

ORDINANCE # 2012-1211-1

AN ORDINANCE AMENDING SECTION 10-225. C-1 KNOWN AS THE LIGHT COMMERCIAL DISTRICT and SECTION 10-226. C-2 KNOWN AS THE GENERAL COMMERCIAL DISTRICT OF CHAPTER 10 PLANNING AND ZONING ORDINANCE OF THE CITY OF BULLARD TO ALLOW FOR THE SALE OF ALCOHOLIC BEVERAGES WITHIN THE CITY OF BULLARD IN THESE DISTRICTS AS A PERMITTED USE PURSUANT TO THE VOTER REFERENDUM HERETOFORE HELD IN THE CITY OF BULLARD ON NOVEMBER 2, 2010 AND HELD IN SMITH COUNTY COMMISSIONER PRECINCT #2 ON NOVEMBER 6, 2012, APPLY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS THE CITY COUNCIL OF THE CITY OF BULLARD FINDS THAT ALL CONDITIONS PRECEDENT REQUIRED BY LAW TO PERMIT THE AMENDMENT OF THE ZONING ORDINANCE OF THE CITY OF BULLARD, TEXAS HAVE BEEN MET, NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BULLARD, TEXAS: THAT THE FOLLOWING AMENDMENTS TO SECTION 10-225. C-1 OF THE PLANNING AND ZONING ORDINANCE OF THE CITY OF BULLARD KNOWN AS THE LIGHT COMMERCIAL DISTRICT AND SECTION 10-226. C-2 OF THE PLANNING AND ZONING ORDINANCE OF THE CITY OF BULLARD, TEXAS, KNOWN AS THE GENERAL COMMERCIAL DISTRICT BE ADOPTED AND MADE A PART OF SAID ORDINANCE FOR ALL PURPOSES, AND DESIGNATED AS SECTION 10-225. C-1 b .6. AND SECTION 10-226. C-2 b. 7. THEREOF, AND THAT EXCEPT AS HEREINAFTER AMENDED THE CITY OF BULLARD ZONING ORDINANCE SHALL REMAIN IN FULL FORCE AND EFFECT.

A.

AMENDMENT TO SECTION 10-225. C-1 b. OF THE PLANNING AND ZONING ORDINANCE OF THE CITY OF BULLARD

APPLICABILITY: From and after the date of adoption of this amendment, SECTION 10-225.C-1 b. OF THE PLANNING AND ZONING ORDINANCE OF THE CITY OF BULLARD is herenow amended to add the following provision to SECTION 10-225.C-1 b. as a permitted use in those areas to which the voter referendums heretofore held in the City of Bullard on November 2, 2010, and held in Smith County Commissioner Precinct #2 on November 6, 2012, apply:

6. After all State and City permitting, licensing, and Ordinance requirements have been met, the sale of beer and wine for off-premises consumption only, and the sale of mixed beverages in restaurants by food and beverage certificate holders only, shall be permitted.

B.

AMENDMENT TO SECTION 10-226, C-2 b. OF THE PLANNING AND ZONING ORDINANCE  
OF THE CITY OF BULLARD

APPLICABILITY: From and after the date of adoption of this amendment, SECTION 10-226, C-2 b. OF THE PLANNING AND ZONING ORDINANCE OF THE CITY OF BULLARD is herenow amended to add the following provision to SECTION 10-226, C-2 b. as a permitted use in those areas to which the voter referendums heretofore held in the City of Bullard on November 2, 2010, and held in Smith County Commissioner Precinct #2 on November 6, 2012, apply:

7. After all State and City permitting, licensing, and Ordinance requirements have been met, the sale of beer and wine for off-premises consumption only, and the sale of mixed beverages in restaurants by food and beverage certificate holders only, shall be permitted.

PASSED AND APPROVED this 11<sup>th</sup> day of December, 2012.

