

ORDINANCE NO. 1535

AN ORDINANCE OF THE CITY OF ANDREWS, TEXAS AMENDING CODE OF ORDINANCES TO PROVIDE FOR THE LIMITED REGULATION OF ALCOHOLIC BEVERAGES: "THE LEGAL SALE OF MIXED BEVERAGES IN RESTAURANTS BY FOOD AND BEVERAGE CERTIFICATE HOLDERS ONLY" AND "THE LEGAL SALE OF BEER AND WINE FOR OFF-PREMISE CONSUMPTION ONLY", PROVIDING THAT EACH HOLDER OF AN ALCOHOLIC BEVERAGE PERMIT OR LICENSE ISSUED BY THE STATE OF TEXAS SHALL BE REQUIRED TO HAVE A LIKE PERMIT OR LICENSE FROM THE CITY SUBJECT TO THE EXCEPTIONS PROVIDED IN THE LIQUOR CONTROL ACT AND/OR OTHER APPLICABLE LAWS; LEVYING A FEE FOR EACH CITY PERMIT OR LICENSE; PROHIBITING THE SALE IN RESIDENTIAL AND SINGLE FAMILY ZONES; PROVIDING DEFINITIONS; PROVIDING DISTANCE REQUIREMENTS; PROVIDING FOR THE CERTIFICATION BY THE CITY SECRETARY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a special location option election was held within the City, on November 5, 2013, for the purpose of submitting to the qualified voters of the city the issues of: (1) the legal sale of mixed beverages in restaurants by food and beverage certificate holders only, and (2) the legal sale of beer and wine for off-premise consumption only; and

WHEREAS, said election was duly and legally held in conformity with the election laws of the State of Texas, and the results of said election have been verified and returned by the proper judges and clerks; and

WHEREAS, the City Council of the City of Andrews, Texas has canvassed the results of said election and declared the results official, with both measures passing favorably.

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

SECTION 1-1: DEFINITIONS

- (1) "Alcoholic beverage" 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.
- (2) "Consignment sale" means:
 - (A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;
 - (B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;
 - (C) the delivery of alcoholic beverages to a factor or broker;
 - (D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;
 - (E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or
 - (F) any other type of transaction which may legally be construed as a consignment sale.
- (3) "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.

- (4) "Illicit beverage" means an alcoholic beverage:
- (A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;
 - (B) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or
 - (C) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.
- (5) "Liquor" means any alcoholic beverage containing alcohol in excess of 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, habanero, or barreteago, is prima facie evidence that it is liquor.
- (6) "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.
- (7) "Wine and vinous liquor" means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.
- (8) "Hotel" means the premises of an establishment:
- (A) where, in consideration of payment, travelers are furnished food and lodging;
 - (B) in which are located at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; and
 - (C) which operates a regular dining room constantly frequented by customers each day.
- (9) "Applicant" means a person who submits or files an original or renewal application with the city secretary commission, or administrator for a license or permit.
- (10) "Commission" means the Texas Alcoholic Beverage Commission.
- (11) "Permittee" means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.
- (12) "Ale" or "malt liquor" means a malt beverage containing more than four percent of alcohol by weight.
- (13) "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage 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, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit
- (14) "Barrel" means, as a standard of measure, a quantity of beer equal to 31 standard gallons.
- (15) "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 weight, and does not include a beverage designated by label or otherwise by a name other than beer.
- (16) "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.
- (17) "Manufacturer" means a person engaged in the manufacture or brewing of beer, whether located inside or outside the state.
- (18) "Original package," as applied to beer, means a container holding one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.
- (19) "Premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

(20) "Citizen of Texas" and "citizen of this state" mean a person who is a citizen of both the United States and Texas.

(21) "Minibar" means a closed container in a hotel guestroom with access to the interior of the container restricted by a locking device which requires the use of a key, magnetic card, or similar device.

(22) "Minibar key" means the key, magnetic card, or similar device which permits access to the interior of a minibar.

(23) "Guestroom" means a sleeping room, including any adjacent private living area, in a hotel which is rented to guests for their use as an overnight accommodation.

(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 1.04, TABC

(25) "Day-care center" means a child-care facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(26) "Child-care facility" means a facility licensed, certified, or registered by the department 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.

Section 42.002 (3) and (7), Human Resources Code

(27) "Central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that is the area that has historically been the primary location in the municipality where business has been transacted.

(28) "Open container" means a container that is no longer sealed.

Section 109.35, (d) and (e), TABC

These definitions shall be consistent with the State Law regarding same and shall be automatically updated from time to time as the State Laws are amended as though acted upon by the City Council.

