



ORDINANCE 2014-12

AN ORDINANCE PROHIBITING THE CONSUMPTION OF, OR HAVING AN OPEN CONTAINER OF ANY ALCOHOLIC BEVERAGE(S) IN THEIR POSSESSION IN PUBLIC PARKS, SIDEWALKS, PARKING LOTS, ON ANY STREET, ALLEY, OR OTHER PUBLIC PLACE ADJACENT TO A PUBLIC ROAD, STREET, OR ALLEY; PROHIBITING THE CONSUMPTION OF, OR HAVING AN OPEN CONTAINER OF ANY ALCOHOLIC BEVERAGE(S) IN THEIR POSSESSION IN ANY PUBLIC BUILDING OR PRIVATE PROPERTY WITHOUT THE OWNER'S CONSENT INSIDE THE TERRITORIAL CITY LIMITS OF TOM BEAN, GRAYSON COUNTY, TEXAS. AND PROVIDING FOR A PENALTY OF NOT LESS THAN ONE AND NO/100 (\$1.00) DOLLAR, NOR MORE THAN FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS. PROVIDING FOR THE ARREST WITHOUT WARRANT OF PERSONS VIOLATING THE TERMS OF THIS ORDINANCE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND REPEALING ORDINANCES NO. 101 AND 110 OF THE CITY OF TOM BEAN AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

Whereas: The City Council of the City of Tom Bean, Grayson County, Texas has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Tom Bean, Grayson County, Texas to adopt this Ordinance regulating the enforcement of the consumption and open container of any alcoholic beverage(s) within the territorial city limits of Tom Bean.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, GRAYSON COUNTY, TEXAS:

Section 1: Purpose and Intent; it is the purpose of this Ordinance to put in place such regulations as necessary to;

- (a) Preserve, promote and protect the public health, safety, peace, temperance, and welfare of the citizens of Tom Bean, Texas.
- (b) Preserve, promote and protect private and public property.

- (c) Provide security and protection to all citizens from disturbances, annoyances, intimidation, and injury from all whom have consumed any alcoholic beverage(s).
- (d) Provide a safe environment free from becoming littered with alcoholic containers.

Section 2: Definitions; when used in this article, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

City. Territorial city limits of Tom Bean.

Public Place. Street, alley, highway, sidewalk, park, playground, building, or place to which the general public has access to and a right to resort for business, entertainment, or other lawful purpose.

Alcoholic beverage. Alcohol and any beverage containing more than one-half of one per cent (1/2 of 1%) of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.

Liquor. Any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.

Wine and Vinous Liquor. Products obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.

Distilled Spirits. Alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and that contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients.

Ale or Malt Liquor. A malt beverage containing more than four percent of alcohol by weight.

Mixed Beverage. Means one or more servings of a beverage composed in whole or part of an alcoholic beverage.

Wine cooler. An alcoholic beverage consisting of vinous liquor plus plain, sparkling, or carbonated water and which may also contain one or more natural or artificial blending or flavoring ingredients. A wine cooler may have an alcohol content as low as one-half of one percent by volume.

Beer. A malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

Commission. Is the Texas Alcoholic Beverage Commission.

Open Container. A container that is no longer sealed.

Minor. A person under 21 years of age.

Consumption. The act or process of consuming.

Littering. Carelessly discarded refuse, such as wastepaper.

Section 3: CONSUMPTION OF ALCOHOLIC BEVERAGES IN PUBLIC PLACE;

The drinking of any alcoholic beverage in any public park, on sidewalks, streets and alleys, public or any retail or commercial business lots, or at any place where athletic event or contest is being conducted, or in, on, or at any public school campus inside the territorial city limits of Tom Bean, Grayson County, Texas, whether afoot or as a passenger in, or as operator of any vehicle is unlawful and is prohibited.

Section 4: OPEN CONTAINERS;

The finding in one's possession of any opened container of an alcoholic beverage shall be prima facie evidence that the person(s), was or were then and there drinking said alcoholic beverage in violation of this code.

Section 5: LITTERING;

It shall be unlawful for any person acting individually, or as a group, to litter any public building, park, street, sidewalk, alley, or private property without the owner's consent, with any empty or partially empty alcoholic beverage container(s).

Section 6: OFFENSIVE NOISE ON PREMISES;

See Noise Ordinance (Loud and Excessive Noise Ordinance) 2014-11

Section 7: CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR SCHOOLS;

A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a facility that is a public or private school, including a parochial school; that provides all or any part of prekindergarten through twelfth grade.

Section 8: CONSUMPTION/ POSSESSION OF ALCOHOL BY A MINOR;

(a) A minor commits an offense if he consumes and / or possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

(1) If the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or

(2) If the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(c) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or makes available an alcoholic beverage to a minor with criminal negligence.

Section 9: ARREST WITHOUT WARRANT;

A peace officer may arrest without a warrant any person he observes violating any provision of this code or any rule or regulation of the commission. The officer shall take possession of all

alcoholic beverages the person has in his possession or on his premises as provided in section 2 of this code.

Section 10: DUTY OF PEACE OFFICERS;

All peace officers in the state, including those of cities, counties, and state, shall enforce the provisions of this code and cooperate with and assist the commission in detecting violations and apprehending offenders.

Section 11: PENALTY OF VIOLATION(S);

(1st Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than Fifty and no/100 (\$50.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

(2nd Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than One Hundred and no/100 (\$100.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

(3rd Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than Two Hundred and no/100 (\$200.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

It is the intention of the city council of Tom Bean, that each separate provision in this ordinance shall be deemed independent of all other provisions herein and it is further the intention of the city council that, if any provisions of this article are declared invalid or unconstitutional, all other provisions thereof shall remain valid, enforceable and constitutional.

Section 12: Right to Appeal;

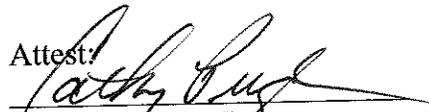
A person, who has received a violation under any section of the said ordinance, has the right to appeal and request a hearing before the judge of the Tom Bean Municipal Court. Request for a hearing must be in writing and received by the court in no less then ten (10) business days after the date violation(s) were issued. The court will then notify the defendant within two (2) weeks prior to hearing with the appearance date, time and any other instructions. If defendant fails to appear at their requested hearing, the court will issue a violation of promise appear violation.

Section 13: Repeal of Conflicting Ordinances;

All existing ordinances of the City of Tom Bean, Grayson County, Texas are hereby repealed insofar as they may be inconsistent with the provisions of this ordinance.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF TOM BEAN, TEXAS THIS 10th
DAY OF November, 2014.**


Sherry B. Howard, Mayor

Attest:

Cathy Pugh, City Secretary