  
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Pam Frederick, Mayor, City of Bullard

ATTEST:

  
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Doris Crockett, City Secretary

ORDINANCE NO. 2012-1211-2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BULLARD, TEXAS, AMENDING CHAPTER 10, PLANNING AND ZONING, ARTICLE IV. SECTION 10-250, TO PROVIDE FOR A FEE FOR ZONING CHANGES, ZONING CHANGES FOR BEER AND WINE ON-SITE INSPECTION VERIFICATION AND OTHER ON-SITE ZONING INSPECTION VERIFICATIONS FOR THE SALE OF ALCOHOLIC BEVERAGES WITHIN "WET AREAS" WITHIN THE CITY OF BULLARD, AND SPECIAL USE PERMITS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Bullard, the powers granted to municipalities under the Texas Local Government Code , are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance, and compliance with State Laws regulating the issuance of permits for the sale of alcoholic beverages within the City ; and

WHEREAS, the City of Bullard has previously adopted a Zoning Ordinance for the City of Bullard, and

WHEREAS, The City of Bullard has previously adopted certain fees related to Zoning and other administrative matters; and

WHEREAS, it is important to clarify the existing fee for zoning changes to establish a reasonable fee for administrative costs that apply to Beer and Wine On-Site Inspection Verification and other On-Site Inspection Verifications related to the sale of alcoholic beverages within the City;

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

**PART 1:** That Bullard Zoning Ordinance **CHAPTER 10, ARTICLE IV. SECTION - 10-250.** b. 1. is hereby amended by establishing the following fees for administrative costs that apply only to Beer and Wine On-Site Inspection Verification and other On-Site Inspections for which permits are required are required by State Law, and ratifying other fees to read as

follows:

**Sec. 10-250 b. 1. (a). Administrative Fees**

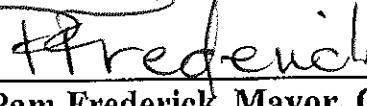
	Fee
Special Use Permit	\$ 150.00
Zoning Change	\$ 150.00
Zoning Change/Beer and Wine Site Inspection Verification /Zoning Site Inspection Verification	\$ 150.00

**PART 3:** Except as amended in Sec. 10-250, b.1.(a) above, fees related to Zoning and other administrative matters previously adopted by the City remain in full force and effect.

**PART 4:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 5:** That this Ordinance shall take effect immediately upon its passage and approval by the City Council.

**PASSED AND APPROVED** this 11th day of December, 2012.

  
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Pam Frederick, Mayor, City of Bullard

**ATTEST:**

  
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Doris Crockett, City Secretary

ORDINANCE # 2012-1211-3

AN ORDINANCE AMENDING CHAPTER 10 OF ARTICLE IV. PLANNING AND ZONING TO ADD "SECTION 10-253. SALE OF ALCOHOLIC BEVERAGES" TO THE CITY OF BULLARD ZONING ORDINANCE; ESTABLISHING REGULATIONS FOR THE PURPOSE OF SELLING BEER AND WINE AND ALCOHOLIC BEVERAGES WITHIN THE CITY OF BULLARD; ADOPTING DISTANCE REGULATIONS FROM CHURCHES, PUBLIC HOSPITALS, DAY-CARE CENTERS, CHILD-CARE FACILITIES, PUBLIC AND PRIVATE SCHOOLS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR THE GRANTING OF VARIANCES; ADOPTING CERTIFICATION PROVISIONS FOR ALCOHOL PERMITS; ADOPTING A LOCAL FEE ON ALCOHOLIC BEVERAGE PERMITS ISSUED BY THE STATE FOR PREMISES LOCATED WITHIN THE CITY THAT ARE CURRENTLY "WET"; ADOPTING REGULATIONS RELATING TO OPEN CONTAINERS; ADDING REFERENCES TO SIGNAGE, AND HOURS OF OPERATION; PROHIBITING THE SALE OF BEER AND WINE IN RESIDENTIAL AREAS; PROHIBITING ESTABLISHMENTS THAT DERIVE SEVENTY-FIVE PERCENT (75%) OR MORE OF THEIR GROSS REVENUE FROM THE ON-PREMISES SALE OF ALCOHOLIC BEVERAGES; ESTABLISHING THE HOURS OF OPERATION; ESTABLISHING A PENALTY OF NOT MORE THAN \$200.00 FOR VIOLATING OUTSIDE CONSUMPTION PROHIBITION; PROVIDING THAT THE VIOLATION OF THE HOURS OF SALE OF ALCOHOLIC BEVERAGES PROVISIONS IS A CLASS A MISDEMEANOR; PROVIDING THAT THE VIOLATION OF ANY OTHER PROVISION OF THIS AMENDMENT WITHOUT A SPECIFIC PENALTY STATED IS A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$500.00 PER VIOLATION; AMENDING "CHAPTER 10, PLANNING AND ZONING ORDINANCE ARTICLE IV SECTION 10-233. M-2 GENERAL INDUSTRIAL DISTRICT." BY ADOPTING ZONING REGULATIONS REGARDING DRIVE-THROUGH SERVICE AREAS THAT PROVIDE FOR PASSAGE OF MOTOR VEHICLES USED PRIMARILY FOR RETAIL SALES OR DELIVERY OF PRE-PACKAGED FOODS OR BEVERAGES NOT PRODUCED ON THE PREMISES FOR OFF-PREMISES CONSUMPTION; PROVIDING FOR THE GRANTING OF SPECIAL USE PERMITS; PROVIDING FOR AN EFFECTIVE DATE, AND PROVIDING FOR A SEVERABILITY CLAUSE.

