

**BYOB VENUE PERMIT RULES
(Emergency and Proposed)**

1.0 SECURITY PLAN

1.1 In accordance with Section 4-11-23(A)(6) (*Permit Application*) the Chief of Police or the Chief's designee must review a security plan for a proposed BYOB venue before an applicant may submit an application.

1.2 The minimum standards for security:

1.2.1 Trained security personnel are required to be on the premises during the hours of operation. The minimum number of security personnel is the greater of two persons or one person for each one hundred people, based on the certificate of occupancy maximum.

1.2.2 A permit holder, a manager, or an employee shall verify the age of each patron by checking a state-issued driver's license, a state-issued identification card, a military identification card, or another form of government-issued identification.

1.2.3 A permit holder shall have lighting installed and operational for exterior areas of the premises, including the parking areas. The light fixtures must be appropriately directed or shielded to prevent light or glare from affecting adjacent property.

1.2.4 A permit holder shall control access to the alcoholic beverage consumption areas.

1.2.5 A permit holder shall monitor the exterior areas of the premises to enforce the prohibition of alcohol consumption in the parking areas, disperse crowds, and report criminal activities.

1.3 Failure to abide by this Rule and Section 4-11-23(A)(6) (*Permit Application*) may result in a denial of the permit.

2.0 APPLICATION

2.1 An applicant must file a complete BYOB venue permit application with the director of Watershed Protection Development and Review (WPDR) on the form attached as Exhibit 2.

2.2 An application must include:

2.2.1 completed application form;

- 2.2.2 security plan reviewed by APD;
- 2.2.3 diagram of premises;
- 2.2.4 proof of all other applicable permits necessary for the business to include but not limited to:
 - 2.2.4.1 certificate of occupancy;
 - 2.2.4.2 food service permit;
 - 2.2.4.3 food managers certificate;
 - 2.2.4.4 site plan or site plan exemption; and
- 2.2.5 proof of compliance with zoning requirements; and
- 2.2.6 signed authorization forms for criminal history background checks as required by Section 4-11-23(A)(1),(2) (*Permit Application*)

3.0 ALCOHOLIC BEVERAGE CONSUMPTION AREA

3.1 Alcoholic Beverage Consumption Areas of a BYOB venue may include:

- 3.1.1 interior spaces of the building;
- 3.1.2 decks adjacent to the building;
- 3.1.3 patios adjacent to the building;
- 3.1.4 garden areas adjacent to the building; and
- 3.1.5 areas of the premises that are not part of the parking area.

3.2 The consumption of alcohol in an area outside of those areas identified in Rule 3.1 is prohibited.

3.3 Alcohol consumption areas must be designed in such a manner and located in such places to mitigate adverse effects on the adjoining property to include but not limited to the following.

- 3.3.1 noise;
- 3.3.2 crime;
- 3.3.3 light and glare; and

3.3.4 trash.

3.4 Diagram

3.4.1 Must be drawn to scale on 8 ½" X 11" paper and includes the following:

3.4.1.1 directional points (if practical, north should point to the top of the form);

3.4.1.2 adjacent streets, roads, and highways identified by name or number;

3.4.1.3 floor plans that show the location of exterior doors, interior walls, partitions, doors, restrooms, food service areas, areas accessible by patrons; and

3.4.1.4 all site improvements.

3.4.2 A diagram must outline the designated alcoholic beverage consumption areas.

3.4.3 An applicant may use more than one diagram to show all information.

3.4.4 **Important:** Blueprints are *not* accepted as diagrams or as attachments to diagrams.

3.5 The director shall review the alcoholic beverage consumption areas diagram submitted with the application for compliance with this Rule and Section 4-11-59 (*Alcoholic Beverage Consumption Areas*).

3.6 The director may disapprove the diagram if it is incomplete, appears insufficient to prevent adverse effects, or includes prohibited alcoholic beverage consumption areas.

3.7 The director should issue comments as soon as practicable to an applicant regarding the reasons for disapproval of a diagram.

3.8 If a diagram is disapproved under to Rule 3.6, then the applicant will have an opportunity to revise the diagram to conform to the director's comments within five days of receiving the director's comments.

3.9 An application is incomplete without an Alcoholic Beverage Consumption Area diagram.

4.0 DENIAL OF APPLICATION

4.1 Except as provided in Rules 4.2 and 4.3, a person is disqualified from holding a BYOB permit or managing a BYOB venue if the person has been convicted of:

- 4.1.1 criminal homicide as described in Texas Penal Code Chapter 19 (*Criminal Homicide*);
- 4.1.2 kidnapping as described in Texas Penal Code Chapter 20 (*Kidnapping and Unlawful Restraint*);
- 4.1.3 a sexual offense as described in Texas Penal Code Chapter 21 (*Sexual Offenses*);
- 4.1.4 an assaultive offense as described in Texas Penal Code Chapter 22 (*Assaultive Offenses*);
- 4.1.5 robbery as described in Texas Penal Code Chapter 29 (*Robbery*);
- 4.1.6 burglary as described in Texas Penal Code Chapter 30 (*Burglary and Criminal Trespass*);
- 4.1.7 theft as described in Texas Penal Code Chapter 31 (*Theft*);
- 4.1.8 fraud as described in of the Texas Penal Code Chapter 32 (*Fraud*);
- 4.1.9 tampering with governmental record as described in Texas Penal Code Chapter 37 (*Perjury and Other Falsification*);
- 4.1.10 public indecency (prostitution or obscenity) as described in Texas Penal Code Chapter 43 (*Public Indecency*);
- 4.1.11 the transfer, carrying, or possession of a weapon in violation of Texas Penal Code Chapter 46 (*Weapons*), or any comparable state or federal law;
- 4.1.12 a violation of the Dangerous Drug Act (Article 4476-14 Vernon's Texas Civil Statutes), or of any comparable state or federal law;
- 4.1.13 an alcohol related offense as described in Chapter 106 of the Texas Alcoholic Beverage Code (*Provisions Relating to Ages*);

- 4.1.14 an alcohol related offense as described in Texas Penal Code Chapter 49 (*Intoxication and Alcoholic Beverage Offenses*);
 - 4.1.15 another felony or misdemeanor involving moral turpitude; or
 - 4.1.16 criminal attempt to commit any of the offenses listed in this subsection.
- 4.2 A conviction described in Rule 4.1 does not disqualify a person from holding a BYOB venue permit or managing a BYOB venue if:
- 4.2.1 for a misdemeanor conviction, more than **two** years have elapsed since the termination, by pardon or otherwise, of a sentence imposed; or
 - 4.2.2 for a felony conviction, more than **five** years have elapsed since the termination, by pardon or otherwise, of a sentence imposed, unless the conviction is for: murder, capital murder, manslaughter, criminally negligent homicide, intoxication manslaughter, robbery, kidnapping, indecency with a child, sexual assault, aggravated assault, theft of a motor vehicle, any offense requiring the person to register as a sex offender, failure to register as a sex offender, or three felony convictions for any offense or combination of offenses.
- 4.3 A conviction described in Rule 4.1 does not disqualify a person from holding a BYOB venue permit or managing a BYOB venue if the director or the director's designee determines that the person is presently fit to engage in the business of a BYOB venue. In determining fitness under this rule the director shall consider the following:
- 4.3.1 the nature and seriousness of the crime;
 - 4.3.2 the relationship of the crime to the purpose for requiring a permit;
 - 4.3.3 the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person had previously been involved;
 - 4.3.4 the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the BYOB venue;
 - 4.3.5 the extent and nature of the applicant's past criminal activity;
 - 4.3.6 the age of the applicant at the time of the commission of the crime;

- 4.3.7 the amount of time that has elapsed since the applicant's last criminal activity;
- 4.3.8 the conduct and work activity of the applicant prior to and following the criminal activity; and
- 4.3.9 whether the applicant or a person who will manage the BYOB venue maintained a record of steady employment, supported his/her dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

4.4 It is the responsibility of the applicant or a person who will manage the BYOB venue, to the extent possible, to secure and to provide to the director the evidence required to determine the present fitness under Rule 4.3.

5.0 PERMIT SUSPENSION

- 5.1 The director may suspend a permit issued under this chapter without prior notice or hearing.
- 5.2 Grounds for a suspension are based on a violation of this chapter.
- 5.3 When considering whether to suspend a permit, the director may consider:
 - 5.3.1 the type of violation occurring at the BYOB venue;
 - 5.3.2 the frequency of violations;
 - 5.3.3 a violation by a permit holder, a manager, or an employee; and
 - 5.3.4 whether a permit holder has acted to correct a violation occurring on the premises.
- 5.4 A violation of this chapter may include:
 - 5.4.1 criminal conduct by either a permit holder, a manager, or an employee of a BYOB venue;
 - 5.4.2 criminal conduct of a patron where the permit holder, manager, or employee was aware of, should have been aware of, condoned, or encouraged a criminal violation;

- 5.4.3 a violation found resulting from a Code Enforcement investigation;
or
- 5.4.4 other documented violation of this chapter.
- 5.5 A suspension shall be effective for a length of time that is related to the seriousness of a violation. Typically, the period of a suspension will be at least 7 days but should not exceed 60 days.
- 5.6 A permit holder may be represented by counsel and may appear by counsel. The City may be represented by an Assistant City Attorney or an employee of a City Department.
- 5.7 After a hearing is closed, the director should render a decision within 7 days.
- 5.8 If the director determines that an agreement between the City and the permit holder is appropriate to accomplish compliance with this chapter, then the director may allow for an agreed resolution.
 - 5.8.1 Neither the City nor the director is required to make an agreement with a permit holder as a means to resolve violations.
 - 5.8.2 The agreement may require the permit holder to comply with additional conditions that relate to a violation in order to gain compliance with these rules and this chapter.
- 5.9 If a permit holder fails to appear at the hearing, then the director may grant a permit holder's request for an additional hearing upon a showing of good cause for failing to appear. Good cause includes but is not limited to:
 - 5.9.1 presumption of receipt of notice is overcome by evidence; or
 - 5.9.2 inability to appear due to illness, injury, or emergency.

