

**ORDINANCE NO. 11142022**

**AN ORDINANCE OF THE CITY OF MERKEL, TEXAS REPEALING AND REPLACING ORDINANCE NO. 08-29-2016; PROHIBITING ALCOHOL SALES IN CERTAIN LOCATIONS; ESTABLISHING A LOCAL PERMIT FEE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Merkel (the "City") is a Type A general law municipality operating pursuant to the laws of the State of Texas;

**WHEREAS**, the Texas Alcoholic Beverage Code (the "TABC") provides the sole basis for the regulation of alcohol sales within the State of Texas;

**WHEREAS**, the TABC provides municipalities the ability to restrict the sale of alcohol near schools, churches, and hospitals pursuant to Section 109.33 of the TABC, and to day-care centers and child-care facilities pursuant to Section 109.331 of the TABC;

**WHEREAS**, TABC Section 11.38 allows cities to collect a fee, of one-half of the amount of the state fee, for each permit issued for sale, manufacture, etc. of liquor, and TABC Section 61.36 allows cities to collect a fee, of one-half of the amount of the state fee, for each license issued for the sale of malt beverages; and

**WHEREAS**, the City Council of the City wishes to adopt and enforce allowable restrictions regarding the location of alcohol sales within the City and wishes to impose a local fee upon permits and licenses issued by the State of Texas for alcohol sales within the City.

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

**Section 1. Incorporation of Premises.** The recitals outlined above are found to be true and correct and are hereby adopted.

**Section 2. Repeal.** Ordinance No. 08-29-2016, adopted on August 29, 2016, is hereby repealed. All other ordinances or ordinance provisions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**Section 3. Definitions.**

*Alcoholic Beverages* means alcohol, or 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.

*Child-care Facility* means a 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.

*Day-care Center* means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

*Licensee* means a person who is a holder of a license provided for in the Texas Alcoholic Beverage Code, or any agent, servant, or employee of that person.

*Liquor* means any alcoholic beverage, other than a malt beverage, containing alcohol in excess of five percent by volume, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.

*Malt Beverage* means a fermented beverage of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, in whole or in part, or from any malt substitute.

*Permittee* means a person who is the holder of a permit provided for in the Texas Alcoholic Beverage Code, or any agent, servant, or employee of that person.

*Person* 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.

*Private School* means a private school, including a parochial school that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

**Section 4. Prohibited.** The sale of alcoholic beverages is hereby prohibited from a place of business within 300 feet of a church, public or private school, public hospital, child-care facility, or day-care center.

**Section 5. Measurement.**

(a) 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) The measurement of the distance between the place of business where alcoholic beverages are sold and the public and 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 permittee or licensee 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.

**Section 6. Exception.** Section 4 and Section 5 do not apply, as they relate to proximity to a child-care facility or day-care center if:

- (a) the permittee or licensee and the day-care center or child-care facility are located on different stories of a multistory building; or
- (b) the permittee or licensee and the day-care center or child-care facility are located in separate buildings and either the permittee or licensee or the day-care center or child-care facility is located on the second story or higher of a multistory building.


**Section 7. Local Fee.**

- (a) Unless state law exempts a permittee or licensee from payment of a fee established by this section, a permittee or licensee must pay the city a biennial permit or license fee of one-half the statutory fee provided in the Alcoholic Beverage Code, which are in effect upon the Effective Date of this Ordinance or as they may be amended in the future.
- (b) An applicant shall pay the fees established under subsection (a) to the City immediately after obtaining a state permit or license.
- (c) A permittee or licensee who sells an alcoholic beverage at a business location before the applicant pays the fees established by this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.
- (d) The city clerk shall issue and deliver a receipt under this section to the permittee or licensee authorizing the sale of alcoholic beverages under this article and a city permit or license, if the permittee or licensee:
  - (1) pays the fee established by subsection (a); and
  - (2) exhibits a valid permit or license issued by the state.

**Section 8. Effective Date.** This Ordinance shall go into effect upon its adoption by the City Council and after publication as required by the Texas Local Government Code.

**PASSED and APPROVED** on this the 14<sup>th</sup> day of November 2022.

ATTEST:

  
Evelyn Morse, Interim City Manager/City Secretary

  
Mary Schramper, Mayor