WHEREAS, the City of Bullard is a general law municipality located in Smith and Cherokee Counties, Texas; and

WHEREAS, a voter referendum was heretofore held in the City of Bullard on November 2, 2010, permitting the sale of mixed beverages in restaurants by food and beverage certificate holders only within qualified areas of the city limits of the City, and

**WHEREAS**, an additional voter referendum was held in Smith County Justice of the Peace Precinct #2 on November 6, 2012, permitting the sale of beer and wine for off-premise consumption as well as the sale of mixed beverages in restaurants by food and beverage certificate holders only in Justice of the Peace Precinct #2 of Smith County, Texas, and

**WHEREAS**, the City Council finds that the voter referendum held on November 2, 2010, permitting the sale of mixed beverages in restaurants by food and beverage certificate holders applies only to that portion of the City that was within the official City limits of the City of Bullard on November 2, 2010, to which the November 2, 2010 referendum applied by law, and

**WHEREAS**, the City Council finds that the voter referendum held on November 6, 2012, in Justice of the Peace Precinct #2 of Smith County, Texas permitting the sale of beer and wine for off-premise consumption as well as the sale of mixed beverages in restaurants by food and beverage certificate holders applies only to that portion of the City of Bullard that is currently situated within Justice of the Peace Precinct #2 of Smith County, Texas, and

**WHEREAS**, Section 109.32 of the Texas Alcoholic Beverage Code provides that the governing body of an incorporated city may enact regulations prohibiting the sale of alcoholic beverages within 300 feet of a church, public or private school, or public hospital; and

**WHEREAS**, Section 109.33 of the Texas Alcoholic Beverage Code provides that the provisions of Section 109.33 relating to a public school also apply to day-care centers and child care centers as those terms are defined by the Texas Human Resources Code; and

**WHEREAS**, the City Council of the City of Bullard, Texas, desires to establish distance regulations from churches, public hospitals, day-care centers, child-care facilities, public and private schools, for the sale of alcoholic beverages in accordance with the Texas Alcoholic Beverage Code; and

**WHEREAS**, the City Council desires to prohibit the sale of beer and wine in residential areas as permitted by the Texas Alcoholic Beverage Code; and

**WHEREAS**, the City Council desires to adopt the hours of sale for alcoholic beverages as established by the Texas Alcoholic Beverage Code; and

**WHEREAS**, the City Council desires to authorize and levy permit fees for the sale of alcoholic beverages as permitted by the Texas Alcoholic Beverage Code; and

**WHEREAS**, regulations related to signage (including banners) for alcoholic beverages are governed by the Texas Alcoholic Beverage Code and Texas Alcoholic Beverage Commission regulations and the City Council desires to enforce signage advertising the sale of alcoholic beverages including with the use of present City Sign Regulations to the extent that it can by law; and

