

ORDINANCE NO. 8-29-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERKEL, TAYLOR COUNTY, TEXAS (CITY) AMENDING COPREHENSIVE ZONING ORDINANCE NO. 0727-98 ESTABLISHING REGULATIONS, PURSUANT TO REGULATIONS IN THE TEXAS ALCOHOLIC BEVERAGE CODE (TABC), REGARDING ALCOHOLIC BEVERAGE SALES WITHIN THE CORPORATE LIMITS OF THE CITY; REQUIRING APPLICATIONS FOR PERMITS AND APPLICABLE ASSOCIATED ANNUAL FEES; PROHIBITING SALES WITHIN 300 FEET OF HOSPITALS, CHURCHES AND SCHOOLS; PROHIBITING POSSESSION AND/OR CONSUMPTION AROUND PUBLIC OR PRIVATE SCHOOLS, PROHIBITING OPEN CONTAINERS ON PUBLIC PROPERTY WITHIN THE CENTRAL BUSINESS DISTRICT (CBD); PROHIBITING SALES IN RESIDENTIAL ZONES; REGULATING SIGNS ADVERTISING SAID SALES AND PROVIDING A SEVERABILITY CLAUSE.

Whereas, approval of a Local Option Election Referendum allows for certain beer and wine sales in Taylor County J.P. Precinct 2 which includes the City of Merkel; and

Whereas, future Local Option Election Referendums may allow for expansion of alcoholic beverage sales; and

Whereas, the City of Merkel heretofore has no regulations for the sales of alcoholic beverages within its corporate limits; and

Whereas, the City Council of the City of Merkel, after public hearings and recommendation from the City's Planning and Zoning Commission, has determined that the establishment of rules and regulations relating to the sale of alcoholic beverages in the corporate limits of the City is in the best interest of the citizens of Merkel and is necessary to protect the public health, safety and welfare; and

Whereas, the Texas Alcoholic Beverage Code authorizes municipalities, by ordinance, to regulate certain aspects of alcoholic beverage sales; and

Whereas, notice of the time, place and subject matter of the open meeting at which this ordinance was enacted was given in accordance with the Texas Open Meeting Act.

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

PART 1: That the provisions included in exhibit "A", attached hereto and made a part of this Ordinance for all purposes, shall constitute the Ordinance.

PART 2: That all ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict only.

PART 3: That if any provision, section, subsection, paragraph, sentence, clause, phrase or word in this ordinance or application thereof to any person or circumstance be found and determined by a court of competent

jurisdiction to be void, invalid or unconstitutional, such holding shall in no way affect the validity of the remaining provisions, sections, subsections, paragraphs, sentences, clauses, phrases or words of this ordinance, which shall remain in full force and effect.

PART 4: That any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a class "C" misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper.

PASSED ON FIRST READING AFTER PUBLIC HEARING on the 8th day of August, 2016.

PASSED ON SECOND READING AFTER PUBLIC HEARING on the 29th day of August, 2016.

ATTEST:



Gwen Wetsel, City Secretary

SIGNED:



Mary Schramper, Mayor

APPROVED:

Claudia Clinton, City Attorney

EXHIBIT "A"

Section 1. TITLE

This Ordinance shall be known as the Merkel Alcoholic Beverage Ordinance.

Section 2. DEFINITIONS

All definitions of words, terms and phrases as set forth in the TABC and other Codes referenced in the TABC are hereby adopted and made a part hereof including but not limited to:

1. **ALCOHOLIC BEVERAGE:** Means any beverage containing more than one half of one percent of alcohol by volume which is capable of use for beverage purposes either alone or when diluted.
2. **ALCOHOL BEVERAGE PERMIT:** Shall mean an official certificate issued by the City Secretary's Office certifying compliance with this ordinance
3. **ALE OR MALT LIQUOR:** Means a malt beverage containing more than four percent of alcohol by weight.
4. **BEER:** Means a malt beverage containing one half of one percent or more of alcohol by volume and not more than four percent of alcohol by volume and does not include a beverage designated by label or otherwise by a name other than beer.
5. **BEER AND WINE RETAIL SALES (NODRIVETHROUGH):** Businesses that engage in the sale of beer, wine and/or malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17% by volume, for Off- Premises Consumption only, with no drive-through facility.
6. **BEER AND WINE RETAIL SALES (DRIVE THROUGH):** Businesses that engage in the sale of beer, wine and/or malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17% by volume, for Off- Premises Consumption only, with a drive-through facility including a drive-up window, drive-through building or any other means of conducting sales without requiring customers to exit their vehicles.
7. **BILLBOARD:** Means a structure directly attached to the land, a house, or a building having one or more spaces used to display a sign or advertisement of the manufacture, sale, or distribution of alcoholic beverages, whether or not the structure is artificially lighted.
8. **CHILD-CARE FACILITY:** As such terms are defined by section 42.002 of the Texas Human Resources Code means a certified facility licensed, certified, or registered by the 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.
9. **CITY** shall mean and refer to the City of Merkel, Taylor County, Texas.
10. **CONVENIENCE CENTER:** Retail establishments which carry convenience goods, such as groceries, drugs, and some variety items, including grocery stores, markets, supermarkets and variety store.
11. **DEALER:** As that term is used in Section 109.33 Texas Alcoholic Beverage Code V.T.C.S. and shall include PERSON as that term is defined herein.
12. **"Distilled Spirits"** means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and that contain plain, sparkling, or

carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients

13. **ELECTRIC SIGN:** Means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

14. **HOTEL/MOTEL:** Means a building or a group of two (2) or more buildings containing guest rooms or apartments and used primarily for the accommodation of automobile travelers containing a restaurant as defined herein.

15. **LICENSEE:** Means a person who is the holder of a license provided for in this ordinance, or any agent, servant, or employee of that person.

16. **"Liquor":** means any alcoholic beverage containing alcohol in excess four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habenero, or barreteago, is prima facie evidence that it is liquor.

17. **MIXED BEVERAGE:** Means one or more servings of a beverage composed in whole or in part of alcohol in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit.

18. **ON-PREMISES CONSUMPTION:** The sale of an alcoholic beverage for consumption on the premises of a business establishment as permitted herein.

19. **OFF-PREMISES CONSUMPTION;** The sale of a sealed alcoholic beverage container for consumption off the premises of a business establishment as permitted herein.

20. **PRE-PACKAGED ALCOHOLIC BEVERAGE RETAIL SALES (NO DRIVE-THROUGH):**
Businesses that engage in the sale of pre-packaged alcoholic beverages, for Off-Premises Consumption with no drive-through facility.

21. **PRE-PACKAGED ALCOHOLIC BEVERAGE RETAIL SALES (DRIVE-THROUGH):**
Businesses that engage in the sale of pre-packaged alcoholic beverages, for Off-Premises Consumption, with a drive-through facility including a drive-up window, drive-through building or any other means of conducting sales without requiring customers to exit their vehicles.

22. **OPEN CONTAINER:** Means a container that is no longer sealed.

23. **OUTDOOR ADVERTISING:** Means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building so that it is visible by a person of ordinary vision from outside the building

24. **PERSON:** Means a natural person or association of natural persons, trustee, receiver, partnership, and corporation, organization of the manager, agent, servant, or employee of any of them.

25. **PRIVATE SCHOOL:** Means a private school including a parochial school that 1) offers a course of instruction for students -in one or more grades from kindergarten through grade 12 and 2) has more than 100 students enrolled and attending courses at a single location.

26. **PERMITTEE:** Means a person who is the holder of a permit provided for in this ordinance, or an agent, servant, or employee of that person.

22. **RESTAURANT:** Means a place where meals are prepared and served to the public for consumption on or off the premises and that derive 50% or more of revenue from food sales including seating for patrons.

23. **WINE:** Means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits,

berries, or honey, and includes wine coolers.

24. WINE COOLER: Means an alcoholic beverage consisting of vinous liquor plus plain, sparkling, or carbonated water and which may also contain one or more natural or artificial blending or flavoring ingredients. A wine cooler may have an alcohol content as low as one-half of one percent by volume.

Section 3. PERMITTED USES

Any business, existing or new, that desires to sell any alcoholic beverage for on premise or off premise consumption within the corporate limits of the City of Merkel must first obtain an alcoholic beverage permit issued by the City in accordance with this ordinance.

1: Beer and Wine Retail Sales (No Drive-Through) or Pre-Packaged Alcoholic Beverage Retail Sales (No Drive-Through) and holding a valid food and beverage license will be allowed to operate only in areas that are zoned C1 (Central Business District), C2 (General Business), LI (Light Industrial District) and HI (Heavy Industrial District).

2: Beer and Wine Retail Sales (No Drive-Through) and Pre-Packaged Alcoholic Beverage Retail Sales (No Drive-Through) and not holding a valid food and beverage license will be allowed to operate only in areas that are zoned C2 (General Business District), LI (Light Industrial District) and HI (Heavy Industrial District).

