

ORDINANCE NO. 071511

AN ORDINANCE OF THE CITY OF GRAPELAND, TEXAS, PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES BY A DEALER WHOSE PLACE OF BUSINESS IS WITHIN 300 FEET OF A CHURCH, PUBLIC OR PRIVATE SCHOOL, PUBLIC HOSPITAL, DAY-CARE CENTER OR CHILD-CARE FACILITY; PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES BY A DEALER WHOSE PLACE OF BUSINESS IS WITHIN 1000 FEET OF A PUBLIC OR PRIVATE SCHOOL IF THE CITY COUNCIL RECEIVES A REQUEST FROM THE BOARD OF TRUSTEES OF THE SCHOOL DISTRICT OR GOVERNING BODY OF THE PRIVATE SCHOOL; PROVIDING EXCEPTIONS; PROVIDING A SEVERABILITY CLAUSE; CONTAINING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF GRAPELAND, TEXAS HEREBY ORDAINS:

SECTION I:

Ordinance No. 071511 is adopted to read as follows:

Prohibition of sale of alcoholic beverages near churches, hospitals, public and private schools, day-care centers and child-care facilities.

(a) In this section:

- (1) "Private school" means a private school, including a parochial school, that:
  - (a) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
  - (b) has more than 100 students enrolled and attending courses at a single location.
- (2) "Day-care center" means a child care facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.
- (3) "Child-care facility" means a facility licensed, certified or registered by the Texas Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage or adoption to the owner or operator of the facility, for all or part of the 24 hour day, whether or not the facility is operated for profit or charges for the services it offers.

- (b) Alcoholic beverages may not be sold by a dealer whose place of business is within:
- (1) 300 feet of a church, public or private school, or public hospital;
  - (2) 1000 feet of a public school, if the city council receives a request from the board of trustees of the school district under Section 38.007, Texas Education Code; or
  - (3) 1000 feet of a private school, if the city council receives a request from the governing body of the private school.
- (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. 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 multi-story 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.
- (d) The city council may allow variances to the regulations of this section if it 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 community.

- (e) The provisions of this section prohibiting sale of alcoholic beverages by a dealer whose place of business is within 1000 feet of a public or private school do not apply to the holder of:
- (1) a retail on-premises consumption permit or license if less than fifty percent (50%) of the gross receipts for the premises is from the sale of service of alcoholic beverages;
  - (2) a retail off-premises consumption permit or license if less than fifty percent (50%) 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, winery, wine bottler's, manufacturer's 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.
- (f) The prohibition of sale of alcoholic beverages by a dealer whose place of business is within 1000 feet of a private school does not apply to the holder of:
- (1) a license or permit issued under Chapter 27, 31 or 72 of the Texas Alcoholic Beverage Code who is operating on the premises of a private school; or
  - (2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that it is located within 1000 feet of a private school.
- (g) The prohibition of sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a private school does not apply to the holder of:
- (1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
  - (2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that is located within 300 feet of a private school.

- (h) This subsection applies only to a permit or license holder under Chapter 25, 28, 32, 69 or 74 of the Texas Alcoholic Beverage Code who does not hold a food and beverage certificate:
- (1) Except as provided by this subsection, the provisions of this section relating to a public school also apply to a day-care center and a child-care facility.
  - (2) The provisions of this section prohibiting sale of alcoholic beverages by a dealer whose place of business is within 1000 feet do not apply to a day-care center or child-care facility.
  - (3) This subsection does not apply to a permit or license holder who sells alcoholic beverages if:
    - (a) The permit or license holder and the day-care center or the child-care facility are located on different stories of a multi-story building; or
    - (b) The permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multi-story building.
  - (4) This subsection does not apply to a foster group home, foster family home, family home, agency group home or agency home, as those terms are defined by Section 42.002 of the Texas Human Resources Code.

SECTION II: Severability.

The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION III: Repealing Clause

All Ordinances, or parts of Ordinances, inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

SECTION IV: Effective Date.

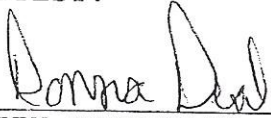
This Ordinance shall become effective immediately upon its passage.

PASSED AND ADOPTED this 15th day of NOVEMBER, 2007 at a regular meeting of the City Council of the City of Grapeland, Texas.

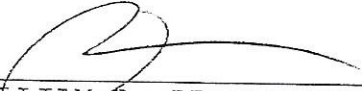
CITY OF GRAPELAND

BY: Dan Walling  
MAYOR

ATTEST:



CITY SECRETARY



WILLIAM R. PEMBERTON,  
CITY ATTORNEY