**WHEREAS**, the City desires to prohibit establishments that derive seventy-five percent (75%) or more of the establishment's gross revenue from the on-premises sale of alcoholic beverages within the City; and

**WHEREAS**, an arrangement allowing drive-through retail sales within an enclosed or unenclosed drive-through service area provides the opportunity for traffic conflicts between vehicles and pedestrians both inside and outside of the building, such as carbon monoxide in close proximity to materials designed for human consumption; and

**WHEREAS**, the City desires to regulate drive-through retail sales of alcoholic beverages within an enclosed or unenclosed drive-through service area to the extent allowed by the Texas Alcoholic Beverage Code and the Texas Alcoholic Beverage Commission; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

**WHEREAS**, the City desires to regulate the sale of alcoholic beverages within the City to the full extent allowed by the Texas Alcoholic Beverage Code and the Texas Alcoholic Beverage Commission;

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

SECTION 1. That the City of Bullard "Chapter 10, Planning and Zoning Ordinance" is herenow amended by the addition of "**SECTION 10-253. SALE OF ALCOHOLIC BEVERAGES**" as follows:

1. PURPOSE.

The purpose of the alcoholic beverage regulations contained in this Ordinance is to protect the public health, safety and public welfare of the inhabitants of the City of Bullard.

2. DEFINITIONS

For the purposes of this Ordinance, all definitions of words, terms and phrases as set forth in the Texas Alcoholic Beverage Code are adopted and made a part hereof as if copied verbatim herein.

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.

**Wine:** Any alcoholic beverage containing more than twenty-one percent (21%) alcohol made from fruits, berries, or grapes whether 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.

**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.

**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.

**Permit:** An authorization granted by the City for the sale of alcoholic beverages within the City.

**Permitter:** 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).

**Open container:** An open container shall mean a container that is no longer sealed.

**Public hospital:** A public hospital means an establishment that:

- (1). Offers services, facilities and beds for use for two (2) or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality or pregnancy; and
- (2). Regularly maintains, at a minimum, clinical laboratory services, diagnostic x-ray services, treatment facilities including surgery or obstetrical care and other definitive medical or surgical treatment of similar extent; and
- (3). Is licensed to operate as a hospital by the Texas Department of State Health Services or its successor.

**Division/Ordinance:** The term "division" and/or "ordinance" used in this amendment to the Bullard Zoning Ordinance is interchangeable.

### **3. PERMITS**

#### **1. Permit Required**

It shall be unlawful for any person to manufacture, distill, brew, sell, 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, within the City, unless the person has a current and unrevoked permit issued by the City. No license or permit to sell alcoholic beverages will be certified by the City of Bullard unless sale of alcoholic beverages at the location at which such activity is sought to be established and maintained is permitted under the Bullard Zoning Ordinance, as amended, this Division of the Bullard Zoning Ordinance, and all other applicable ordinances, rules and regulations of the City. Certification under this section does not make a nonconforming use conforming.

