

PUBLIC NOTICE

AGENDA

**LOCKHART CITY COUNCIL
SPECIAL MEETING**

AUGUST 25, 2022

**CLARK LIBRARY ANNEX-COUNCIL CHAMBERS
217 SOUTH MAIN STREET, 3rd FLOOR
LOCKHART, TEXAS**

6:30 P.M.

1. **CALL TO ORDER**
Mayor Lew White
2. **DISCUSSION/ACTION ITEMS**
A. Discussion and/or action regarding Downtown Alcohol Beverage Regulations & Enforcement.
3. **ADJOURNMENT**

Posted on the bulletin board in the Municipal Building, 308 West San Antonio Street, Lockhart, Texas, on the 19th day of August 2022 at 11:15 a.m.



MESSER ★ FORT ★ McDONALD

THE MUNICIPAL LAW FIRM

NORTH TEXAS | AUSTIN | ABILENE

MEMORANDUM

TO: Mayor, Council Members, City Manager, City of Lockhart

FROM: Monte Akers, City Attorney

DATE: August 18, 2022

RE: Downtown District Alcohol Enforcement Issues

Please accept this memo for use in connection with the special meeting on August 25, 2022, at which a Texas Alcoholic Beverage Commission (“TABC”) representative is scheduled to speak. A purpose of the meeting is to consider whether possession and consumption of alcohol shall be allowed on streets and sidewalks in the City’s Commercial Central Business District (“CCBD”).

Relevant City Ordinances

Chapter 6 of the City’s Code of Ordinances addresses alcohol sales, licensing, and hours. Sec. 36-3a prohibits consumption of alcohol on streets, sidewalks, and public ways in the city. Sec. 36-3b prohibits consumption of alcohol in a park unless a permit is obtained from the chief of police, prohibits alcohol in playground areas, but allows possession of alcohol at picnic tables at which food is also possessed. Chapter 6 and Sec. 36-3 are attached.

Issues/Options for Consideration

City regulation of alcohol in the city is currently less restrictive in the CCBD than elsewhere, in that on-premises consumption is allowed and sales are allowed within 300 feet of a church or school (Sec. 6-3a). Traditionally, the city has also allowed possession and consumption on streets and sidewalks in the CCBD during public events for which the chief of police has issued a permit. Issuance of such permits follows the pattern for consumption in city parks, although the City’s Code does not specifically address issuance of permits for the CCBD.

Although not described as such in the City Code, three types of events occur in the district—historically held community wide events, such as Cinco de Mayo and the Dickens festival; smaller events such as Courthouse Nights, and Chamber/Downtown Business-sponsored events such as “First Friday Night” and “Sip n. Stroll.” Assuming the TABC representative does not provide conflicting information, and the Council decides to allow alcohol on streets and sidewalks in the CCBD, options for such allowance include (a) only at types of events for which a description is inserted into the Code; (b) only at events for which streets are closed and barricaded; (c) only at

events for which a permit is issued based on criteria to be adopted; (d) only at certain locations within the CCBD; (e) only during certain hours or on certain days; (f) only for certain types of TABC-licensed businesses; or (g) a combination of such options.

Should the Council determine to allow alcohol on streets and sidewalks in the CCBD, an appropriate ordinance will be drafted and presented at a future council meeting.

MEMORANDUM

TO: Steve Lewis, City Manager, City of Lockhart

FROM: Monte Akers, City Attorney

DATE: July 29, 2022

RE: Downtown Alcohol Beverage Regulations & Enforcement

Please accept this memo in regard to the item on the agenda for August 2 about regulation of alcohol in the City's Commercial Central Business ("CCB") district. You advised that the City, through the Police Dept., periodically issues Special Activity Permits for the CCB that include authorizations for open containers and consumption of alcohol on streets and sidewalks of the CCB for certain events. There are essentially three types of events that occur in the district—historically held community wide events, such as Cinco de Mayo and the Dickens festival; smaller events such as Courthouse Nights, and Chamber/Downtown Business-sponsored events such as 1st Friday Night and "Sip n. Stroll."

With regard to such events, certain businesses that sell/serve alcohol in the district are allowing open containers and public consumption on sidewalks and streets in the absence of permits or ordinance authorization. The City Council should discuss options for appropriately regulating the same, may carve out such exceptions as it deems appropriate regarding allowance of open containers and alcohol consumption in streets and on sidewalks in the CCB district, and should amend its ordinances accordingly.

