



**CITY OF TYLER  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** O-1

**Date:** November 13, 2012

**Subject:** It is requested that the City Council consider adopting an ordinance amending Tyler City Code Chapter 10 relating to the regulation of beer and wine sales:

1. To establish certain distance restrictions on the sale of alcoholic beverages near a church, public or private school, public hospital, day-care center or child-care facility, providing for exceptions, and establishing a procedure for granting variances;
2. To prohibit the sale of beer in area that is zoned Residential or RPO;
3. That a local fee be levied for each permit issued by the State under the Alcoholic Beverage Code within the city, as allowed by State law;
4. To require that the location that is the subject of a Texas Alcoholic Beverage Commission permit must comply with the Unified Development Code, alcohol-related ordinances, and all other applicable ordinances, rules and regulations of the City;
5. To prohibit the possession of an open container or consumption of an alcoholic beverage on a public street, public alley, or public sidewalk, within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district;
6. To add references to State law restrictions on signs and banners related to sale of alcoholic beverages; and
7. To add references to State law restrictions on hours of operation for such businesses.

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**Item Reference:** Texas Alcoholic Beverage Code Chapter 109; Texas Alcoholic Beverage Code Section 11.38; Texas Local Government Code Chapter 211; Tyler City Code Chapter 10

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Texas law provides for local option elections regarding the sale of alcoholic beverages. On April 19, 2012, two Petitions were filed with the City Clerk's Office, requesting that a Special Election be called on the issues of off-premises beer and wine sales, and to extend the legal sale of mixed beverages in restaurants to the current City limits. The City Clerk's Office verified that the minimum number of signatures required under State law for calling a special election on alcoholic beverages had been obtained. Accordingly, on June 25, 2012, the City Council adopted Resolution No. R-2012-19, ordering a Special Election to be held on November 6, 2012, for the purpose of legalizing the sale of beer and wine for off-premises consumption, and to extend the legal sale of mixed beverages in restaurants to the current City limits.

In order for the City to be prepared for any results of the November 6 election, Mayor Barbara Bass previously directed the formation of an Alcohol Review Committee and charged the Committee with examining possible City regulations that could be adopted to govern alcoholic beverages. The Alcohol Review Committee was chaired by Councilmember Mark Whatley, and included Councilmember Sam Mezayek, Councilmember Darryl Bowdre, City Manager Mark McDaniel, and City staff. State law restrictions set forth in the Texas Alcoholic Beverage Code, as well as the ordinances of other Texas cities, were examined. Following an extensive review, the Alcohol Review Committee now recommends to the full City Council adoption of the attached Ordinance.

Generally speaking, the Texas Alcoholic Beverage Code exclusively governs the manufacture, sale, distribution, transportation and possession of alcoholic beverages. **The Texas Alcoholic Beverage Code generally pre-empts municipal regulation of alcoholic beverages, except where expressly authorized by the Code. The purpose and intent of this Ordinance to provide for City regulation of alcoholic beverages to the maximum extent possible permitted under State law, in order to protect the public health, safety and welfare.**

#### **Local Fee Authorized by State Law**

A local fee is authorized under Texas Alcoholic Beverage Code Section 11.38. Section 11.38(a) states that the governing body of a municipality or town may levy and collect a fee not to exceed one-half of the state fee for each alcoholic beverage permit issued for premises located within the city or town. The attached Ordinance establishes a local fee as allowed by State law.

#### **Certification; Compliance with City Ordinances**

Persons filing Texas Alcoholic Beverage Permit applications are required to seek certification from the City that the proposed use does not violate any City ordinances regulating the sale of alcohol. The Texas Alcoholic Beverage Commission has indicated that when the City certifies an application, the Commission views this as a certification that the Application is in compliance with other City ordinances, including zoning. Accordingly, a provision is added to the new Ordinance indicating that the proposed location for a Texas Alcoholic Beverage Code must comply with the Unified Development Code, Division H. related to alcoholic beverages, and any other applicable ordinances, rules or regulations of the City.

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**Distance Requirements for Sales near Churches, Public or Private Schools,  
and Public Hospitals**

Tyler City Code Section 10-61 currently contains regulations on private clubs that sell alcohol. The Texas Alcoholic Beverage Code generally pre-empts municipal regulation of alcoholic beverages. However, Texas Alcoholic Beverage Code Section 109.33(a)(1) authorizes the governing board of an incorporated city or town to enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public or private school, or public hospital. **Due to the fact that past elections allow for the sale of alcoholic beverages in the City limits under certain circumstances, and because future elections could affect the sale of alcohol inside the City limits, it is now recommended that the City Council adopt additional requirements as allowed by State law.** This will require creation of a new Division related to Alcoholic Beverages.

