ORDINANCE NO. 298

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS ("CITY"), ESTABLISHING THAT ANNUAL PERMIT AND LICENSES ARE REQUIRED AND ESTABLISHING FEES FOR APPLICATIONS FOR PERMITS AND LICENSES UNDER THE TEXAS ALCOHOLIC BEVERAGE CODE; ESTABLISHING PROCESSING PROCEDURES FOR APPLICATIONS FOR PERMITS AND LICENSES UNDER THE TEXAS ALCOHOLIC BEVERAGE CODE; PROVIDING FOR REGULATION OF THE SALE OF ALCOHOLIC BEVERAGES; PROVIDING FOR A PENALTY NOT TO EXCEED $500; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Tioga, Texas ("City Council") is aware that a local option election was held November 8, 2011; and

WHEREAS, the majority of the voters in the local option election opted to allow the legal sale of all alcoholic beverages for off-premise consumption only; and

WHEREAS, all applications for permits and licenses for the sale of alcohol as described above ("Applications") that are processed by the Texas Alcoholic Beverage Commission ("TABC") under the Alcoholic Beverage Code ("the Code") must be submitted to the City Secretary for approval and signature; and

HEREAS, before the City Secretary can sign or certify the Applications, they must be processed by the appropriate City departments to ensure that all local ordinances and regulations are complied with; and

WHEREAS, the Code authorizes the City to collect additional local fees for permits and licenses equal to one-half of the State of Texas fee for the permit or license ("Permit Fee"); and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of Tioga to pass this Ordinance;

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

SECTION 1: Permit Required and Permit Fees Established.

1.01 With respect to the sale of alcoholic beverages for off-premise consumption, it shall be unlawful for any person to make such sales within the City without having first obtained proper certification and approval from the office of the City Secretary and paid the annual Permit Fee equal to one-half of the State of Texas fee required by the Alcoholic Beverage Code of every person that may be issued any permit or license or renew such permit or license by the State for such sales.

1.02 The City Secretary shall issue a receipt for all Permit Fees and shall keep a record of the same in the City Secretary's office. All receipts issued for the payment of Permit Fees under the terms of this section shall terminate at midnight on the day before the anniversary date of their issuance, and no receipt shall be issued covering a longer term than one (1) year.

SECTION 2: Processing Procedures Established.

2.01 Before the City Secretary shall sign or certify any Application for a permit or license under the Texas Alcoholic Beverage Code, or any annual renewal, such Application shall be submitted to the appropriate City departments, as determined by the Mayor to ensure that the Application complies with all City ordinances and regulations and are for establishments located in a wet area.

2.02 Before sales of any alcoholic beverages for off-premise consumption may begin, a City Permit must be obtained. In order to obtain a City Permit an application must be filed with the City Secretary along with
(a) a copy of a current and valid Texas Alcoholic Beverage Commission permit; and
(b) payment of a permit fee in the amount of one-half of the state fee for each permit

SECTION 3: Hours of Sale.

Under the authority granted to municipalities under the Alcoholic Beverage Code including but not limited to authority granted under § 109.32, an establishment that sells alcoholic beverages may do so at any time during a day that those sales are allowed under the Code as amended.

SECTION 4: Sales near Churches, Public Schools and Private Schools.

4.01 Under the authority granted to municipalities under the Alcoholic Beverage Code, including but not limited to authority granted under § 109.33, and only to the extent allowed by the Alcoholic Beverage Code, there may be no sale of alcoholic beverages in the City's corporate limits by a dealer whose place of business is within 300 feet of a church, public or private school, or public hospital (as those terms are defined in the Alcoholic Beverage Code, as amended);

4.02 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.

The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

(a) 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,

(b) if the permit or license holder 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 5. Other Sales Restricted.

Under the authority granted to municipalities under the Alcoholic Beverage Code, including but not limited to authority granted under § 109.32, an establishment that sells beer may not be located within a residential area.

SECTION 6. Penalty.

Any violation of any of the terms of this Ordinance, whether denominated in this Ordinance as unlawful or not, shall be deemed a Class C misdemeanor. Any person, corporation or other type of business entity or organization convicted of any such violation shall be fined in an amount not to exceed $500 for each incidence of violation. Each violation is considered a separate offense and will be punished separately.

SECTION 7: Savings/Repealing Clause.

All provisions of any ordinance in conflict with this ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal

prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8: Severability.

Should any section, subsection, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect. The City of Tioga hereby declares that it would have passed this ordinance, and each section, Subsection, clause, or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 9: Effective Date.

This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED by the City Council of the City of Tioga, Texas, on this the 28 day of November, 2011.

APPROVED:

Stanley Kemp

Mayor

ATTEST:

Donna Carney

City Secretary