The following discussion does not address possession of an open container or consumption of alcohol in vehicles.

I. Executive Summary

The City's ordinances related to the regulation of alcohol are generally consistent with state law. However, the authorization for issuance of Special Activity Permits by the Police Department is limited to City Parks and should be amended if such permits are to be used for the CCB District.

Although state law limits City regulation of alcohol, the City Council has significant discretion regarding open containers and consumption of alcohol in the district. State law allows a city to completely ban the same in its "central business district" which has not been done, and allows a

city to ban the same in streets, sidewalks, and other public places, which has been done. A question to be addressed at the meeting on August 2, 2022, is when, how, and for the type of events for which open containers and consumption of alcohol in streets and sidewalks in the CCB district will be allowed.

II. City Authority to Regulate Alcohol

Municipal authority over alcoholic beverages is limited to the following (excluding rules applicable to international border and certain populous cities):

1. A home rule city, in its charter, may prohibit the sale of liquor or malt beverages in all or part of its residential sections. (TABC Sec. 109.31 & 109.32)
2. A city may prohibit sales within 300 feet of a church, school, most childcare facilities, or a hospital, or within 1000 feet of a school if requested by the school. (TABC Sec. 109.33 & 109.331)
3. A city may prohibit possession of an open container or consumption in its central business district if (a) the governing body determines that it is a risk to health & safety; and (b) it adopts a map depicting the central business district (TABC Sec. 109.35)
4. A city may prohibit possession of an open container or consumption on a public street, alley, or sidewalk within 1,000 feet of a homeless shelter or substance abuse treatment center not located in a central business district. (TABC Sec. 109.36)
5. A city may regulate the location of (e.g. require a special use permit) for an establishment that derives 75% or more of its gross revenue from the on-premises sale of alcoholic beverages or a sexually oriented business. (TABC Sec. 109.57)
6. A city may impose more, or less, restrictive, hours of operation for the sale of beer from state law hours (i.e. sales allowed between 7 a.m. and midnight any day except Sunday, when beer cannot be sold between midnight and 1 p.m. (TABC Sec. 105.32 & 109.32)
7. A city may prohibit the possession or consumption of alcohol in city parks and other city property. (caselaw).
8. A city may require that a business that sells alcoholic beverages be licensed by the city and pay a license fee that cannot exceed one-half the amount of the license fee the business must pay for its state license. (TABC Sec. 11.38)
9. A city may not impose a license or permit requirement on a business that sells/serves alcohol that is not imposed on business that do not (i.e. the city may not discriminate against businesses licensed by TABC). (TABC Sec. 109.57)

III. City of Lockhart Regulation of Alcohol

The City's Code of Ordinances currently regulates alcohol in the following manners:

1. Requires licenses and a license fee (Sec. 6-2).
2. Restricts locations of sales: Except for the sale of beer and wine for off-premises consumption and the sale of alcoholic beverages for on-premises consumption in the CCB district, sales of alcohol are prohibited within 300 feet of any church or school. (Sec. 6-3).

3. Allows extended hours for sales of wine, beer, and mixed beverages until 2 a.m., but with prohibitions for possession or consumption in a public place on Sunday between 2:15 a.m. and noon, and on any other day between 2:15 a.m. and 7 a.m. (Sec. 6-4).
4. Prohibits possession of any alcoholic beverage on any street, sidewalk, or other public place (Sec. 36-2).
5. Prohibits consumption of alcohol on any street, sidewalk, or other public way in the City, and prohibits consumption in a city park without first obtaining permission from the police chief; requires possession of food in addition to alcohol in the park (Sec. 36-3).
6. Regulates or prohibits alcohol in manners or for purposes unrelated to the subject of this memo (i.e. aviation [4-74]; game Rooms [8-214]; permits for bands where alcohol is sold [18-28]; shooting range/firearms [36-1]; particular zoning districts [64-196]; and Sexually Oriented Businesses [64-201]).

IV. Special Rules for Central Business Districts

Prior to September 1, 2015, cities were allowed to petition the Texas Alcoholic Beverage Commission to adopt an order to prohibit possession of an open container or consumption of alcohol in the central business district of the city, and as of January 1, 2013, TABC had adopted such orders for the following cities:

Amarillo, Claude, College Station, Corpus Christi, Dallas, El Paso, Farmersville, Giddings, Groveton, Houston, Hubbard, Jefferson, McAllen, Rosenberg, San Angelo, San Antonio, San Marcos, Shamrock, Sinton, South Padre Island, Taylor, Timpson, and Vernon

However, with the passage of HB 2296 in 2015, the petition requirement was repealed and the current language of Sec. 109.35, discussed above in II 3, was enacted, meaning that a city may prohibit sales within its central business district without TABC approval.

