

REGULATIONS PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES
BY DEALER NEAR SCHOOL OR CHURCH

WHEREAS, the Commissioners' Court of Montgomery County, Texas has determined that a necessity exists for the County to prohibit the sale of alcoholic beverages by a dealer whose place of business is close to a school or church;

WHEREAS, the Commissioners' Court of Montgomery County, Texas has the authority to regulate the sale of alcoholic beverages near schools, churches and hospitals pursuant to Texas Alcoholic Beverage Code Section, Sections 109.33; and

WHEREAS, the Commissioners' Court of Montgomery County, Texas desires to adopt these regulations only to the extent that the sale of alcoholic beverages would be prohibited in close proximity to a church or school.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS' COURT OF MONTGOMERY COUNTY, TEXAS:

Article I. Application of these Regulations

Section 1.1 These regulations are applicable in areas of Montgomery County outside an incorporated city or town.

Section 1.2 As of the effective date of these Regulations, the sale of alcoholic beverages is prohibited by a dealer whose place of business is within:

- (1) 300 feet of a church, or a public or private school;
- (2) 1,000 feet of a public school, if the commissioners court receives a request from the board of trustees of a school district under Section 38.007, Education Code; or
- (3) 1,000 feet of a private school if the Montgomery County Commissioners' Court receives a request from the governing body of the private school.

Section 1.3 A dealer whose initial permit was issued prior to the effective date of these Regulations, for a location that would otherwise be prohibited under Section 1.2 above, is not prohibited from selling alcoholic beverages under these Regulations. Dealers of alcoholic beverages whose place of business is within 1000 feet of a church, or a public or private school may be denied a permit or license.

Section 1.4 (a) Numbers (2) and (3) of Section 1.2 do not apply to the holder of: a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages; a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102 of the Texas Alcoholic Beverage Code.

(b) Number (3) of Section 1.2 does not apply to the holder of: a license or permit issued under Chapter 27, 31, or 72 of the Texas Alcoholic Beverage Code who is operating on the premises of a private school; or a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that is located within 1,000 feet of a private school.

(c) Number (1) of Section 1.2 does not apply to the holder of: a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that is located within 300 feet of a private school.

Article II. Measurement of Distance

Section 2.1 The measurement of the distance between the place of business where alcoholic beverages are sold and the church shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

Section 2.2 The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

(1) 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

(2) 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.

Article III. Notice

Section 3.1 Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This section does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53 of the Texas Alcoholic Beverage Code.

Article IV. Variance

Section 4.1 The Commissioners' Court of Montgomery County may also allow variances to the regulation if the Commissioners' Court determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the court or governing board, 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.

Article V. Miscellaneous

Section 5.1 These Regulations are not meant to substitute for state law regarding this subject matter, but to activate Section 109.33 of the Texas Alcoholic Beverage Code as it applies to schools and churches in Montgomery County, Texas.

Section 5.2 The effective date of these Regulations is July 9, 2012.

PASSED AND APPROVED ON _____, 2012.

MONTGOMERY COUNTY, TEXAS

ALAN B. SADLER, COUNTY JUDGE

MIKE MEADOR,
COMMISSIONER, PCT. 1

CRAIG DOYAL,
COMMISSIONER, PCT. 2

ED CHANCE,
COMMISSIONER, PCT. 3

ED RINEHART,
COMMISSIONER, PCT. 4

ATTEST:

MARK TURNBULL
COUNTY CLERK