

**ORDINANCE NO. 20070809-061**

**AN ORDINANCE AMENDING TITLE 4 OF THE CITY CODE TO ADD CHAPTER 4-11 RELATING TO ESTABLISHMENTS THAT ARE NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION; PROVIDING FOR CRIMINAL AND CIVIL PENALTIES; AMENDING THE 2006-07 FEE SCHEDULE IN ORDINANCE NO. 20060911-004 TO ADD A BYOB VENUE PERMIT FEE; PRESCRIBING REGULATIONS FOR ESTABLISHMENTS THAT ARE NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION FOR THE TIME PERIOD BEFORE CHAPTER 4-11 TAKES EFFECT; AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Title 4 (*Business Regulation And Permit Requirements*) of the City Code is amended to add Chapter 4-11 to read:

**CHAPTER 4-11. ESTABLISHMENTS NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§ 4-11-1 DEFINITIONS.**

- (A) It is a common practice for an establishment not licensed or permitted by the Texas Alcoholic Beverage Commission to allow its patrons to bring their own alcoholic beverages onto the premises for consumption. This practice is often referred to as "BYOB", an acronym for "bring your own bottle"
- (B) In this chapter:
- (1) ALCOHOLIC BEVERAGE has the meaning assigned by the Texas Alcoholic Beverage Code.
  - (2) BYOB VENUE means an establishment to which this chapter applies, as prescribed by Section 4-11-2 (*Applicability*).
  - (3) DEPARTMENT means the Watershed Protection and Development Review Department
  - (4) DIRECTOR means the director of the Watershed Protection and Development Review Department.

- (5) PREMISES means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

**§ 4-11-2 APPLICABILITY.**

(A) Except as provided in Subsection (B), this chapter applies to an establishment that:

- (1) is not licensed or permitted by the Texas Alcoholic Beverage Commission; and
- (2) allows patrons to bring alcoholic beverages onto the premises for possession and consumption.

(B) This chapter does not apply to:

- (1) a residence;
- (2) an establishment operated by a governmental entity;
- (3) a private club, as defined by the Texas Alcoholic Beverage Code;
- (4) a fraternal or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
- (5) a college and university use, as defined by Section 25-2-6 (*Civic Uses Described*);
- (6) a religious assembly use, as defined by Section 25-2-6 (*Civic Uses Described*);
- (7) a restaurant, general or limited, as defined by Section 25-2-4 (*Commercial Uses Described*); or
- (8) a theater use, as defined by Section 25-2-4 (*Commercial Uses Described*).

**§ 4-11-3 NOTICE.**

(A) Mailed notice is presumed received on the fifth day after it is mailed.

(B) Notice to a permit holder may be delivered to the manager at the BYOB venue and is effective on delivery.

**§ 4-11-4 ADMINISTRATIVE RULES.**

The director shall adopt administrative rules to implement, administer, and enforce this chapter.

***ARTICLE 2. PERMITS.***

**§ 4-11-21 PERMIT REQUIRED.**

- (A) A person shall obtain a permit issued by the department before the person may operate a BYOB venue
- (B) A person must obtain a separate permit for each BYOB venue location.

**§ 4-11-22 QUALIFICATIONS.**

- (A) A person may not apply for or hold a permit under this chapter unless the person is at least 18 years of age.
- (B) A person may not hold a permit under this chapter or manage a BYOB venue if the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, and the conviction makes the person unfit to hold a permit or manage a BYOB venue.

**§ 4-11-23 PERMIT APPLICATION.**

- (A) A person who seeks a permit to operate a BYOB venue must submit an application to the director on a form provided by the director. The application must include:
  - (1) the names, addresses, and birth dates of all persons who have an ownership interest in, or who will manage, the proposed BYOB venue;
  - (2) authorization for the City to conduct a criminal background check on each person described in Paragraph (1);
  - (3) the name of the BYOB venue and its physical address;
  - (4) a registration certificate for the establishment from the Secretary of State, if registration is required by law;
  - (5) proof that the applicant has all other permits and approvals required to operate the establishment, including appropriate zoning;

- (6) a security plan that meets or exceeds the minimum standards established by administrative rule, as determined by the Austin Police Chief;
  - (7) scale drawings of the site, including:
    - (a) all site improvements;
    - (b) the floor plan of each building;
    - (c) a designation of the areas where the consumption of alcohol is to be allowed;
  - (8) information required by administrative rule; and
  - (9) other information reasonably required by the director.
- (B) An applicant shall pay the nonrefundable permit fee established by ordinance.
- (C) A permit is void if the applicant obtains the permit by knowingly providing false information on the application.

