

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 53-10

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND THROUGH THE AMENDMENT OF CHAPTER 18 "BUSINESSES" BY CREATING A NEW ARTICLE X TO BE ENTITLED "ALCOHOLIC BEVERAGES" REQUIRING A PERMIT AND THE PAYMENT OF A FEE FOR THE INITIAL ISSUANCE AND SUBSEQUENT RENEWALS OF A PERMIT ALLOWING FOR THE SALE OF ALCOHOLIC BEVERAGES AND BY AMENDING APPENDIX A "FEE SCHEDULE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND TO INCLUDE SUCH FEES; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Home Rule Charter adopted November 3, 1981; and

WHEREAS, the Town of Flower Mound possesses all the rights, powers, and authorities possessed by all home rule municipalities to regulate utility billing services and the fees for services provided; and

WHEREAS, the Town of Flower Mound has determined that it needs to establish a process for the issuance of permits for the sale of alcoholic beverages in accordance with the Texas Alcoholic Beverage Code and to defray the cost of program administration and the expense of Town-provided services related to such process.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Flower Mound and they are hereby approved and incorporated into the body of this Ordinance, as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance Chapter 18 "Businesses" of the Town's Code of Ordinances is amended by creating a new Article X entitled "Alcoholic Beverages" to read as follows:

“ARTICLE X. ALCOHOLIC BEVERAGES**Sec. 18-600. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Ale means a malt beverage containing more than four percent of alcohol by weight.

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.

Malt liquor means a malt beverage containing more than four percent of alcohol by weight.

Mixed beverage means one or more servings of a beverage composed in whole or in 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.

Off-premises means locations other than those described in the definition of "premises" in this section.

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.

Town Manager means the Town Manager of the Town of Flower Mound and his/her designee.

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.

Sec. 18-601. Permit required; procedures.

(a) It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine or mixed beverages within the Town unless such person has obtained a Town permit from the office of the Town Manager.

(b) Any person wishing to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine or mixed beverages must complete a Town permit application and pay the application fee as set forth in section 18-602.

(c) The Town Manager shall submit each application to the appropriate Town departments, as determined by the Town Manager, to ensure that the application complies with all Town ordinances and regulations, including this article.

(d) After approval by all necessary Town departments, the application shall be deemed approved and the Town Manager shall issue a Town permit upon payment by the applicant of the initial permit fee as set forth in section 18-602.

(e) Applications and permits shall be kept on file in the Town Manager's and/or the Town Secretary's office.

Sec. 18-602. Application fee; initial permit fee.

(a) An application fee as determined from time to time by Town council shall be charged by the Town Manager for accepting any permit application or permit renewal application. No permit application or permit renewal application may be accepted unless accompanied by the application fee.

(b) The Town's initial permit fee shall be equal to one-half of the state fee required by the state alcoholic beverage commission of every person that may be issued any state

permit or license for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any beer, wine or mixed beverage, unless a different fee is allowed or required by state law. No Town permit may be issued unless the initial permit fee is received.

(c) The Town Manager shall issue a receipt for the application fee and initial permit fee and keep a record of the same in the Town Manager's and/or Town Secretary's office.

Sec. 18-603. Permit renewal; permit renewal fee.

(a) All permits shall be renewed annually. All permits shall terminate at midnight on the day before the anniversary date of their issuance and no permit shall be issued covering a term longer than one year.

(b) The Town shall require payment of an annual permit renewal fee by all establishments selling alcoholic beverages within the Town. The permit renewal fee shall be equal to one-half of the state fee required by the state alcoholic beverage commission of every person that may be issued any state permit or license for the manufacture, distilling, brewing, importing, transporting, storing, distributing or sale of any beer, wine or mixed beverage, unless a different fee is allowed or required by state law.

(c) The Town Manager may cancel a permit if a permittee fails to pay the permit renewal fee. The Town Manager shall send notice of such cancellation to the address on file with the permit application.

Sec. 18-604. Violations.

A permittee who sells an alcoholic beverage without first having paid the permit fee or permit renewal fee under this section commits a misdemeanor punishable by a fine of up to \$200.00. In addition, the Town Manager shall report such failure to pay to the Texas Alcoholic Beverages Commission.

Sec. 18-605. Hours of operation.

The hours of sales of alcoholic beverages in the Town shall comply with state law provisions regarding the hours of sale of alcoholic beverages.

Sec. 18-606. Development standards.

The sale of alcoholic beverages shall only be permitted at such locations as are allowed under the Town's Land Development Regulations and the Zoning Chapter of the Town Code."

SECTION 3

From and after the effective date of this Ordinance, Appendix A, "Fee Schedule," relative to Alcoholic Beverage Permits as set forth in Sections 18-602 and 18-603 of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby created to read as follows:

"Code Section Number	Description
18-602 and 18-603	Alcoholic Beverage fees

Town mandated application fees and permit fees shall be in an amount equal to 50 percent of the state fee imposed for the permit under which any person manufactures, distills, brews, imports, transports, stores for purposes of sale, distributes or sells any beer, wine or mixed beverages within the Town's corporate limits; or such other maximum amount therefore allowed by state law. The initial alcoholic beverage permit fees and renewal alcoholic beverage permit fees that are required to be paid to the Town for the types of permits currently issued by the Texas Alcoholic Beverage Commission (TABC) within the Town shall be:

- (1) RM Permit -- mixed beverage permit with food and beverage certificate. \$750.00 per year beginning with the fourth year or third renewal of such permit; and,
- (2) BQ Permit -- Wine and beer retailer's off premise permit. \$60.00 per year.

The initial and renewal fees for alcoholic beverage permits for all other types of permits issued by the TABC shall be an amount equal to 50 percent of the state fee imposed for the permit or such other maximum amount as is allowed by state law. The actual amount of the Town fee to be paid for an initial or renewal alcoholic beverage permit shall automatically increase as the state fee for the specific type of permit increases."

SECTION 4

This Ordinance shall be cumulative of all provisions of ordinances of the Town of Flower Mound, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5

If any section, subsection, clause, phrase or provision of this Ordinance and the Code, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance and the Code, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 6

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 7

This Ordinance shall take effect and be in full force on and after October 1, 2010, and its publication as provided by the laws of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 7th DAY OF SEPTEMBER, 2010.

Melissa D. Northern, MAYOR

ATTEST:

Tracy Knierim, INTERIM TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, TOWN ATTORNEY