliance with the following standards.

1. *Permit requirements.* All solar panel systems shall comply with the current adopted International Building Code and International Fire Code, as amended.
2. *Maintenance.* The owner of the property with a solar panel system shall maintain the system so that it does not create a safety issue for surrounding property owners. Solar panels that are not in use shall be disengaged so as to prevent accidental electrical charges to property or persons.

SECTION 2. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Allen and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, 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 or the Allen Land Development Code Zoning Regulations, as amended hereby, 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 provisions of the Allen Land Development Code Zoning Regulations, as 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 Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 6. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the 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 24TH DAY OF AUGUST 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:7/29/2021:123831)

Shelley B. George, TRMC, CITY SECRETARY