**§ 4-11-24 PERMIT APPROVAL OR DENIAL.**

- (A) The director shall approve a permit application if the director determines that the applicant and the proposed BYOB venue meet the requirements of this chapter.
- (B) The director shall deny a permit application if the director determines that:
- (1) the applicant is under the age of 18 years;
  - (2) the BYOB venue as proposed would not comply with this chapter; or
  - (3) the applicant had a permit required by this chapter revoked within the preceding 12-month period.
- (C) The director may deny a permit application if the director determines that:
- (1) the applicant provided incorrect or incomplete information on the application; or
  - (2) the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, and the conviction makes the person unfit to hold a permit.

- (D) If the director does not approve or deny an application within 45 days of the date it is filed, the application is denied.
- (E) The director shall give written notice of a denial of an application to the applicant.
- (F) An applicant may appeal to the city manager a denial of a permit application in accordance with Section 4-11-31 (*Appeal*).

**§ 4-11-25 PERMIT NOT TRANSFERABLE.**

A permit issued under this chapter is not transferable to another person.

**§ 4-11-26 PERMIT NOT A RIGHT.**

A permit issued under this chapter is a grant of a privilege and is not a property right.

**§ 4-11-27 PERMIT EXPIRATION; RENEWAL.**

- (A) A permit issued under this chapter expires one year after the date it is issued.
- (B) A permit holder shall file an application for permit renewal not sooner than the 90<sup>th</sup> day and not later than the 45<sup>th</sup> day before the permit expires. An application that is not filed within the described time period is a new application.

**§ 4-11-28 REQUIREMENT TO SUPPLEMENT INFORMATION.**

While a permit application is pending or a permit is in effect, an applicant or permit holder shall immediately supplement the information provided to the director in the permit application if the information is or becomes inaccurate, incomplete, or misleading.

**§ 4-11-29 PERMIT SUSPENSION.**

- (A) The director may suspend a permit issued under this chapter without prior notice or hearing if the director determines that:
  - (1) the permit holder, the manager, or an employee of the BYOB venue has violated a requirement of this chapter;
  - (2) the BYOB venue does not comply with this chapter; or
  - (3) the permit holder does not qualify for a permit under this chapter.

(B) If the director suspends a permit:

(1) the director shall give written notice to the permit holder that:

- (a) the permit is immediately suspended on receipt of the notice, and
- (b) the permit holder may file a written request for a hearing not later than the 10<sup>th</sup> day after the date of receipt of notice of suspension; and

(2) the permit holder shall immediately close the BYOB venue.

(C) Suspension of a permit is effective on receipt of notice.

(D) A permit holder may file with the director a written request for a hearing on a permit suspension. The request must be filed not later than the 10<sup>th</sup> day after the date of receipt of notice of suspension.

(E) If a permit holder timely files a hearing request:

- (1) the director shall hold a hearing on the permit suspension not later than the 10<sup>th</sup> day after the date the hearing request is filed; and
- (2) a suspension is stayed pending the outcome of the hearing.

(F) If a hearing request is not timely filed, a suspension continues in effect.

(G) The director shall give written notice to the permit holder of a suspension that is continued in effect after a hearing under Subsection (E) or as prescribed by Subsection (F).

(H) The director may reinstate a permit if the reason for suspension no longer exists.

#### **§ 4-11-30 PERMIT REVOCATION.**

(A) The director may revoke a permit issued under this chapter if the director determines that:

- (1) the permit holder, the manager, or an employee of the BYOB venue has engaged in serious or repeated violations of this chapter;
- (2) the BYOB venue does not comply with this chapter; or
- (3) the permit holder does not qualify for a permit under this chapter.

