

ORDINANCE NO. 2024-3988

AN ORDINANCE WAIVING THE REQUIREMENTS OF SECTION 6-2 OF THE LA PORTE CODE OF ORDINANCES AND AUTHORIZING THE SALE OF ALCOHOLIC BEVERAGES FOR GARDEN OF EDEN FLORAL & GIFTS, LLC., LOCATED AT 10515 SPENCER HIGHWAY, LA PORTE, TEXAS, FOR ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES WITHIN THREE-HUNDRED (300) FEET OF RIZZUTO ELEMENTARY SCHOOL; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing board of an incorporated city to enact regulations prohibiting the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital; and

WHEREAS, Chapter 6, Section 6-2 of the City Code of the City of La Porte prohibits the sale of alcoholic beverages if the place of business is within three hundred (300) feet of any church, public school or public hospital; and

WHEREAS, Section 109.33 of the Texas Alcoholic Beverage Code also authorizes the governing body of an incorporated city to allow variances to the regulation if the governing body 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 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; and

WHEREAS, the La Porte City Council has previously passed and approved an ordinance amending Chapter 6 of the La Porte Code of Ordinances, which ordinance established procedures and guidelines for the granting of a variance to the prohibition; and

WHEREAS, the business premises at 10515 Spencer Highway, La Porte, Texas, is situated within three hundred (300) feet of the nearest property line of Rizzuto Elementary School, a public school, thus making the sale of alcoholic beverages a violation contrary to Section 6-2 of the City Code of Ordinances, and Garden of Eden Floral & Gifts, LLC., is requesting a variance to the prohibition; and

WHEREAS, a public hearing to receive input from the public concerning Garden of Eden Floral & Gifts, LLC., request for a variance to the prohibition was held during the La Porte City Council's regular meeting on June 10, 2024, and that notice of such public hearing was published in the City's official newspaper at least ten (10) days before the public hearing date; and, that written notice of such public hearing was sent to the owners of real property within 300 feet of the premises at 10515 Spencer Highway, La Porte, Texas, and that separate notices were sent to each church,

child care facility, daycare center, public or private school, or public hospital located within 300 feet of the premises at 10515 Spencer Highway, La Porte, Texas, as well as to the superintendent of the La Porte I.S.D.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS:

Section 1. The requirements of Section 6-2 of the City Code of Ordinances prohibiting the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital are waived for the purposes of the variance request by Garden of Eden Floral & Gifts, LLC., for the property located at 10515 Spencer Highway, on a .75- acre tract of land legally described as a portion of Lots 3 & 4, and a portion of Tract 5, Block 2, Payne W J Survey, Harris County, Texas, and which premises is located within 300 feet of the property line of Rizzuto Elementary School, a public school, and such variance application is hereby granted, but subject to the following conditions:

- (a) This variance shall be applicable only to applicant, Garden of Eden Floral & Gifts, LLC., and the premises located at 10515 Spencer Highway, La Porte, Texas, and shall not transfer to any successor company or entity.
- (b) The sale of alcohol beverages shall be limited to on-premises consumption.
- (c) This variance shall not be transferable to a land use other than a restaurant.
- (d) This variance shall terminate in the event of non-operation or non-use of a restaurant by Garden of Eden Floral & Gifts, LLC. on the premises of 10515 Spencer Highway, La Porte, Texas, for a period of twelve or more successive calendar months.

Section 2: The La Porte City Council determines that enforcement of the distance requirements in the case of Garden of Eden Floral & Gifts, LLC., located at 10515 Spencer Highway, La Porte, Texas, 1) is not in the best interest of the public; 2) constitutes waste or inefficient use of land or other resources; 3) creates an undue hardship on an applicant for a license or permit; 4) does not serve its intended purpose; 5) is not effective or necessary; and 6) after consideration of the health, safety and welfare of the public and the equities of the situation, is not in the best interest of the community; and in consideration of these factors, that the variance applied for by Garden of Eden Floral & Gifts, LLC., with the conditions described herein, should be granted.

Section 3: All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 4: Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable,

such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 5. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council is posted at a place convenient to the public at the City Hall of the city for the time required by law preceding this meeting, as required by Chapter 551, Tx. Gov't Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 6. This Ordinance shall be effective immediately upon its passage and approval.

PASSED AND APPROVED this 10th day of JUNE 2024.

CITY OF LA PORTE, TEXAS

By: _____
Rick Helton, Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney