

ORDINANCE NO. 009-09

**AN ORDINANCE OF THE CITY OF DE LEON, TEXAS
REGULATING THE POSSESSION, USE AND SALE OF
ALCOHOLIC BEVERAGES WITHIN THE CITY;
PROVIDING A SEVERABILITY CLAUSE; AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the sale of alcoholic beverages is now and shall continue to be generally prohibited within the City of De Leon, Texas (the “City”), with the exception of those entities permitted to do so on specific private premises by the State of Texas Alcoholic Beverage Commission, until such time as a local option election produces a mandate to permit such activity; and

WHEREAS, it is in the best interest of the citizens of the City of De Leon, Texas (the “City”) and their health and welfare to establish on Ordinance regulating the use and sale of alcoholic beverages within the City limits;

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

Section 1 Definitions. 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:

Alcoholic beverage shall mean 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

Illicit beverage is any alcoholic beverage consumed or possessed in violation of this chapter.

Public place shall mean any place to which the public or a substantial group of the public has access and shall include, but not be limited to, public streets, public parks, schools, hospitals, commercial businesses, and parking lots.

Section 2 Sale of alcoholic beverages. The sale of alcoholic beverages is prohibited within the City pursuant to the laws of the State of Texas until such time as a local option election produces a mandate to permit such activity. Those entities permitted by the Texas Alcoholic Beverage Commission (the “TABC”) to serve and sell alcoholic beverages on “private club” premises within the City are exempt from this prohibition.

Section 3 Consumption and possession in public places. To the fullest extent the Texas Alcoholic Beverage Code allows the City by ordinance to prohibit the consumption or possession of alcoholic beverages, it is unlawful for any person to intentionally or knowingly consume or possess any alcoholic beverage in any public place within the City.

Section 4 Seizure of illicit beverages. Any illicit beverage may be seized without warrant and be used as evidence of a violation of law. Any person in possession thereof or who otherwise violates any provision of this chapter may be arrested without warrant.

Section 5 Limitations upon passage of provision allowing sale of alcohol in City. The City, hereby, adopts Section 109.33 of the Texas Alcoholic Beverage Code, and as amended in the future, to limit the sale of alcoholic beverages near schools, churches or hospitals in the City at such time as a local option election produces a mandate to permit the sale of alcoholic beverages within the City. It shall be unlawful to sell or engage in the business of selling alcoholic beverages in the City within 300 feet of any church, public or private school or public hospital; within 1,000 feet of public schools or other educational institution upon request of the board of trustees of a school district under Section 38.007 of the Education Code; or within 1,000 feet of a private school upon request of the governing body of the private school. 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 schools 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.

Section 6 Construction consistent with state law. This ordinance shall be construed to be consistent with the Texas Alcoholic Beverage Code and with all rules and regulations promulgated under authority of the Texas Alcoholic Beverage Code.

Section 7 Severability. It is hereby declared to be the intention of the City Council that the section, paragraphs, sentences, clauses, and phrases are severable, and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs of this Ordinance, since the same would have been enacted by the City Council without the incorporation In the Ordinance of unconstitutional or invalid phrases, clauses, sentences, paragraphs, or sections.

Section 8 Notice and Publication. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Loc. Gov't. Code.

Section 9 Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Council and publication as required by the Local Government Code.

PASSED AND APPROVED on this ____ day of _____, 2009.

PASSED, APPROVED AND ADOPTED on this ____ day of _____, 2009.

Danny Owen, Mayor

ATTEST:

Karen Wilkerson,
City Administrator/Secretary