- (B) Before revoking a permit, the director shall provide the permit holder with written notice of the pending permit revocation. The written notice shall include:
  - (1) the reason the permit is subject to revocation;
  - (2) the date on which the permit is scheduled to be revoked; and
  - (3) a statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a hearing with the director not later than the 10<sup>th</sup> day after the date the notice is received.
- (C) A permit revocation becomes effective on expiration of the time period prescribed by the notice if the permit holder does not file a written request for hearing with the director not later than the 10<sup>th</sup> day after the notice is received.
- (D) If a permit holder timely files a hearing request:
  - (1) the director shall hold a hearing on the permit revocation not later than the 10<sup>th</sup> day after the date the hearing request is filed, and
  - (2) a revocation is stayed pending the outcome of the hearing.
- (E) The director shall give written notice to the permit holder of a decision to revoke the permit or a revocation that becomes effective under Subsection (C).

**§ 4-11-31 APPEAL.**

- (A) An applicant or a permit holder may appeal to the city manager a permit application denial, a permit suspension, or a permit revocation by filing a notice of appeal with the director on a form provided by the director not later than the 10<sup>th</sup> day after the applicant receives the notice required by Section 4-11-24(E) (*Permit Approval Or Denial*), Section 4-11-29(G) (*Permit Suspension*), or Section 4-11-30(E) (*Permit Revocation*), as applicable.
- (B) If the permit holder timely files a notice of appeal, a suspension or revocation is stayed.
- (C) The city manager or a designee shall, not later than the 10<sup>th</sup> day after the date the notice of appeal is filed, hear the appeal, and may affirm, reverse, or modify a permit application denial, permit suspension, or permit revocation.
- (D) The city manager or a designee shall give written notice of a decision on an appeal to the appellant.

- (E) An appellant who seeks judicial review of the city manager's decision on an appeal must file a petition with a court of competent jurisdiction not later than the 30<sup>th</sup> day after receipt of the notice of the decision.

### **ARTICLE 3. REGULATIONS.**

#### **§ 4-11-51 PUBLIC PLACE.**

A BYOB venue is a public place.

#### **§ 4-11-52 PERMIT POSTING REQUIRED.**

A permit holder shall post the permit required by this chapter in a prominent public location at the BYOB venue.

#### **§ 4-11-53 MANAGER REQUIRED ON PREMISES.**

A permit holder shall ensure that a qualified manager is continuously on the BYOB venue premises during the hours of operation. A permit holder may serve as the manager.

#### **§ 4-11-54 SECURITY PLAN IMPLEMENTATION.**

- (A) A person may not operate a BYOB venue without an approved security plan.
- (B) A permit holder and a BYOB venue manager shall provide security for the BYOB venue in accordance with the security plan.

#### **§ 4-11-55 MINIMUM AGE FOR ADMITTANCE.**

A permit holder, a manager, or an employee of a BYOB venue may not allow a person under the age of 18 years on the premises.

#### **§ 4-11-56 DOORS TO REMAIN UNLOCKED.**

During the hours of operation, a person may not lock or obstruct:

- (1) an exterior entrance door that is designated or available for use by patrons; or
- (2) an interior door that provides access to a portion of the premises that is designated or available for use by patrons.



**§ 4-11-57 CONSENT TO INSPECTION; IMMEDIATE ACCESS REQUIRED.**

- (A) By accepting a permit under this chapter, the permit holder consents that the director, the director's representative, law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel may enter the premises during the hours of operation to conduct an investigation or inspect the premises to determine compliance with this chapter.
- (B) A permit holder, a manager, and an employee of a BYOB venue shall provide the director, the director's representative, law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel with immediate access to all portions of the premises.