**Distance Requirements for Certain Sales near Day-Care Center  
or Child-Care Facilities**

Texas Alcoholic Beverage Code Section 109.331 provides that the Section applies to specified permit or license holders under Texas Alcoholic Beverage Code. These include Chapters 25 (Wine and Beer Retailers Permit), 28 (Mixed Beverage Permit), 32 (Private Club Registration Permit), 69 (Retail Dealer's On-Premise License), or 74 (Brewpub License), who do not hold a food and beverage certificate. Except as otherwise provided, the provisions of Texas Alcoholic Beverage Code Section 109.33 referenced above also apply to day-care centers and child-care facilities. **The attached Ordinance includes such regulations related to day-care centers and child-care facilities, and also provides for exceptions as mandated by State law.**

**State Law Exceptions; Variances**

Texas Alcoholic Beverage Code Section 109.33(h) provides certain exceptions to the distance requirements established pursuant to Section 109.33(a). These State law exceptions are included in the attached ordinance.

Variances. Also, Texas Alcoholic Beverage Code Section 109.33(e) allows the governing board of a city or town to allow variances to the alcohol regulations upon a determination by the governing board that such variance is in the best interest of the public, to address hardships, to protect the public welfare, etc. **The attached ordinance contains a proposed procedure by which the City Council could allow a variance to the distance requirements through the issuance of a Special Use Permit, if certain findings are made.**

**Grandfathered Uses**

**Legal sales of alcoholic beverages existing at the time of adoption of this Ordinance, or businesses that are currently operating legally under a valid Texas Alcoholic Beverage Commission permit/license would be grandfathered and could continue.** Accordingly, this new Ordinance will not affect any current businesses in legal operation.

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### **Prohibition on Sale of Beer in Residentially Zoned/Designated Areas**

Texas Alcoholic Beverage Code Section 109.32(a)(1) provides that an incorporated city or town may, by charter or ordinance, prohibit the sale of beer in residential areas. The attached Ordinance adds a new provision prohibiting the sale of beer in any area that is zoned Residential. In addition, the sale of beer is prohibited in an RPO District, as well as in any identified portion of a mixed-use district that is restricted to residential uses.

### **No Effect on Regulation of Sexually Oriented Businesses**

Pursuant to Texas Local Government Code Chapter 243 and other State laws, the City of Tyler has adopted regulations governing Sexually Oriented Businesses. Per Texas Alcoholic Beverage Code Section 109.57(d)(1), that Code does not limit a city's ability to continue to regulate the location of sexually oriented businesses.

### **Possession or consumption near Homeless Shelters or Substance Abuse Centers**

Texas Alcoholic Beverage Code Section 109.36 provides that the governing board of an incorporated city or town may enact regulations prohibiting the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk, within 1,000 feet of the property line of a homeless shelter that is not located in the central business district or a substance abuse treatment center that is not located in the central business district. Such a provision is included in the attached ordinance.

### **Signage, Banners, and Hours of Operation**

Sign regulations (including references to banners) regarding sale of alcoholic beverages, are contained in State law in the Texas Alcoholic Beverage Code and Texas Alcoholic Beverage Code regulations. A specific reference to these State regulations is included in the Ordinance.

Similarly, State law regulates the hours of operation including days of the week and open and closing times and a reference to these State regulations is included in the Ordinance.

### **Enforcement/Penalty Section; State Law Controls**

A new Section 10-99 is added to provide for enforcement and penalties for violations of the Ordinance. Wording is also added to provide that municipal regulation is intended to conform to State law, and that State law will govern in the event that any conflict arises.

The Planning and Zoning Commission considered this Ordinance on November 6, 2012.

A resident, Grant Hudgens, stated he had questions that were previously answered during the presentation. Kristi C. Roberts, Coalition Director Next Step Community Solutions (NSCS), wanted clarification on the proposed drive-through ordinance and stated that the coalition is in favor of limiting alcohol-related advertising near schools. No one spoke in opposition to the proposed amendments.