## 2 Fee Established

- A. The annual permit fee shall be charged by the City for issuing a license or permit to operate, conduct, and maintain a business establishment selling alcoholic beverages in the City and shall be in an amount that does not exceed one-half of the State fee for which an alcoholic beverage permit is required under the Texas Alcoholic Beverage Code, as amended, to charge and collect. A current list of State fees for which an alcoholic beverage permit is required under the Texas Alcoholic Beverage Code shall be maintained by the City Secretary.
- B. The City of Bullard adopts those exemptions from the permit and fee requirement as provided in the Texas Alcoholic Beverage Code Section 11.38 (d).
- C. All fees required under this Ordinance shall be paid in advance to the city secretary for a one (1) year term at the same time that the state annual fee is due and payable for each respective license and/or permit, including renewals thereof.
- D. The fee shall not apply to those permits specifically excepted from the fee by the Texas Alcoholic Beverage Code, including but not limited to mixed beverage permits during the three-year period following the issuance of the mixed beverage permit and private club registrations.
- E. The City Council may adopt administrative fees to off set the cost of any inspections, zoning reviews, plat reviews necessary to insure that the application complies with all ordinances and regulations effecting the sale of alcoholic beverages within the City of Bullard.
- F. Upon failure to pay the fee required by this section, the City Manager or his designee may notify the Texas Alcoholic Beverage Commission of such failure for cancellation of the Texas Alcoholic Beverage Commission permit.
- G. It shall be unlawful for a permittee of the Texas Alcoholic Beverage Commission to sell an alcoholic beverage without payment of the City fee required by this section. Each individual beverage sale shall constitute a separate offense.
- H. The city secretary shall, in the name of the city, issue and deliver to such applicant or person a permit ( a receipt evidencing payment of the fee (s) shall be sufficient proof of a city permit) to engage in a business that sells alcoholic beverages within the city of the character described in and

authorized by the state permit or license held by such applicant or person. This permit issued in the name of the city shall authorize the conduct of such business upon the premises described in the state permit or license, and shall remain in force only so long as the state permit or license remains in force. The city permit will be issued upon payment to the city secretary of the applicable fee(s) for a permit or license as required by this article and according to state law. The city secretary shall keep a record of all permits and/or receipts issued under this article.

- I. The permit shall be valid only for one (1) year from the date of its issuance. All permits issued for the payment of permit or license fees under the terms of this article shall terminate at midnight on the day before the anniversary date of the issuance, and no receipt shall be issued covering a longer term than one (1) year. Upon expiration of any permit issued under this article, the applicant or person shall renew annually thereafter during the time that such person is engaged in the business of selling alcoholic beverages within the city.
- J. All permits or licenses issued under this article shall be displayed in a conspicuous place at all times on the premises for which the permit or license is issued.
- K. A permit issued under this Ordinance may be canceled, denied, or revoked as provided under Chapters 11 or 61 of the Texas Alcoholic Beverage Code, as amended. The city shall have all powers, duties and remedies permitted under state law.
- L. Before the City Secretary shall sign any city permit or application for a permit or license under the Texas Alcoholic Beverage Code as amended, or any annual renewal, the city permit and application shall be submitted to the appropriate city departments, as determined by the City Manager, to ensure that the city permit and application comply with all city ordinances and regulations and are for premises located in the proper "wet" area of the City for which the proposed use applies and any fees authorized by this or any other part of the Bullard Zoning Ordinances providing for the inspection for compliance purposes have been paid.
- M. All Permit applications shall be filed with the City Secretary.

**4. THE SALE OF ALCOHOL BEVERAGES IN THAT PORTION OF THE CITY LIMITS OF THE CITY OF BULLARD TO WHICH THE REFERENDUMS HELD ON NOVEMBER 2<sup>ND</sup> 2010 AND NOVEMBER 6, 2012 APPLY.**

- 1. Sale of Beer and Wine Prohibited in Residential Areas

The sale of off-premises beer and wine in residential areas is hereby prohibited, in accordance with Section 109.32, Texas Alcoholic Beverage Code. Under this Section, residential areas shall mean any property located in the following districts as described in the City of Bullard Zoning Ordinance, as amended from time to time.

- A. Agriculture (AG)
- B. Single-Family Residential (R-1A)
- C. Single-Family Residential (R-1B)
- D. Single-Family Residential (R-1C)
- E. Two-Family Residential (R-2)
- F. Multi-Family Residential- (R-3)
- G. High Rise Multi-Family Residential (R-4)
- H. Manufactured Home Residential Districts (R-MH)
- I. Townhouse Residential District (R-TH)
- J. Planned Unit Residential District (PUR)
- K. Planned Multi-Family Residential District (PMF)
- L. Any residential component of an approved planned development

Whether enumerated specifically in this Section 4.1 above or not, except as otherwise may be permitted by other sections of this amendment to the Bullard Zoning Ordinance, and the Texas Alcoholic Beverage Code, it is the intent of this Ordinance that the sale of alcoholic beverages for off-premises consumption in the City of Bullard, and the sale of mixed beverages in restaurants by food and beverage certificate holders, shall be permitted only in those portions of the City that are Zoned as Light Commercial Districts (C-1), and General Commercial Districts (C-2), in the City of Bullard Zoning Ordinance.

