

CITY OF LOWRY CROSSING, TEXAS

ORDINANCE NO. 238

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS LEVYING AND PROVIDING FOR THE COLLECTION OF AN ANNUAL FEE FOR BUSINESSES THAT ARE REQUIRED BY THE TEXAS ALCOHOLIC BEVERAGE CODE TO HAVE A PERMIT OR LICENSE TO CONDUCT BUSINESS; PROVIDING THAT SUCH ANNUAL FEE IS IN AN AMOUNT EQUAL TO ONE-HALF OF THE FEE PAYABLE TO THE STATE FOR SUCH LICENSE OR PERMIT; PROVIDING FOR A LICENSE AND RECEIPT TO BE ISSUED BY THE CITY UPON PAYMENT OF THE SAID FEE; PROVIDING THAT IT IS UNLAWFUL FOR A PERSON TO ENGAGE IN A BUSINESS WITHIN THE CITY FOR WHICH A LICENSE IS REQUIRED BY THE TEXAS ALCOHOLIC BEVERAGE CODE WITHOUT HAVING PAID THE SAID FEE AND HAVING BEEN ISSUED A LICENSE BY THE CITY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 11.38 of the Texas Alcoholic Beverage Code (“Code”) provides that the governing body of 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 or town, and Section 61.36 of the Code authorizes the governing body of an incorporated city or town to levy and collect a fee not to exceed one-half of the state fee for each license, except a temporary or agent’s beer license, issued for premises located within the city or town; and

WHEREAS, the City Council finds that the adoption of this Ordinance is in the best interests of the health, safety and welfare of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:

Section 1. Incorporation of Recitals. The above and foregoing premises and recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Fee Levied, Collected. There is hereby levied and assessed and shall be collected by the City of Lowry Crossing, Texas (“City”) annual fees in amounts equal to one-half of those payable to the state, for each business for which a permit or license is required by the State of Texas pursuant to the Texas Alcoholic Beverage Code (“Code”) to conduct business, except when said fee is waived or otherwise not required, or the permit is exempt from the payment of fees, according to the provisions of the Code, including, without limitation, the following:

- (a) Wholesaler's permit – Chapter 19 of the Code;
- (b) Package store permit - Chapter 22 of the Code;
- (b) Local distributor's permit – Chapter 23 of the Code;
- (d) Wine only package store permit – Chapter 24 of the Code; and
- (e) Wine and beer retailer's off-premise permit – Chapter 26 of the Code.

Section 3. Prima Facie Proof of Classification. The permit issued under the provisions of the Code shall be prima facie proof of the classification of the occupation upon which the fee is levied and shall be the sole basis of determination of the amount of the license fee.

Section 4. Unlawful to Engage In Business Without License. It shall be unlawful for a person to engage in any business within the City for which a permit or license is required under the provisions of the Code, without having been issued a license by the City for the same and having paid the City a license fee as set forth herein and then having received a receipt for such transaction.

Section 5. Collection of Fee. The license fees provided by this Ordinance shall be collected by the City Secretary and shall be paid by every person engaging in a business for which a permit or license is required under the provisions of the Code, and the City Secretary shall issue to the person the proper license, which shall state on its face for what it is issued, the date when it will expire, and by whom and where such business is to be conducted, and shall describe the place where such license is to be kept and state what type of business is to be permitted under the license. No license is transferable.

Section 6. Condition Precedent to License Issuance. It shall be a condition precedent to the issuance of any license by the City as provided for in this Ordinance that the person shall furnish appropriate evidence to show that all provisions of the Code and any amendments thereto have been fully met, and that the person has been issued a license to engage in such business by the appropriate authority (including the Texas Alcoholic Beverage Commission).

Section 7. Limitation. This Ordinance is limited to the levying and collection of fees by the City as set forth in Section 2 above, and the issuance of a license by the City regarding the same, and does not grant or provide any rights or authority pertaining or relating to the sale, possession, storage, distribution, or consumption of any alcoholic beverages within the City.

Section 8. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or

accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 9. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 10. Penalty. It shall be unlawful for any person to violate any provision of this Ordinance, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount not more than Five Hundred Dollars (\$50.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 11 Effective Date. This Ordinance shall become effective from and after its passage and approval, and its publication as provided by law.

PASSED AND APPROVED by the City Council of the City of Lowry Crossing, Texas this the 4th day of October, 2011.

Derek Stephens, Mayor

ATTEST:

By: _____
Janis Cable, City Secretary