V. Analysis and Conclusion

There is no statewide ban prohibiting possession of open containers or public consumption of alcohol in Texas except in vehicles, state parks, or on public property where the governing body of a city where has made it illegal. Lockhart ordinances are consistent with state laws, and open containers and consumption on city streets, sidewalks, and parks are prohibited. There is currently a mechanism in the City Code for allowing open containers and consumption in parks, but there is none regarding streets and sidewalks in the CCB district.

The City Council has significant discretion regarding open containers and consumption of alcohol in the district. State law allows a city to completely ban the same in its “central business district,” which has not been done, or it allows a city to determine the circumstances, or types of events, for which citizens are allowed to buy a drink and walk around the square, which should be done. Accordingly, the City Council may carve out such exceptions as it deems appropriate regarding allowance of open containers and alcohol consumption in streets and on sidewalks in the CCB district.

DOWNTOWN EVENTS - Lockhart Square

Update: 8-17-22

EVENT	DATE/MONTH
MLK March	3rd Monday in January (March sometimes begins downtown)
First Friday	1st Friday each month
Farmers Market	Every Saturday
Courthouse Nights	3rd Friday each month
Easter Egg Hunt	April -Egg hunt sometimes on Courthouse lawn
Sip-n-Stroll	Early April
Kiwanis 5K and Fun/Run Walk	April 2023
Fiesta del Mariachi	April
Dia de los Ninos	April
Cinco de Mayo	1st Fri & Sat in May
Cowboy Breakfast - CTR	1st Wednesday in June
Chisholm Trail Roundup	1st full weekend in June
CTR Parade	1st Saturday in June
CTR- Running of the Bulls	Saturday before the first full weekend in June
Diez y Seis	Sept 16 weekend
Western Swing Festival	Varies One weekend in Sept-Oct
Heart of Texas Bike Ride	October
Dia de Los Muertos Art Show	First Weekend in November (Couthouse Lawn)
Texas Monthly BBQ Fest	First Weekend in November
Dickens	December
Christmas Tree Lighting	December
Kwanza	December

SPECIAL/NON-RECURRING EVENTS

KART Races	
Car Shows	

D. PRESENTATION OF THE CITY OF LOCKHART'S FY 2022-2023 PROPOSED BUDGET AND CONSIDER THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION'S BUDGET FOR FISCAL YEAR 2022-2023, AND SET TWO PUBLIC HEARINGS ON THE FISCAL YEAR 2022-2023 CITY OF LOCKHART PROPOSED BUDGET.

Ms. Larison stated that according to the City of Lockhart Charter, Article 9, Section 9.07, Public Hearing on Budget, the City Council shall hold a public hearing on the budget submitted and all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item therein contained. According to the Lockhart Economic Development Corporation's bylaws, Article 5, Section 3 Annual Corporate Budget, the President shall submit the budget to the City Council for approval prior to submittal to the Board for final adoption. The City of Lockhart is required by Charter to hold one public hearing on the budget. Staff recommended conducting two public hearings to allow the citizens of Lockhart the opportunity to discuss any item or amount presented in the proposed FY 2022-2023 Budget. The dates proposed to conduct the public hearings are August 16, 2022 at 7:30 p.m. and September 6, 2022 at 7:30 p.m. at the Council Chambers located at the Clark Library Annex - 217 South Main Street, 3rd floor, Lockhart, Texas. The City of Lockhart and the Lockhart Economic Development budget for Fiscal Year 2022-2023 can be located on the City's website and hard copies are located in City Hall and the City Library. Ms. Larison provided information regarding the City of Lockhart's proposed Fiscal Year 2022-2023 budget and the Lockhart Economic Development Corporation's Fiscal Year 2022-2023 budget. There was discussion.

E. DISCUSSION REGARDING ORDINANCE 2022-34 ADOPTING A CODE OF ETHICS AND ANTI-DISCRIMINATION POLICY FOR CITY COUNCIL MEMBERS AND CITY BOARD/COMMISSION MEMBERS.