**§ 4-11-58 HOURS OF OPERATION.**

- (A) A permit holder, a manager, or an employee of a BYOB venue shall close a BYOB venue between 2:00 a.m. and 7:00 a.m. each day except Sunday, and between 2:00 a.m. and noon on Sunday. A patron who is on the premises at 2:00 a.m. may remain until not later than 2:15 a.m.
- (B) A person may not consume an alcoholic beverage on the premises of a BYOB venue between 2:15 a.m. and 7:00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday.
- (C) A permit holder, a manager, or an employee of a BYOB venue may not allow a member of the public on its premises, including a parking area, between 2:30 a.m. and 7:00 a.m. each day except Sunday, or between 2:30 a.m. and noon on Sunday. This prohibition does not apply to a person who is providing a product or service directly to the BYOB venue.

**§ 4-11-59 ALCOHOLIC BEVERAGE CONSUMPTION AREAS.**

- (A) A permit holder shall designate, subject to the approval of the director, the portions of the premises on which the consumption of alcoholic beverages is permitted. A designated area:
  - (1) must be located and designed to minimize adverse effects on adjacent property;
  - (2) may include the interior of a building or a deck, patio, or garden; and
  - (3) must exclude parking areas.

- (B) A person may not consume, and a permit holder, a manager, or an employee of a BYOB venue may not allow the consumption of, an alcoholic beverage outside of a designated area.

**§ 4-11-60 PARKING AREA RESTRICTIONS.**

- (A) A permit holder, a manager, or an employee of a BYOB venue may not allow persons to congregate in a parking area.
- (B) A permit holder, a manager, or an employee of a BYOB venue may not allow a person to consume an alcoholic beverage in a parking area.
- (C) A permit holder shall post signs in each parking area stating that the consumption of an alcoholic beverage is prohibited.

**§ 4-11-61 SALE OF ALCOHOLIC BEVERAGES PROHIBITED.**

A person may not sell an alcoholic beverage at a BYOB venue.

**§ 4-11-62 RESTRICTION ON CONSUMPTION AND PURCHASE OF ALCOHOL BY PERMIT HOLDER AND EMPLOYEES.**

A permit holder, manager, or employee of a BYOB venue may not:

- (1) consume an alcoholic beverage while on duty;
- (2) purchase or otherwise acquire an alcoholic beverage for a patron; or
- (3) give an alcoholic beverage to a patron.

**§ 4-11-63 COMPLIANCE WITH OTHER LAWS.**

A permit holder, a manager, and an employee of a BYOB venue shall comply with the Texas Alcoholic Beverage Code and all applicable criminal, zoning, health, and safety laws relating to the operation of the BYOB venue.

**§ 4-11-64 CRIME PREVENTION AND REPORTING.**

The permit holder, the manager, and the employees of a BYOB venue shall:

- (1) take reasonable measures to prevent criminal activity on the premises,  
and

- (2) immediately report to law enforcement personnel all suspected criminal activity on the premises or the surrounding areas that they observe or of which they otherwise become aware

#### **ARTICLE 4. ENFORCEMENT.**

##### **§ 4-11-81 CRIMINAL PENALTY.**

- (A) A person commits a Class C misdemeanor if the person:
  - (1) operates a BYOB venue without a permit required by Article 2 (*Permits*); or
  - (2) violates a provision of Article 3 (*Regulations*), other than Section 4-11-61 (*Sale Of Alcoholic Beverages Prohibited*) or Section 4-11-63 (*Compliance With Other Laws*).
- (B) Proof of a culpable mental state is not required to prove an offense under this chapter, except for Section 4-11-58(B) (*Hours Of Operation*).
- (C) Each day that a violation occurs or continues is a separate offense.

##### **§ 4-11-82 CIVIL REMEDIES.**

- (A) The city council has determined that this chapter is necessary to protect health, life, and property and to preserve the good government, order, and security of the City and its inhabitants.
- (B) A person who continues to violate this chapter after being notified of the offense in writing by an authorized City representative is subject to a civil penalty of \$1000 for each day or part of a day the violation occurs.
- (C) The City may file suit to enforce this chapter or collect a civil penalty.
- (D) The City may seek to enjoin violations of this chapter.