SECTION 1 – 2: ZONING REGULATIONS

The City of Andrews prohibits the sale of alcoholic beverages in single family and residential zones. All retailers of alcoholic beverages in the city limits of the City of Andrews are restricted to Central Business, Local Retail, General Commercial, Light and Heavy Industrial zones.

SECTION 1 – 3: DISTANCE REGULATIONS

(1) PUBLIC AND PRIVATE SCHOOLS, CHURCHES, AND HOSPITALS

The sale of alcoholic beverages by an establishment whose place of business is within 300 feet of a church, public or private school, or public hospital is prohibited. Sec. 109.33 (a) (1), TABC

(2) DAY-CARE CENTERS OR CHILD-CARE FACILITIES

The sale of alcoholic beverages by an establishment who holds a wine and beer on-premises permit or a beer on-premise license and is within 300 feet of a day-care or child-care facility is prohibited. Sec. 109.331, TABC

(3) VARIANCES

In limited circumstances, the City of Andrews may issue a variance to the distance regulations. An economic hardship variance will be administratively approved if the establishment requesting a permit or license for the sale of alcoholic beverages can demonstrate their business operation pre-existed the location of a church, hospital or day care centers or child care facilities, from the effective date of this ordinance forward. No variance will be considered or issued from the distance regulations of schools. No other variances will be considered.

(4) MEASUREMENT OF DISTANCES

The measurement of distances shall be according to the Texas Alcoholic Beverage Code. The Building Inspector will measure distances for compliance with this ordinance

SECTION 1-4: HOURS FOR THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES

Hours for the sale and consumption of alcoholic beverages shall be the same as the Texas Alcoholic Beverage Code "standard hours" as set out in Sec. 109.32 (a) (2), Sec. 105.04, and Sec. 105.05, TABC

SECTION 1-5: CERTIFICATION BY CITY SECRETARY

(1) The City Secretary shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by charter or ordinance. Sec. 61.37 (b), TABC

(2) The application presented for certification must have the signature of the State Comptroller..

SECTION 1-6: PERMIT FEE

(1) Annual Permit Fee: The annual permit fee for issuing a permit to operate, conduct, and maintain a business establishment selling alcoholic beverages in the City shall be set by the City Council from time to time as amendments, in the amount not to exceed the maximum fee which the City is authorized by the Texas Alcoholic Beverage Code, as amended, the charge and collect. Sec. 61.36.

(2) The initial fee shall be the maximum fee which the City is authorized by the Texas Alcoholic Beverage Code, as amended, to charge and collect.

(3) Exemption: A mixed beverage permit is exempt from the payment of the fee imposed by this Subsection during the two-year period following the issuance of the permit as specified in the Texas Alcoholic Beverage Code, as amended.

SECTION 1-7: SEVERABILITY

If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Andrews, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality of any other portion or provision.

SECTION 1-8: PENALTIES

Any person, either by himself or his agent, and/or any firm, corporation or their entity who violates the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction of any such violation, in all cases arising under this ordinance of the city that govern fire, safety, zoning, or public health and sanitation, including dumping of refuse, shall be fined in a sum not to exceed \$2,000.00 and by a fine not exceeding \$500.00 in all other cases arising under this ordinance of the city or by an amount not exceeding the maximum amount allowed by the constitution and laws of the state, as amended. Each day during which such violation continues shall constitute a separate and distinct offense. For any violation of any of the terms or provisions of this ordinance by a corporation, officers and agents actively in charge of the business of such corporation shall be subject to the penalty provided in this section. Any offense defined in the ordinance which has been defined by laws of the state as an offense and for which penalty has been prescribed shall be punished as provided in state law, and nothing in this ordinance shall be held as fixing any penalty contrary to a penalty provided by the laws of the state. (Ordinance No. 755, 3-5-90)

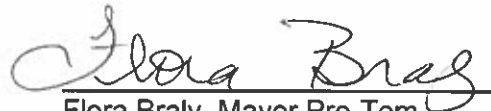
State law reference – Authority of city to prescribe penalties for violation of Code, V.T.C.A., Local Government Code Sec. 51.001 et seq.

Section 1-9: An emergency exists as shown in the preamble of this Ordinance, and its enactment is declared to be an emergency measure thereby creating a public necessity for suspending the rule that proposed ordinances be presented at two (2) separate council meetings and such requirement is hereby dispensed with and this Ordinance shall be effective from the date of its passage.


SECTION 1-10: PUBLISHING AND EFFECTIVE DATE

This ordinance shall be published and become immediately effective upon passage.

