

CITY OF ABERNATHY

ORDINANCE NO. 504

AN ORDINANCE AMENDING THE ABERNATHY CODE OF ORDINANCES BY ADDING ARTICLE 4.600, ALCOHOL SALES; ESTABLISHING THE TYPES OF ALCOHOL SALES PERMITTED WITHIN 300 FEET OF CHURCHES, SCHOOLS, PUBLIC HOSPITALS, DAY-CARE CENTERS AND CHILD-CARE FACILITIES; PROVIDING FOR SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, pursuant to Section 109.33 (a) of the Texas Alcoholic Beverage Code, a municipality 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, Section 109.33 of the Texas Alcoholic Beverage Code provides that some of these same restrictions, if adopted, must also apply to certain dealers whose businesses are located near day-care centers and child-care facilities; and

WHEREAS, a public hearing on this matter was held by the City Council as required by law; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABERNATHY, TEXAS:

Section 1.

The Code of Ordinances of the City of Abernathy, Texas, be, and the same is hereby, amended by adding Article 4.600 Alcohol Sales, in its entirety, to read as follows:

Article 4.600 Alcohol Sales

Sec. 4.601. Title

This article shall be known and cited as the Alcohol Sales Ordinance.

Sec. 4.602. Terms

The terms of this Ordinance shall be construed to be consistent with the Texas Alcoholic Beverage Code and rules and regulations promulgated under its authority.

Sec. 4.603. Sales Within 300 Feet of a Church, School, or Hospital

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 is hereby prohibited, except as otherwise provided by this Ordinance and the Texas Alcoholic Beverage Code.

Sec. 4.604. Sales Within 300 feet of a Day-Care or Child-Care Facility

(A) That a permit or license holder under Chapters 25 (Wine and Beer Retailer's 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 may not sell or engage in the business of selling an alcoholic beverage at a place of business located within 300 feet of a day-care center or child-care facility, as defined by the Texas Human Resources Code, except as otherwise provided by this Ordinance and the Texas Alcoholic Beverage Code.

(B) The restrictions in this Section 4.604 do not apply to a permit or license holder who sells alcoholic beverages if:

- (i) the seller's business and the day-care center or child-care facility are located on different stories of a multistory building; or*
- (ii) the seller's business and the day-care center or child-care facility are located in separate buildings and either the permit or license holder's place of business or the day-care center or child-care facility is located on the second story or higher of a multistory building.*

Sec 4.605. Measuring Distances

The distance between the place of business where the alcoholic beverages are sold and the church, public or private school, public hospital school, or day-care center or childcare facility shall be measured in accordance with Section 109.33 of the Texas Alcoholic Beverage Code.

Sec. 4.606. Variances Allowed

(A) The City Council may allow variances to the regulations in Sec. 4.603 and Sec. 4.604 if the City Council determines that enforcement of the regulation in a particular instance:

- (i) is not in the best interest of the public;*
- (ii) constitutes waste or the inefficient use of land or other resources;*
- (iii) creates an undue hardship on an applicant;*
- (iv) does not serve its intended purpose;*
- (v) is not effective or necessary; or*
- (vi) 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 is in the best interest of the community.*

Section 2.

If any section, sub-section, sentence, clause, phrase or portion of this ordinance shall be held unconstitutional or invalid by a court of competent jurisdiction, such section, sub-section, sentence, clause, phrase or portion shall be deemed a separate, distinct, and independent provision and such invalidity shall not affect the validity of the remaining portion.

Section 3.

This ordinance shall take effect from and after its adoption by the City Council of the City of Abernathy, Texas.

PASSED AND APPROVED the 13th day of July 2009.