Mr. Akers stated that the Council has discussed the Ethics ordinance several times. He provided a brief explanation about a few corrections to the proposed ordinance than what was included in the council packet. There was discussion.

F. DISCUSSION REGARDING DOWNTOWN ALCOHOL BEVERAGE REGULATIONS & ENFORCEMENT.

Mayor White suggested that regulations about alcohol consumption in city streets and sidewalks in the downtown area be considered since there are various types of community events or festivals being held in the downtown area.

Mr. Akers stated that, currently, special event hosts in the downtown area where alcohol will be consumed, must obtain approval through a special activity permit from the Lockhart Police Department and obtain a temporary permit through the Texas Alcoholic Beverage Commission (TABC).

There was discussion regarding different outdoor events, such as festivals, community events, or music events that serve alcohol or allow individuals to bring their own alcohol.

Mr. Akers stated that TABC's regulations about on-premise consumption provides that alcohol is served inside the business establishment where it was purchased and is not allowed to be taken outside of the business door or serving area. The city regulates whether alcohol can be consumed on streets and sidewalks such as is currently allowed during downtown events, festivals and music events.

Mayor White requested the following to address the Council:

Casey Wilcox, downtown business owner, stated that it is up to a business with an on-premise TABC license to make sure that the individual does not leave the premises with alcohol. The downtown businesses request clarification about whether a person can consume alcohol that was purchased at a convenience store while walking on the sidewalk in the downtown area.

Ronda Reagan, 412 W. San Antonio, stated that during a Sip-n-Stroll event, the TABC permit process required the city to provide a letter authorizing consumption of alcohol during the event and a detailed outline showing the walking route, on sidewalks, where the alcohol would be consumed. She stated that during events, such as music events, some visitors consume alcohol outside the businesses, such as tail gaiting. Downtown businesses request clarification about the off-premise consumption of alcohol while walking on city streets and sidewalks.

Sally Daniel, 103 E. San Antonio Street, stated that the business owners need clarification about which events require approval of a special activity permit through the Lockhart Police Department. She also requested clarification about whether alcohol is allowed to be consumed on streets and sidewalks while walking in the downtown area.

James Lee, 100 E. Market, requested clarification about whether alcohol is allowed to be consumed while walking in the downtown area anytime or only with the approval of a special activity permit.

Mayor White stated that staff will invite a TABC officer to a future special meeting to discuss options and to consider regulations.

G. DISCUSSION REGARDING THE NOMINATION OF PHYLLIS EGGIMANN TO THE LOCKHART HISTORICAL PRESERVATION COMMISSION BY COUNCILMEMBER BRAD WESTMORELAND WITH A TERM TO EXPIRE IN NOVEMBER 2022.

Mr. Westmoreland stated that Ms. Eggimann withdrew her application for the Lockhart Historical Preservation Commission.

H. DISCUSSION REGARDING MATTERS RELATED TO COVID-19.

There was no discussion.

RECESS: Mayor White announced that the Council would recess for a break at 7:27 p.m.

REGULAR MEETING

ITEM 1. CALL TO ORDER.

Mayor White called the special meeting to order at 7:42 p.m.

ITEM 2. INVOCATION, PLEDGE OF ALLEGIANCE.

Mayor Pro-Tem Sanchez gave the Invocation and led the Pledge of Allegiance to the United States and Texas flags.

ITEM 3. PUBLIC COMMENT.

Mayor White requested the following to address the Council:

ASSIGNING THERETO A ZONING CLASSIFICATION OF *AO AGRICULTURAL-OPEN SPACE DISTRICT* AND AMENDING THE ZONING MAP ACCORDINGLY.

Mayor White announced that there was an issue with the publication, therefore the item will be postponed until the first meeting in September.

Councilmember Michelson made a motion to postpone the item to the September 6, 2022 meeting. Councilmember Westmoreland seconded. The motion passed by a vote of 7-0.

ITEM 5. CONSENT AGENDA.

Mayor Pro-Tem Sanchez requested that consent agenda item 5A be pulled to allow the minutes to be approved separately.

Mayor Pro-Tem Sanchez made a motion to approve the June 21, 2022 and consent agenda 5B. Councilmember McGregor seconded. The motion passed by a vote of 7-0.

Councilmember McGregor made a motion to approve the minutes of the July 19, 2022 Council meeting. Councilmember Mendoza seconded. The motion passed by a vote of 6-0-1, with Mayor Pro-Tem Sanchez abstaining.

The following are the consent agenda items that were approved:

5A: Approve City Council minutes of the June 21, 2022 and July 19, 2022 Council meetings.

5B: Accept 3rd Quarter Fiscal Year 2022 Investment Report.

ITEM 6-A. PRESENTATION OF THE CITY OF LOCKHART'S FY 2022-2023 PROPOSED BUDGET AND CONSIDER APPROVAL OF THE LOCKHART ECONOMIC DEVELOPMENT CORPORATION'S BUDGET FOR FISCAL YEAR 2022-2023, AND SET TWO PUBLIC HEARINGS ON THE FISCAL YEAR 2022-2023 CITY OF LOCKHART PROPOSED BUDGET.

Councilmember McGregor made a motion to approve the Lockhart Economic Development Corporation's Fiscal Year 2022-2023 budget, and to set two public hearings on the City of Lockhart's proposed Fiscal Year 2022-2023 budget on August 16, 2022 and September 6, 2022 at 7:30 p.m. at the Clark Library, Council Chambers, 217 S. Main Street. Mayor Pro-Tem Sanchez seconded. The motion passed by a vote of 7-0.

ITEM 6-B. DISCUSSION AND/OR ACTION TO CONSIDER ORDINANCE 2022-34 ADOPTING A CODE OF ETHICS AND ANTI-DISCRIMINATION POLICY FOR CITY COUNCIL MEMBERS AND CITY BOARD/COMMISSION MEMBERS.

There was discussion.

Councilmember McGregor made a motion to approve Ordinance 2022-34, as revised. Councilmember Westmoreland seconded. The motion passed by a vote of 7-0.

ITEM 6-C. DISCUSSION AND/OR ACTION REGARDING DOWNTOWN ALCOHOL BEVERAGE REGULATIONS & ENFORCEMENT.

CONSENSUS: After discussion, the consensus of the Council was to hold a special meeting to discuss TABC regulations and city ordinances pertaining to consuming alcohol on streets and sidewalks. A TABC Representative will be invited to clarify regulations.

Chapter 6 - ALCOHOLIC BEVERAGES

Sec. 6-1. - Definitions.

For the purposes of this chapter, all definitions of words, terms, and phrases as set forth in the V.T.C.A., Alcoholic Beverage Code are hereby adopted and made a part hereof.

Public or private school shall be defined in accordance with V.T.C.A., Alcoholic Beverage Code § 109.33.

Sec. 6-2. - License and permit fees.

(a) There is hereby levied upon each person to whom a permit has been issued pursuant to the provisions of the Texas Alcoholic Beverage Code for premises located within the city a two-year fee equal to one-half of the state fee for such permit.

(b) There is hereby levied upon each person to whom a license has been issued pursuant to the provisions of the Texas Alcoholic Beverage Code for premises located within the city a two-year fee equal to one-half of the state fee for such license.

(c) A separate fee shall be required for each permit and license issued.

Sec. 6-3. - Location of sales restricted.

(a) Except for: a) the sale of beer and wine for off-premises consumption; or b) the sale of alcoholic beverages for on-premises consumption in the CCB Commercial central business district; it shall be unlawful for any person to sell or engage in the business of selling alcoholic beverages where the place of business of such person is situated within 300 feet of any church, or public or private school. The measurements shall be along the property lines of the street fronts, and from front door to front door, and in a direct line across intersections.

(b) Variances to the 300-foot restriction of subsection (a) may be allowed if the Lockhart City Council determines that enforcement of the restriction in a particular instance:

- (1) Is not in the best interest of the public;
- (2) Constitutes waste or inefficient use of land or other resources;
- (3) Creates undue hardship on an applicant for a license or permit;
- (4) Does not service its intended purpose;
- (5) Is not effective or necessary; or

(6) For any other reason that 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.

(c) Requests for a variance from the restriction of subsection (a) must be submitted in writing to the city secretary by the person requesting or holding the TABC license or permit for the business or other entity located within 300 feet of a church or school. The Lockhart City Council will consider each variance on a case-by-case basis in a meeting open to the public and with public notice in compliance with the Texas Open Meetings Act. Written notice of the meeting also will be given to the variance requestor and to all churches and/or public or private schools within, or adjacent to, 300 feet of the affected business or other entity, sent by regular mail and posted at least ten days prior to the public meeting.