##### **§ 4-11-83 CUMULATIVE REMEDIES.**

The remedies authorized under this article are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

**PART 2.** From August 20, 2007 until October 4, 2007:

- (A) a person may operate a BYOB venue as defined in Chapter 4-11 (*Establishments Not Licensed By The Texas Alcoholic Beverage Commission*) without the permit required by that chapter, if the person.
  - (1) complies with the requirements of Article 3 (*Regulations*), including those applicable to a permit holder; and
  - (2) meets or exceeds minimum security requirements, as determined by the Austin Police Chief; and
- (B) a person who operates a BYOB venue is not required to comply with Section 4-11-52 (*Permit Posting Required*), Section 4-11-54 (*Security Plan Implementation*), or Section 4-11-59 (*Alcoholic Beverage Consumption Areas*), unless the director has issued the person a BYOB venue permit

**PART 3.** The 2006-07 Fee Schedule attached as Exhibit “A” to Ordinance No 20060911-004 is amended to add a “BYOB venue permit” fee of \$100 to the “Miscellaneous Fees” category for the Watershed Protection and Development Review Department, as follows.

	<b>Approved</b>	<b>Approved</b>	
	<b><u>2005-06</u></b>	<b><u>2006-07</u></b>	<b><u>Change</u></b>
<b><i>Watershed Protection &amp; Development Review Department – General Fund</i></b>			
<b>Miscellaneous Fees</b>			
<u>BYOB venue permit</u>	<u>None</u>	<u>\$100.00</u>	

**PART 4.** This part prescribes regulations for a BYOB venue, as defined below, for the time period that begins on the effective date of this part and ends on August 20, 2007.

- (A) In this part:
  - (1) ALCOHOLIC BEVERAGE has the meaning assigned by the Texas Alcoholic Beverage Code
  - (2) BYOB VENUE means an establishment to which this part applies, as prescribed by Subsections (B) and (C).

- (3) PREMISES means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.
- (B) Except as provided in Subsection (C), this part applies to an establishment that:
- (1) is not licensed or permitted by the Texas Alcoholic Beverage Commission; and
  - (2) allows patrons to bring alcoholic beverages onto the premises for possession and consumption.
- (C) This part does not apply to:
- (1) a residence;
  - (2) an establishment operated by a governmental entity;
  - (3) a private club, as defined by the Texas Alcoholic Beverage Code;
  - (4) a fraternal or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
  - (5) a college and university use, as defined by Section 25-2-6 (*Civic Uses Described*);
  - (6) a religious assembly use, as defined by Section 25-2-6 (*Civic Uses Described*);
  - (7) a restaurant, general or limited, as defined by Section 25-2-4 (*Commercial Uses Described*); or
  - (8) a theater use, as defined by Section 25-2-4 (*Commercial Uses Described*).
- (D) A BYOB venue is a public place.
- (E) An owner, operator, manager, or employee of a BYOB venue shall close a BYOB venue between 2:00 a.m. and 7:00 a.m. each day except Sunday, and between 2:00 a.m. and noon on Sunday. A patron who is on the premises at 2:00 a.m. may remain until not later than 2:15 a.m.

- (F) A person may not consume an alcoholic beverage on the premises of a BYOB venue between 2:15 a.m. and 7.00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday.
- (G) An owner, operator, manager, or employee of a BYOB venue may not allow a member of the public on its premises, including a parking area, between 2:30 a.m. and 7:00 a.m. each day except Sunday, or between 2.30 a.m. and noon on Sunday. This prohibition does not apply to a person who is providing a product or service directly to the BYOB venue.
- (H) A person commits a Class C misdemeanor if the person violates Subsection (E), (F), or (G).
- (I) Proof of a culpable mental state is not required to prove an offense under Subsection (E) or (G).
- (J) Each day that a violation occurs or continues is a separate offense.

**PART 5.** The council finds that the need to regulate establishments that are not licensed or permitted by the Texas Alcoholic Beverage Commission constitutes an emergency. Because of this emergency and for the immediate preservation of the public peace, health, and safety, Part 4 of this ordinance takes effect at 12:01 a.m. on the day after the date notice of its enactment is published in a newspaper of general circulation in the City. Parts 1, 2, and 3 of this ordinance take effect on August 20, 2007.

**PASSED AND APPROVED**

\_\_\_\_\_ August 9 \_\_\_\_\_, 2007

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§ \_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk