

ORDINANCE 827

AN ORDINANCE AUTHORIZING PERMITTEES OF MIXED BEVERAGE PERMITS AND LATE-HOURS PERMITS TO SELL OR OFFER FOR SALE MIXED BEVERAGES FROM THE HOURS OF TWELVE MIDNIGHT UNTIL TWO A.M. ON ANY DAY; PROVIDING DEFINITIONS; LEVYING A FEE ON PERMITTEES AFTER A THREE-YEAR PERIOD FOLLOWING THE ISSUANCE OF PERMITS; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, the Texas Alcoholic Beverage Code regulates the hours of sale and the offer for sale of mixed beverages; and,

WHEREAS, said Code provides that a city may extend the hours of sale and offer for sale of mixed beverages by the passage of an ordinance; and,

WHEREAS, pursuant to said Code, an ordinance may allow the sale and the offer for sale of mixed beverages to apply to the hours between twelve midnight and two a.m. on any day; and,

WHEREAS, under said Code the city council may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city, but the city shall not levy and collect a fee on a mixed beverage permit during the three-year period following the issuance of the mixed beverage permit and/or a late-hours permit;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Findings. The facts and findings recited hereinabove are found to be true and correct and are hereby adopted as part of this ordinance.

Section 2. Definitions. The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this ordinance, except where the context clearly indicates a different meaning. The singular shall include the plural and vice-versa, except where the context clearly indicates a different meaning.

Code means and refers to the Texas Alcoholic Beverage Code.

Mixed beverage means and refers to its definition found at Sec. 105.03 (Hours of Sale: Mixed Beverages) of the Code.

Permittee means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them and also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

Premises means and refers to its definition as found at Sec. 11.49 (Premises Defined; Designation of Licensed Premises) of the Code.

Section 3. Late hours sale or offer for sale of mixed beverages.

- a. A permittee that has been issued a mixed beverage permit and a late-hours mixed beverage permit by the Texas Alcoholic Beverage Commission (TABC) may sell or offer for sale mixed beverages on the permittee's premises between the hours of twelve midnight and two a.m. on any day, if otherwise in compliance with this ordinance.
- b. A permittee must show written proof satisfactory to the chief of police that the permittee has been issued a mixed beverage permit and a late-hours mixed beverage permit from the TABC before the permittee may sell or offer for sale mixed beverages on the permittee's premises between the hours of twelve midnight and two a.m. on any day.
- c. If any written proof provided by the permittee is not satisfactory to the chief of police, the permittee may appeal the chief's decision to the city council. Upon appeal, the city council shall decide if said proof meets the requirements of subsection a. of this section and the Code. If the city council so determines, the permittee may proceed with the sale or offer for sale of mixed beverages on the permittee's premises between the hours of twelve midnight and two a.m. on any day. If the city council determines that said proof does not meet the requirements of said subsection or the Code, the city council may request of the TABC to cancel or suspend the permittee's late-hours permit or to seek any other remedies available at law to the TABC.

Section 4. Permit fee.

- a. A fee in an amount not to exceed one-half the state fee shall be charged and collected for each permit issued by the TABC for premises located within the city, including a mixed beverage permit and a late-hours permit, but the city shall not levy and collect a fee on a mixed beverage permit or a late-hours permit for three years following the issuance by the TABC of said permits to a permittee.

Section 5. Penalty. A violation of this ordinance is a violation of the Texas Alcoholic Beverage Code and subject to the penalties provided for thereunder.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be

severable.

Section 7. Conflicting ordinances. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 8. Compliance with Open Meetings Act. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, TEX. GOV'T CODE, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon.

Section 9. Effective date. This ordinance shall take effect from and after its final passage and publication as required by law.

PASSED AND APPROVED on First Reading this 5th day of November, 2014.


PASSED AND ADOPTED on Second Reading this 18th day of November, 2014.

THE CITY OF KYLE, TEXAS

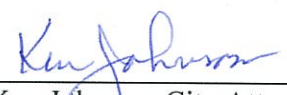
BY:


R. Todd Webster, Mayor

ATTEST:


Amelia Sanchez, City Secretary

APPROVED AS TO FORM:


Ken Johnson, City Attorney