PASSED AND ADOPTED ON FIRST READING this 13th day of November 2013.

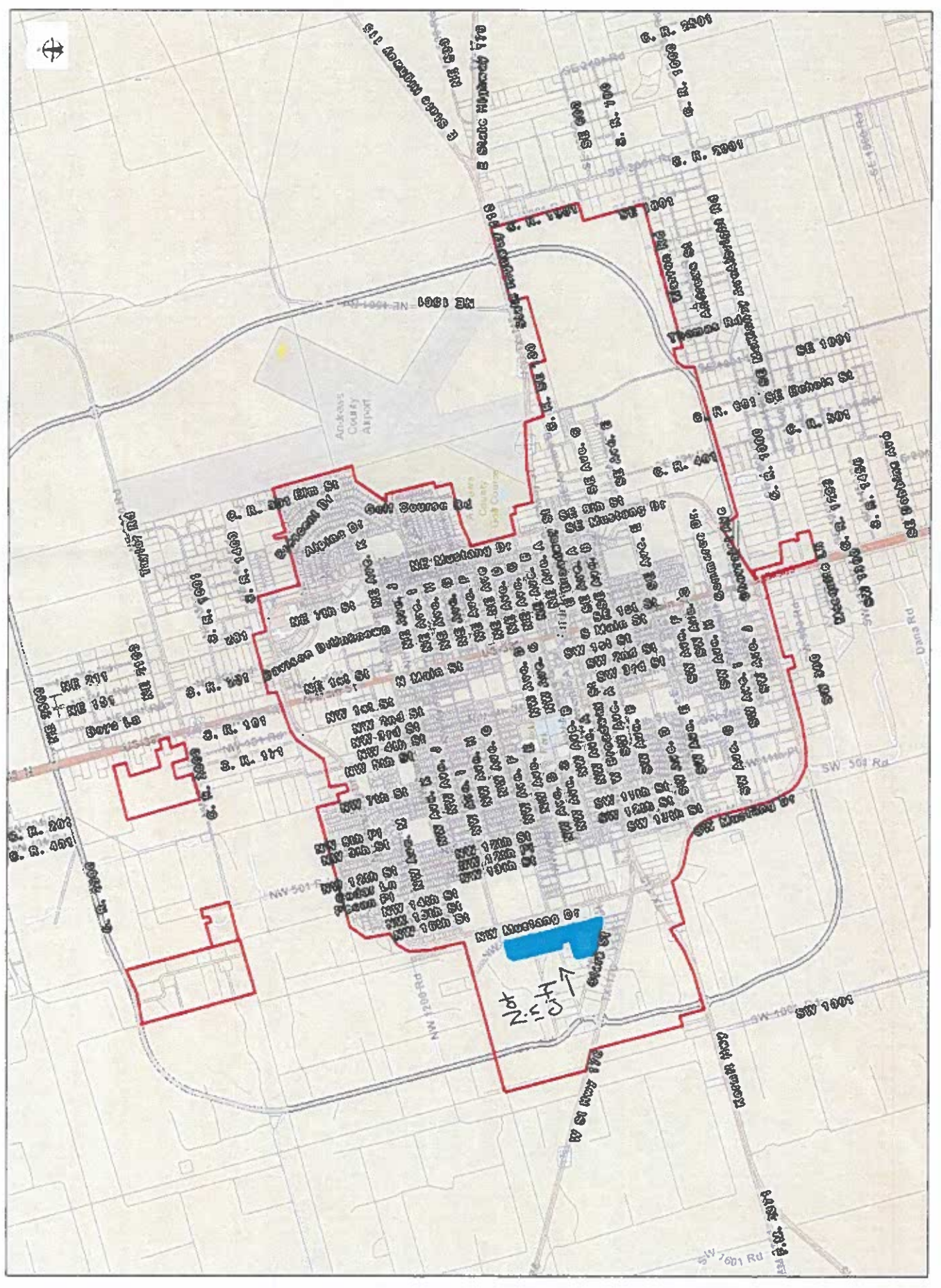

Flora Braly, Mayor Pro-Tem

ATTEST:


Steve Eggleston, City Secretary

**CITY LIMITS AS OF
ADOPTION OF
ORDINANCE NO. 1535
Attachment**

- Parcel Numbers
- Parcels
- Loop 1910
- Street
- Roads
- Road with Address
- World Street Map



Projection: WGS_1984_Web_Mercator_Auxiliary_Spheroid
 0 0.45 0.9 Miles
 1:32,623

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