Sec. 6-4. - Extended hours for on-premises sale of beer, wine and mixed beverages.

(a) The terms "beer," "wine" and "mixed beverages" have the same meanings as set forth in V.T.C.A., Alcoholic Beverage Code § 1.04.

(b) The hours for holders of retail dealers' on-premises late hours licenses/permits to sell, offer for sale, and deliver beer for on-premises consumption, is hereby extended to 2:00 a.m. pursuant to V.T.C.A., Alcoholic Beverage Code § 105.05(c).

(c) The hours for holders of retail dealers' on-premises late hour licenses/permits to sell, offer for sale, and deliver wine for on-premises consumption are extended to 2:00 a.m. pursuant to V.T.C.A., Alcoholic Beverage Code § 105.04.

(d) The hours for holders of retail dealers' on-premises late hours licenses/permits to sell, offer for sale, and deliver mixed beverages for on-premises consumption is hereby extended to 2:00 a.m. pursuant to V.T.C.A., Alcoholic Beverage Code § 105.03(c).

(e) Unless otherwise provided in a specific use permit at the time of issuance or renewal, each valid, unexpired specific use permit for on-premises consumption of alcoholic beverages granted prior to the adoption of the ordinance from which this section derives shall be deemed amended to authorize the sale of beer or mixed beverages for on-premises consumption during the extended hours authorized by this section if the permit holder obtains a late hours permit for that location from the Texas Alcoholic Beverage Commission.

CURRENT ORDINANCES
PERTAINING TO ALCOHOLIC BEVERAGES

(f) This section does not create and shall not be construed to create any enforceable right to the continuation of the ordinance codified herein, or any right to receive compensation for any loss, damages, costs or expenses alleged to have been incurred in reliance upon its adoption or suffered as a result of its repeal. The authorization to sell beer, wine or mixed beverages for on-premises consumption during the extended hours adopted by this section under a specific use permit expires upon the repeal of this section.

(g) The holders of retail dealers' on-premises late hours licenses/permits described herein are subject to fees and restrictions as provided in Lockhart Code of Ordinances, chapter 6.

(h) Penalty.

(1) Pursuant to V.T.C.A., Alcoholic Beverage Code § 105.10, a person commits an offense if the person, in violation of V.T.C.A., Alcoholic Beverage Code ch. 105 or § 32.17(a)(7), sells or offers for sale an alcoholic beverage during prohibited hours, or consumes or permits the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours. An offense under that section is a class A misdemeanor.

(2) Pursuant to V.T.C.A., Alcoholic Beverage Code § 105.06(c), in an extended hours area, a person commits an offense if s/he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12:00 noon and on any other day between 2:15 a.m. and 7:00 a.m. A premises that is licensed or permitted by the Texas Alcoholic Beverage Commission is a public place for purposes of V.T.C.A., Alcoholic Beverage Code § 105.06. An offense under that section is a class C misdemeanor.

(3) Nothing in this section limits or restricts the Texas Alcoholic Beverage Commission and/or the city from pursuing all charges, claims and remedies available at law or equity in the enforcement of state law or municipal ordinances.

Chapter 36 - OFFENSES AND MISCELLANEOUS PROVISIONS¹

Sec. 36-2. - Possession of alcoholic beverage in public.

- (a) No person shall possess any alcoholic beverage while he is located upon any street, sidewalk or other public place unless it is in the original package and the seal on such package is unbroken.
- (b) The provisions of subsection (a) shall not apply to:
 - (1) The possession of an alcoholic beverage in a motor vehicle; or
 - (2) Possession of an alcoholic beverage in accordance with the provisions of section 36-3 of this Code.
- (c) As used in this section the term "alcoholic beverage" shall have the meaning assigned to it by the Texas Alcoholic Beverage Code.

Sec. 36-3. - Consumption of alcoholic beverages in public.

- (a) It shall be unlawful for any person to consume any alcoholic beverage while on any street, sidewalk or other public way within the city.
- (b) It shall be unlawful for any person to consume any alcoholic beverage in any city park without first obtaining from the chief of police or his duly appointed representative written permission. Alcoholic beverages shall be at all times prohibited in playground areas; provided, however, that alcoholic beverages shall not be possessed in a park except at a picnic table and no person shall possess alcoholic beverages while in a park unless he also possesses food at the same time.
- (c) As used in this section the term "alcoholic beverage" shall have the meaning ascribed to it by the Texas Alcoholic Beverage Code.