3: Alcoholic beverage sales for On-Premise consumption shall only be permitted by restaurants or hotel/motels holding a valid food and beverage license and the restaurant or hotel/motel's revenue from the sale of alcoholic beverages shall be less than fifty percent of its gross revenue according to the State Comptroller.

4: Alcoholic beverage sales for Off-Premise consumption shall only be permitted by convenience centers that derive forty percent or more of its gross revenue from the sale of non-alcoholic products and products not subject to motor fuel tax.

5: Mixed Beverage Sales for On-Premise Consumption and holding a valid food and beverage license will be allowed to operate only in areas that are zoned C1 (Central Business District), C2 (General Business), LI (Light Industrial District), and HI (Heavy Industrial District).

6: Mixed beverage sales for on premise consumption and not holding a valid food and beverage license will be allowed to operate only in LI and HI

Section 4. SALE OF ALCOHOLIC BEVERAGES PROHIBITED NEAR HOSPITALS, PUBLIC SCHOOLS, PRIVATE SCHOOLS, CHURCHES.

1: It shall be unlawful for any dealer not holding a valid food and beverage license to sell alcoholic beverages from or at a place of business within the City within 300 feet of a hospital, church, public or private school or daycare as defined.

2: The measurement of the distance between the place of business where alcoholic beverages are sold and the hospital, church, school or daycare shall be measured according to the TABC.

3: This section 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.

4. There are no distance restrictions for the central business district area as described. (see appendix A)

Section 5. SALE OF ALCOHOLIC BEVERAGES PROHIBITED IN RESIDENTIAL AREAS

1: It shall be unlawful for any person or dealer to sell any alcoholic beverages on any lot, tract, or parcel of land zoned as residential within the city.

Section 6. CONSUMPTION OF ALCOHOLIC BEVERAGE AND POSSESSION OF AN OPEN CONTAINER NEAR PUBLIC OR PRIVATE SCHOOLS OR PUBLIC PROPERTY; EXCEPTION

1: It shall be unlawful for any person to consume any alcoholic beverage in or on any public property, including any parking areas which are used generally by the public; or for any person to possess any alcoholic beverage in or on any public property, including any parking areas which are used generally by the public unless a conditional use/special event permit, specifying the type(s) of alcohol to be permitted at the special event, is approved by the city council.

2: It shall be unlawful for any person to consume, have or possess or have upon their persons or in their possession, any wine, malt or vinous liquors or any other alcoholic beverage regardless of the name and strength thereof or be found in a state of intoxication while attending or being in or upon any school grounds, public school grounds, public school buildings, football grounds and/or stadiums, basketball grounds and/or stadiums, while football games, basketball games, track meets or any other public meetings are being held within said grounds and/or buildings within the city.

3: The possession by any person of wine, malt or vinous liquors or any other alcoholic beverage regardless of name and strength shall be prima facie evidence that same is being possessed for unlawful purposes.

Section 7. SIGNAGE

No person may erect or maintain a billboard, electric sign, or any outdoor advertising in violation of any ordinance of the City of Merkel, Texas or this ordinance.

1: No person shall erect or maintain a Billboard, Electric Sign, or any Outdoor Advertising for the sale or consumption of an alcoholic beverage within the city limits of the City of Merkel, Texas.

2: No person shall erect post or display any signs for the sale or consumption of alcoholic beverages or other forms of advertisement inside the alcoholic beverage establishment if same can be viewed from a public street.

3: Any winery may include wine in the name of their business as registered with the Texas Comptroller's Office.

Section 8. LOCAL FEES FOR LICENSE AND APPLICATION

1: For On-Premises Consumption, the City hereby levies an annual fee in a sum equal to fifty percent of the State's third renewal fee for a mixed beverage permit with a food and beverage certificate, and all other licenses required, as authorized by the Texas Alcoholic Beverage code, except a temporary or agent's beer license issued for premise locations within the corporate limits of the city.

2: For Off-Premises Consumption, the City hereby levies an annual fee in a sum equal to fifty percent of the State's fee for a beer retailer's off-premises license, and all other licenses required, as authorized by the Texas Alcoholic Beverage Code, except a temporary or agent's beer license issued for premise locations within the corporate limits of the city.

3: There is hereby levied a \$150.00 administrative processing fee for acceptance, review and verification of all new applications.

4: All payments shall be made to the City along with the submission of the application. The City shall issue a receipt for display with the state license or permit on the licensed or permitted premises.

Section 9. Penalties

Any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a class "C" misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

APPENDIX A

C-1 CENTRAL BUSINESS DISTRICT