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**RECOMMENDATION:**

The Planning and Zoning Commission, by a 6-0 vote, recommends adoption of the attached ordinance amending Tyler City Code Chapter 10:

1. To establish certain distance restrictions on the sale of alcoholic beverages near a church, public or private school, public hospital, day-care center or child-care facility, providing for exceptions, and establishing a procedure for granting variances;
2. To prohibit the sale of beer in area that is zoned Residential or RPO;
3. That a local fee be levied for each permit issued by the State under the Alcoholic Beverage Code within the city, as allowed by State law;
4. To require that the location that is the subject of a Texas Alcoholic Beverage Commission permit must comply with the Unified Development Code, alcohol-related ordinances, and all other applicable ordinances, rules and regulations of the City;
5. To prohibit the possession of an open container or consumption of an alcoholic beverage on a public street, public alley, or public sidewalk, within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district;
6. To add references to State law restrictions on signs and banners related to sale of alcoholic beverages; and
7. To add references to State law restrictions on hours of operation for such businesses.

**Drafted/Recommended By:  
Department Leader**



**City Planner**

**Edited/Submitted By:  
City Manager**

**ORDINANCE NO. 0-2012-89**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "UNIFIED DEVELOPMENT CODE", ARTICLE III, "USE REGULATIONS", DIVISION C., "LIMITED AND SPECIFIC USE STANDARDS", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY ADOPTING DISTANCE REQUIREMENTS FOR SALES OF ALCOHOLIC BEVERAGES NEAR A CHURCH, SCHOOL, PUBLIC HOSPITAL, DAY-CARE CENTER OR CHILD-CARE FACILITIES; PROVIDING FOR EXCEPTIONS, ESTABLISHING A PROCEDURE FOR GRANTING VARIANCES; PROHIBITING THE SALE OF BEER IN RESIDENTIALLY-ZONED AREAS; ADOPTING CERTIFICATION PROVISIONS FOR ALCOHOL PERMITS; ADOPTING A LOCAL FEE ON ALCOHOLIC BEVERAGE PERMITS ISSUED BY THE STATE FOR PREMISES LOCATED WITHIN THE CITY; AND ADOPTING REGULATIONS RELATING TO ALCOHOL CONTAINERS AND ALCOHOL CONSUMPTION NEAR HOMELESS SHELTERS OR SUBSTANCE ABUSE TREATMENT CENTERS NOT WITHIN THE CENTRAL BUSINESS DISTRICT; ADDING REFERENCES TO SIGNAGE, BANNERS, AND HOURS OF OPERATION; PROVIDING FOR ENFORCEMENT AND CRIMINAL PENALTIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

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

**WHEREAS**, Texas Alcoholic Beverage Code Section 109.33(a)(1) provides that the governing body of an incorporated city or town may enact regulations prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public or private school, or public hospital; and

**WHEREAS**, Texas Alcoholic Beverage Code Section 109.331 contains specific regulations related to certain kinds of alcohol sales near day-care centers and child-care facilities; and

**WHEREAS**, Texas Alcoholic Beverage Code Section 109.331 provides that the Section applies to permit or license holders under Texas Alcoholic Beverage Code Chapters 25, 28, 32, 69 or 74; and

**WHEREAS**, except as otherwise provided, Texas Alcoholic Beverage Code Section 109.331 provides that the provisions of Texas Alcoholic Beverage Code Section 109.33 also apply to day-care centers and child-care facilities; and

**WHEREAS**, Texas Alcoholic Beverage Code Section 109.33(e) provides that the governing board of a city or town that has enacted a regulation under Section 109.33(a) may allow variances to the regulations under certain circumstances; and

**WHEREAS**, the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., 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

**WHEREAS**, Texas Local Government Code Section 211.0003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

**WHEREAS**, under State law, the City of Tyler has established zoning and subdivision regulations in the Unified Development Code in Tyler City Code Chapter 10; and

**WHEREAS**, under Texas Alcoholic Beverage Code Section 109.32(a)(1), an incorporated city or town by charter or ordinance may prohibit the sale of beer in a residential area; and

**WHEREAS**, Texas Alcoholic Beverage Code Section 11.38(a) provides that the governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city; and

**WHEREAS**, Texas Alcoholic Beverage Code Section 109.36 provides that the governing board of an incorporated city or town may enact regulations prohibiting the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk, within 1,000 feet of the property line of a homeless shelter that is not located in the central business district or a substance abuse treatment center that is not located in the central business district; 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

