

ORDINANCE NO. 2017.07

**AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS, ESTABLISHING REGULATIONS RELATING TO THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES WITHIN THE VILLAGE LIMITS; REPEALING ORDINANCE NO. 2009.06, ORDINANCE NO. 2008.09 AND OTHER CONFLICTING ORDINANCES OR RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, voters in the Village of Salado have approved the sale of beer and wine for off-premise consumption, the sale of mixed beverages by food and beverage certificate holders only, the legal sale of wine on the premises of a permitted winery and the sale of all alcoholic beverages for off-premise consumption only;

**WHEREAS**, on April 3, 2008, the Board adopted Ordinance No. 2008.09 establishing distance regulations for the sale of alcoholic beverages from schools, churches, hospitals and day care centers; prohibiting the sale of beer and wine for off-premise consumption in residential areas; adopting hours of sale for alcoholic beverages; and establishing a permit requirement and fees for the sale of alcoholic beverages as permitted by the Texas Alcoholic Beverage Code; and

**WHEREAS**, on August 20, 2009, the Board adopted Ordinance No. 2009.06 which amended Ordinance No. 2008.09 to rescind the requirement to obtain a permit from the Village for the sale of alcoholic beverages within the Village limits.

**WHEREAS**, the Board now finds it reasonable and necessary to repeal and replace the regulations enacted under Ordinance No. 2008.09 and Ordinance No. 2009.06 and provide new;

**WHEREAS**, the regulations established by this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade, and commerce of the Village and necessary and proper for carrying out the power granted by law to the Village; and

**WHEREAS**, the following enactments are a valid exercise of the Village's broad police powers and based on the Village's statutory regulatory authority, including, but not limited to, Texas Local Government Code Chapters 51, 52, and 211; and

**WHEREAS**, the Board finds that the provisions of this Ordinance will serve to promote the public health, safety, morals, and general welfare; and

**WHEREAS**, parties in interest and citizens have had an opportunity to be heard regarding this Ordinance at a meeting of the Board, an agenda for which was posted at the Municipal Building more than seventy-two (72) hours prior to the respective hearings;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS:**

#### **SECTION I**

All of the above premises are hereby found to be true and correct legislative and factual findings of the Board and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

#### **SECTION II.**

The Village of Salado Alcoholic Beverage Ordinance set forth in "Exhibit A" is hereby adopted.

#### **SECTION III.**

Ordinance No. 2008.09 and Ordinance No. 2009.06 are hereby repealed and replaced in their entirety, and all other ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of conflict with this Ordinance.

#### **SECTION IV.**

The repeal of any ordinance or part of ordinances effectuated 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 City under any section or provisions of any ordinances at the time of passage of this Article.

#### **SECTION V.**

Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION VI.**

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

**SECTION VII.**

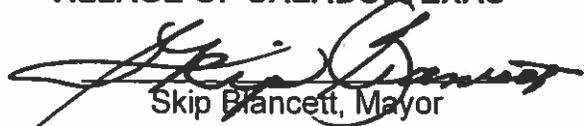
This Ordinance shall take effect immediately from and after its passage and publication as may be required by law.

**SECTION VIII.**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED** this 15<sup>th</sup> day of June, 2017, by Ayes 5 to Nays 0 Abstain 0 of the Board of Aldermen of the Village of Salado, Texas.

**VILLAGE OF SALADO, TEXAS**

  
Skip Blancett, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Don Ferguson, Village Administrator  
Acting City Secretary

# *Attachment "A"*

## ALCOHOLIC BEVERAGES ORDINANCE

### SECTION 1. DEFINITIONS

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

**Alcohol:** Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

**Alcoholic Beverage:** Includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine as defined in this Ordinance.

**Beer or Malt Beverage:** Any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other product, or any combination of such products in water containing not more than fourteen percent (14%) alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer, and strong beer. Also included are beverages known as "non-alcoholic beer" which is made by fermentation of any infusion or decoction of barley, malt, hops, or other products, and containing less than three percent (3%), but more than zero point one percent (0.1%) alcohol by volume. The term "malt beverage" does not include sake, known as Japanese rice wine.

**Child-care facility:** A facility licensed, certified, or registered by the Department of Human 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.

**Day Care Center:** A child-care facility that provides care for more than twelve (12) children under fourteen (14) years of age for less than 24 hours a day.

**Fortified Wine:** Any alcoholic beverage containing more than twenty-one percent (21%) alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. "Fortified wine" includes, but is not limited to, brandy.

**Permittee:** The individual to whom a license is issued or, in the case of a partnership or corporation, all partners, officers, and directors of said partnership or corporation.

**Person:** Any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi public.

**Place of Worship:** A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

**School, private:** A school including a parochial school that is not operated by an Independent School District that offers a course of instruction for students in one or more grades from kindergarten through grade twelve (12) and has more than 100 students enrolled and attending courses at a single location.

**School, public:** Any school operated by an Independent School District that offers a course of instruction for students in one or more grades from kindergarten through grade twelve (12).

**Wine:** Any alcoholic beverage containing not more than twenty-one percent (21%) alcohol made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. "Wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term "wine" does not include Fortified Wine or cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage.

## **SECTION 2. PERMITS**

### **2.1. Permit Required**

It shall be unlawful for any person to manufacture, distill, brew, sell, or possess for the purpose of sale any beer, wine, or other alcoholic beverage, or otherwise engage in any activity for which a license or permit is required by the Texas Alcoholic Beverage Code as amended, unless the person has a current and unrevoked permit issued by the Texas Alcoholic Beverage Commission.