2. Sale of Alcoholic Beverages near Churches, Public Hospitals, Public or Private Schools

A. Churches and Public Hospitals.

- 1. The sale of alcoholic beverages within 300 feet of a church or public hospital is hereby prohibited.
- 2. The measurement of the distance between the place of business where alcoholic beverages are sold and a 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. Public schools, private schools and day care/child care facilities

- 1. The sale of alcoholic beverages within 300 feet of a public or private school is hereby prohibited. Said distance restriction may be extended pursuant to State law.

2. The sale of alcoholic beverages within 300 feet of a day care or child care facility is hereby prohibited.

3. As established in State law, the distance between the place of business where alcoholic beverages are sold and a public or private school and day care center shall be measured as follows:

4. Public schools, private schools and day care/child care facilities

A. The measurement of the distance between the place of business where alcoholic beverages are sold and a public or private school shall be in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections.

B. The measurement of the distance between the place of business where alcoholic beverages are sold and a day care or child care facility shall be in a direct line from the property line of the public school or private school to the property line of the place of business, and in a direct line across intersections.

3. Exceptions

The above regulations prohibiting the sale of alcoholic beverages within specified distances from churches, public hospitals, public schools, private schools, day care and child care facilities are subject to any and all conditions and exceptions established in the Texas Alcoholic Beverage Code.

4. Variances. Pursuant to State law, the City Council may waive the distance requirements in this section. The City Council may, after notice and a public hearing, grant a variance to the distance requirements herein through the issuance of a Special Use Permit if the City Council determines that enforcement of the distance requirement in a particular instance:

A. is not in the best interest of the public; or

B. constitutes waste or inefficient use of land or other resources; or

C. creates an undue hardship on an applicant for a license or permit; or

D. does not serve its intended purpose; or

E. 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 that the variance is in the best interest of the community. In making a determination under this section the City Council may take into consideration any other factors that it considers relevant.

## 5. 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 7: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 1:00 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 or beer between 10:00 a.m. and noon if the wine or beer is served to a customer during the service of food to the customer.
3. Penalty: A person commits an offense if the person sells or offers for sale an alcoholic beverage during prohibited hours or consumes or permits the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours. An offense under this section is a class A misdemeanor.

### 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 7:00 a.m. and midnight on any day except Sunday..

2. Sunday: A mixed beverage permittee may sell and offer for sale mixed beverages between midnight and 1:00 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.

## 5. NO OUTSIDE CONSUMPTION

- A. It is prohibited for customers to leave the premises with open alcoholic beverages and it is the licensee's responsibility to ensure that no open beverages are sold and carried out.
- B. It is prohibited for customers to gather outside an alcoholic beverage establishment and consume alcoholic beverages.
- C. It is prohibited for the manager or any employee to allow persons to gather outside the property boundaries of an alcoholic beverage establishment and consume alcoholic beverages.
- D. Penalty for Violation: A person commits an offense if the person knowingly consumes liquor, beer or wine on the premises of a holder of a wine and beer retailer's off-premises license. A person is presumed to have knowingly violated this provision if the permittee/licensee has the warning sign displayed on the premises as required by either Section 26.05 or 71.00 of the Texas Alcoholic Beverage Code, as amended. A violation of this provision is a misdemeanor punishable by a fine of no less than fifteen dollars (\$15.00) nor more than two hundred dollars (\$200.00), unless a person has been convicted of a violation of this provision occurring within one (1) year or a subsequent violation. In this case, the subsequent violation is a misdemeanor punishable by a fine of no less than one hundred dollars (\$100.00) or more than two hundred dollars (\$200.00). (Alcoholic Beverage Code, Section 101.72)

## 6. Signs and Banners:

Signs (including banners) specifically related to sale of alcoholic beverages shall be governed by the Texas Alcoholic Beverage Code and any applicable regulations of the Texas Alcoholic Beverage Commission, as amended, and any applicable City sign regulations shall also govern signage, without regard to content.