**WHEREAS**, regulations related to hours of operation, including days of the week and opening and closing times for alcoholic beverages are governed by the Texas Alcoholic Beverage Code and Texas Alcoholic Beverage Commission regulations; 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 Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may license, and regulate persons, corporations and associations engaged in any business, occupation, profession or trade; and

**WHEREAS**, the City Council is acting under authority of Texas Local Government Code Sections 51.001 and 51.072; and

**WHEREAS**, the City Council is acting under authority of Tyler City Charter Sections 1, 2 and 6;

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

**PART 1:** That Tyler City Code Chapter 10, “Tyler Unified Development Code” Article III., “Use Regulations”, Division C., “Limited and Specific Use Standards”, is hereby amended by deleting current Section 10-61 in its entirety as follows:

**Sec. 10-61. Reserved**

**PART 2:** That Tyler City Code Chapter 10, “Tyler Unified Development Code”, Article III., “Use Regulations”, is hereby amended by adding a new Division H., “Alcoholic Beverages”, to read as follows:

**DIVISION H. ALCOHOLIC BEVERAGES**

**Sec. 10-93. Local fee levied on alcoholic beverage permits.**

a. There is hereby levied on persons carrying on the business of manufacturing, distributing or dealing in alcoholic beverages, a local fee authorized by Texas Alcoholic Beverage Code Section 11.38(a) or successor, and not excepted by Texas Alcoholic Beverage Code Section 11.38(d), in an amount not to exceed one-half of the fee levied on such business by the state, consonant with provisions found in the appropriate sections of the Texas Alcoholic Beverage Commission or successor.

b. The fee shall be paid annually upon issuance or renewal of the Texas Alcoholic Beverage Commission permit. The fee shall be submitted to the City Planning Department.

c. 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.

d. Upon failure to pay the fee required by this section, the City Attorney may notify the Texas Alcoholic Beverage Commission of such failure for cancellation of the Texas Alcoholic Beverage Commission permit.

e. 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, punishable by a fine as set forth in Section 1-4. (Ord. No. 0-2012-89; 11/13/12)

**Sec. 10-94. Certification; compliance with City ordinances.**

No person may sell alcoholic beverages and no license or permit to sell alcoholic beverages will be certified by the City of Tyler unless sale of alcoholic beverages at the location at which such activity is sought to be established and maintained is permitted under the Unified Development Code, as amended, this Division, and all other applicable ordinances, rules and regulations of the City. Certification under this section does not make a nonconforming use conforming. (Ord. No. 0-2012-89; 11/13/12)

**Sec. 10-95. Sale of beer prohibited in residential/designated zoning districts.**

The sale of beer is prohibited at any location in the city that is within a residential zoning district (AR, RE, R-1A, R-1B, R-1C, R-1D, R-2, R-MF, R-MH, PUR, PXR and PMF). The sale of beer is prohibited in an RPO district, as well as in any identified portion of a mixed-use district (PMXD-1 and PMXD-2) that is restricted to residential uses. (Ord. No. 0-2012-89; 11/13/12)

**Sec. 10-96. Sale of alcoholic beverages near a church, school, public hospital, day-care center or child-care facility; distance requirements.**

a. Churches and public hospitals.

1. The sale of alcoholic beverages within three hundred (300) feet of a church or public hospital is unlawful and is hereby prohibited.

2. As established in State law, the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be measured along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.

b. Public and private schools.

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

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

- (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 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.

3. Pursuant to State law, and as used in this subsection, the term “private school” shall mean a private school, including a parochial school, that:

- (a) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
- (b) has more than 100 students enrolled and attending courses at a single location.

4. Exceptions. Pursuant to State law, the regulations in this subsection b. do not apply to a license or permit holder who also holds a food and beverage certificate covering a

premise that is within 300 feet of a private school. Pursuant to State law, this subsection b. does not apply to the holder of a license or permit covering a premise where minors are prohibited from entering under Texas Alcoholic Beverage Code Section 109.53 or successor, and that is located within 300 feet of a private school.

c. Sales near day-care center or child-care facility.

1. Pursuant to State law, this subsection c. only applies to a permit or license holder under Chapter 25 (Wine and Beer Retailers Permit), 28 (Mixed Beverage Permit), 32 (Private Club Registration Permit), 69 (Retail Dealer's On-Premise License) or 74 (Brewpub License) of the Texas Alcoholic Beverage Code, who does not hold a food and beverage certificate.