## **SECTION 3. THE SALE, STORAGE OR HANDLING OF ALCOHOL BEVERAGES IN THE VILLAGE CITY LIMITS**

### **3.1. Sale of Beer and Wine Prohibited in Residential Areas**

The sale, storage or handling of beer and wine for the purpose of sale is prohibited in residential areas in the Village limits,. Under this Section, residential areas shall mean any property located in the following districts as described in the Village of Salado Zoning Ordinance, as amended from time to time:

- A. Agriculture (A)
- B. Single-Family Estate Residential (SF-21)
- C. Single-Family Residential (SF-7)
- D. Single-Family Residential-Patio Home (SF-PH)

- E. Single-Family Attached Residential (SFA)
- F. Multi-Family Residential-1 (MF-1)
- G. Any residential component of an approved planned development

**3.2. Sale of Alcoholic Beverages near Schools, Day-Care Centers, Child-Care Facilities, Churches or Hospitals**

- A. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred (300') of a church, public or private school, or public hospital unless expressly granted an exception pursuant to the requirements of this section.
- B. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within one thousand (1,000') of a public or private school if the governing body of the public or private school has requested the Village impose the one thousand (1,000') distance restriction, unless expressly granted an exception pursuant to the requirements of this section.
- C. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred (300') feet of a day-care center or a child-care facility as defined in the Texas Human Resources Code Section 42.002 and the permit or license holder does not hold a food and beverage certificate issued by the Texas Alcoholic Beverage Commission, unless expressly varied pursuant to the requirements of this section, exception that this provision shall not apply:
  - 1. If the permit or license holder and the day-care center or child-care facility are located on different stories of a multi-story building; or
  - 2. If 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 multistory building
- D. The distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be measured along the property lines of the street fronts and from front door to front door, and in direct line across intersections.
- E. The distance between the place of business where alcoholic beverages are sold and a school, day-care center or child-care facility shall be measured in a direct line from the property line of the school, day-care center or child-care facility to the property line of the place of business, and in direct line across intersections.
- F. Waiver of Minimum Distances.

1. The Board of Aldermen may waive the distance restrictions in subsections (A), (B) and (C), if, after notice and a public hearing, the Board determines that enforcement of the restriction in a particular instance:
  - a. is not in the best interest of the public;
  - b. constitutes waste or the inefficient use of land or other resources;
  - c. creates an undue hardship on the applicant;
  - d. does not serve its intended purpose;
  - e. is not effective or necessary; or
  - f. for any other reason the Board, after consideration of the health, safety and welfare of the public and the equities of the situation, determines it is in the best interest of the community.
2. The Board may consider the written consent to a waiver under this subsection from each church, public or private school, public hospital, care-center or child-care facility within the required minimum distance from the applicant's proposed place of business filed by the applicant with the Village to be sufficient justification for a waiver.
3. To request a waiver under this subsection, the applicant must submit an application to the Village with all information requested and required by the Village and pay an administrative fee.
4. The Village shall distribute notice of an application and related public hearing for a waiver to the minimum distance requirements by:
  - a. publication once in a newspaper of general circulation in the location in which the waiver is requested; and
  - b. mail not fewer than fifteen (15) days before the date of the Board's required public hearing under this subsection to:
    - i. the applicant;
    - ii. the record owner of real property located within three hundred (300') feet of the proposed place of business according to the most recent tax appraisal roll; and
    - iii. a neighborhood organization on file with the Village that has requested notice of an applicant for the waiver under this subsection; and

### **3.3 Hours of Sale of Alcoholic Beverages**

#### **A. Beer and Wine Permit**

The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's off-premise permit as established by Section 105.04 of the Texas Alcoholic Beverage Code, are the same as those prescribed for the sale of beer under Section 105.05 of the Texas Alcoholic Beverage code, except that no sale shall be allowed between 2:00 a.m. and noon on Sunday. The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's off-premise permit shall be established by Section 105.05 as follows:

1. Monday through Saturday: A wine and beer retailer's off-premise permittee may sell, offer for sale, or deliver wine and beer between the hours of midnight and 2:00 a.m. and between the hours of 7:00 a.m. and midnight on any day except Sunday.
2. Sunday: A wine and beer retailer's off-premise permittee may sell, offer for sale, or deliver wine and beer between the hours of midnight and 2:00 a.m. and between the hours of noon and midnight, except that permittees or licenses authorized to sell for on-premise consumption may sell wine and beer between 10:00 a.m. and noon if the wine and beer is served to a customer during the service of food to the customer.

**B. Mixed Beverage Permit**

The hours of sale for mixed beverages shall be as established by Section 105.03, Texas Alcoholic Beverage Code, as follows:

1. Monday through Saturday: A mixed beverage permittee may sell and offer for sale mixed beverages between the hours of midnight and 2:00 a.m. and between the hours of 7:00 a.m. and midnight.
2. Sunday: A mixed beverage permittee may sell and offer for sale mixed beverages between midnight and 2:00 a.m. and between 10:00 a.m. and midnight, except that an alcoholic beverage served to a customer between 10:00 a.m. and 12 noon on Sunday must be provided during the service of food to the customer.

**SECTION 4. PENALTY**

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this Ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), and each day any violation or noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in Section 54.012 of the Texas Local Government Code, as may be amended, may be exercised in enforcing this Ordinance whether or not there has been a complaint filed.