## 7. CERTAIN ESTABLISHMENTS PROHIBITED

An establishment that derives seventy-five percent (75%) or more of its gross revenue from the on-premises sale of alcoholic beverages is prohibited from operating within the City, in accordance with Section 109.57 (d) of the Texas Alcoholic Beverage Code.

## 8. FAILURE TO REQUIRE AND PROPERLY CHECK IDENTIFICATION

- A. It shall be a violation not to require and properly check identification to ensure an underage person is not sold or have in his/her possession, alcoholic beverages while in a licensed establishment.
- B. "Identification" in this Section shall mean any document issued by a governmental agency containing a description of the person, such person's photograph and giving such person's date of birth and shall include, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.

## 9. DRIVE THROUGH FACILITIES

That City of Bullard "Chapter 10 Planning and Zoning Ordinance Article IV Section 10-233-M-2 General Industrial District" is hereby amended by amending c. 12. to read as follows:

### 12. Drive-through Facilities

- a. Facilities used to provide or dispense products or services, through an attendant or a window or an automated machine, to persons remaining in vehicles that are in a designated stacking aisle and not in a building or facility as defined in subsection b of this section. A drive-through facility may be in combination with other uses, such as a financial institution, personal service use, retail store, or eating establishment, a car wash, gas station, or building or facility are not "Drive-through Facilities" regulated by subsection b of this section.
- b. Drive-through service areas used primarily for retail sale or delivery of pre-packaged foods or beverages for off-premises consumption that are not produced on the premises. The use of an enclosed or unenclosed drive-through service area that allows passage of motor vehicles therein for the primary purpose of retail sale of, or retail

delivery of, pre-packaged foods or beverages for off-premises consumption, is only allowed through the issuance of a Special Use Permit. For purposes of this subsection, the term "enclosed" means a drive-through service area allowing entry and exit of motor vehicles, that is used primarily for retail sale or delivery directly to the public, and which is completely enclosed or covered by, or the majority of the service area is enclosed or covered by, solid walls, windows or partitions on at least two (2) sides. For purposes of this subsection, the term "pre-packaged foods or beverages" shall include foods or beverages for off-premises human consumption that are not prepared on site at the location. Activity under this subsection is allowed only in the "M-2", General Industrial District, as a permitted use only if the City Council approves the issuance of a special use permit.

#### 10. PENALTY

Any violation of this Division is unlawful and, shall be subject to a penalty. If there is any conflict between the penalties in this Division and the State law, then to that extent the State law controls such as in those instances in which the violation is a Class A or Class B misdemeanor or Felony in which the penalties provided by State law controls. The Bullard Municipal Court will have jurisdiction of any offense under this Division and under the State law, only where the Constitution and the general laws of the State confer such jurisdiction.

Except where a different penalty is expressly set out herein, any person, firm or corporation violating any of the provisions of this Division shall be deemed guilty of a misdemeanor, and 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 which falls within the jurisdiction of the Bullard Municipal Court 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.

#### 11. Effective Date

Since this Division has a penalty for a violation, it shall not become effective until after its publication as required by law.

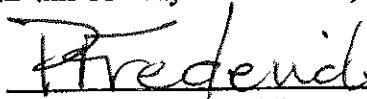
## 12. Severability

In the event that any one or more of the provisions, clauses, or words of this ordinance or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provisions, clauses, or words of this ordinance or the application thereof to any other situations or circumstances and it is intended that this ordinance shall be severable and that it shall be construed and applied as if such invalid or unconstitutional clause, section, provision, or word had not been included herein.

## 13. Open Meeting

That the meeting at which this Ordinance was enacted, was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

PASSED AND APPROVED this 11<sup>th</sup> day of December, 2012.

  
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Pam Frederick, Mayor, City of Bullard

ATTEST:

  
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Doris Crockett, City Secretary