2. Pursuant to State law, and as used in this subsection c., the term "day-care center" shall mean a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week. Pursuant to State law, and used in this subsection, the term "child-care facility" shall mean a facility licensed, certified, or registered by the Texas 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 that it offers.

3. The sale by a permit or license holder described in subsection c.1. of alcoholic beverages within three hundred (300) feet of a day-care center or child-care facility is unlawful and is hereby prohibited.

4. As established in State law, the distance between the location where alcoholic beverages are sold by a permit or license holder described in subsection c.1. and a day-care center or child-care facility shall be measured in a direct line from the property line of the day-care center or child care facility to the place of business, and in a direct line across intersections.

5. Exceptions. Pursuant to State law, this subsection c. does not apply to a permit or license holder described in subsection 1. who sells alcoholic beverages if:

(a) The permit or license holder and the day-care center or child-care facility are located on different stories of a multi-story building; or

(b) The permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multi-story building.

6. Exceptions. Pursuant to State law, this subsection c. does not apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by Texas Human Resources Code Section 42.002, or successor.

d. Variances. Pursuant to State law, the City Council may waive the distance requirements in this Section 10-96 as set forth in this subsection d. 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 pursuant to Chapter 10, Article IX., Division A., and if the City Council determines that enforcement of the distance requirement in a particular instance:

1. is not in the best interest of the public; or
2. constitutes waste or inefficient use of land or other resources; or
3. creates an undue hardship on an applicant for a license or permit; or
4. does not serve its intended purpose; or
5. is not effective or necessary; or
6. 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 subsection d., the City Council may also take into account the standards set forth in Sections 10-726 – 10-728, or any other factors that it considers relevant to its consideration. The prohibition in Section 10-728.d, prohibiting the granting of a variance through issuance of a special use permit, shall not apply to variances granted under this Section. The provision in Section 10-728.d., authorizing the Planning Director to grant minor changes to the conditions imposed in a Special Use Permit, shall not apply to variances granted under this Section.

e. Grandfathered Uses. If at the time an original alcoholic beverage permit or license is granted for the premises, the premises is lawfully in use or otherwise satisfies the requirements regarding distance from schools, churches, hospitals, day-care centers for child-care facilities in effect at that time, the premises will be deemed to satisfy the distance requirements for all subsequent renewals of a license or permit. This includes any requirements which would come into play on the sale or transfer of the premises or the business on the premises in which new original alcoholic beverage licenses or permits are required. (Ord. No. 0-2012-89; 11/13/12)

**Sec. 10-97. Possession or consumption of alcoholic beverages near homeless shelters or substance abuse centers.**

a. Pursuant to State law, it shall be unlawful for a person to possess an open container containing an alcoholic beverage, or to consume an alcoholic beverage, on a public street, public alley or public sidewalk, within one thousand (1,000) feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in the central business district.

b. Special temporary events, activities and festivals approved by the City Council are exempt from the provisions of subsection a. of this Section.

c. For purposes of this Section, the following definitions will apply:

1. 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. The "DBAC" Downtown Business, Arts and Culture District constitutes the central business district for purposes of this Section.

2. Homeless shelter means a supervised public or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.

3. Open container means a container containing an alcoholic beverage that is no longer sealed, within the meaning assigned by Texas Alcoholic Beverage Code Section 109.35 or successor. (Ord. No. 0-2012-89; 11/13/12)

#### **Sec. 10-98. Signs, Banners, and Hours of Operation.**

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. Any applicable City sign regulations shall also govern signage, without regard to content.

The hours of operation, including days of the week and open and closing times, shall be as governed by the Texas Alcoholic Beverage Code and any applicable regulations of the Texas Alcoholic Beverage Commission, as amended. (Ord. No. 0-2012-89; 11/13/12)

#### **Sec. 10-99. Enforcement; penalty.**

Any violation of this Division is unlawful and, except where otherwise provided, shall be subject to a penalty as set forth in Section 1-4. If there is any conflict between the penalties in this Division and the State law, then to that extent the State law controls. The Tyler 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. (Ord. No. 0-2012-89; 11/13/12)

**PART 3:** 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 4:** That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be November 15, 2012.

**PASSED AND APPROVED** this the 13th day of November, A.D., 2012.

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BARBARA BASS, MAYOR  
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

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CASSANDRA BRAGER, CITY CLERK

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GARY C. LANDERS, CITY ATTORNEY