6.0 PERMIT REVOCATION

- 6.1 The director may suspend the permit concurrently with the issuance of a notice of pending revocation.
- 6.2 Generally the effective date of a revocation will be 30 days from the date of receipt of notice.
- 6.3 A revocation may result after serious or repeated violations of this chapter.
 - 6.3.1 A serious violation includes but is not limited to:

- 6.3.1.1 occurrences that require immediate closure of the venue;
- 6.3.1.2 felony occurrences on the property by the permit holder, the manager, or an employee of the venue;
- 6.3.1.3 interference with an inspection by the permit holder, the manager, or an employee of the venue;
- 6.3.1.4 selling alcohol on the premises; and
- 6.3.1.5 operating during a suspension period.
- 6.3.2 Repeated violations of this chapter may be evidenced by:
 - 6.3.2.1 a previous suspension during the permit period;
 - 6.3.2.2 multiple citations;
 - 6.3.2.3 multiple violations resulting from Code Enforcement investigations; or
 - 6.3.2.4 multiple civil notices of violations.
- 6.4 A permit holder may be represented by counsel and may appear by counsel. The City may be represented by an Assistant City Attorney or an employee of a City Department.
- 6.5 After a hearing is closed, the director should render a decision within 7 days.
- 6.6 If the director determines that an agreement between the City and the permit holder is appropriate to accomplish compliance with this chapter, then the director may allow for an agreed resolution.
 - 6.6.1 Neither the City nor the director is required to make an agreement with a permit holder as a means to resolve violations.
 - 6.6.2 The agreement may require the permit holder to comply with additional conditions that relate to a violation in order to gain compliance with these rules and this chapter.
- 6.7 If a permit holder fails to appear at his or her hearing, then the director may grant a permit holder's request for an additional hearing upon a showing of good cause for failing to appear. Good cause includes but is not limited to:
 - 6.7.1 presumption of receipt of notice is overcome by evidence; or

6.7.2 inability to appear due to illness, injury, or emergency.

7.0 APPEAL TO CITY MANAGER

7.1 A permit holder may timely file an appeal of a decision issued in accordance with Sections 4-11-29(G) (*Permit Suspension*) and 4-11-30(E) (*Permit Revocation*) of this chapter.

7.2 A permit holder may be represented by counsel and may appear by counsel. The City may be represented by an Assistant City Attorney or an employee of a City Department.

7.3 After a hearing is closed, the City Manager or his or her designee should render a decision within 7 days.

8.0 PARKING AREA RESTRICTIONS

8.1 A permit holder, a manager, or an employee of a BYOB venue shall prevent patrons from congregating in the parking area.

8.2 A permit holder has to minimize adverse effects including but not limited to:

8.2.1 noise; and

8.2.2 crime.

8.3 A permit holder, a manager, and an employee shall prevent alcohol consumption in parking areas.

8.4 A permit holder must install signs in such a manner that the signs are likely to notify patrons that alcohol consumption is prohibited in all parking areas.

8.5 Signs in a parking area must conform to the following requirements:

8.5.1 minimum two inch block lettering;

8.5.2 minimum height of 18 inch and width 24 inch;

8.5.3 posted so that the bottom of the sign is not lower than four feet above the ground and no higher than six feet above the ground;

8.5.4 bearing the phrase “NO ALCOHOL CONSUMPTION IN PARKING AREA”; and

8.5.5 background is one color and the lettering is in a contrasting color (example: White background, Red lettering).

8.6 Failure to post signs as required is a violation of this chapter.

9.0 CRIME PREVENTION

9.1 A permit holder, a manager, or an employee of a BYOB venue shall take reasonable measures to prevent criminal activity on the premises. Reasonable measures include, but are not limited to:

- 9.1.1 following an approved BYOB venue security plan for the premises,
- 9.1.2 preventing crowds from forming in parking areas,
- 9.1.3 preventing intoxication;
- 9.1.4 preventing drug use;
- 9.1.5 reporting criminal activity as required by this chapter;
- 9.1.6 regular patrols of exterior premises; and
- 9.1.7 proper lighting.

9.2 A permit holder, a manager, or an employee of a BYOB venue shall 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. Reporting includes, but is not limited to:

- 9.2.1 calling the non-emergency city number of 3-1-1 when appropriate;
- 9.2.2 calling the emergency number of 9-1-1 when appropriate; and
- 9.2.3 reporting incidents directly to an on-duty police officer.

10.0 MINIMUM AGE

10.1 Section 4-11-55 (*Minimum Age for Admittance*) prohibits a permit holder, a manager, or an employee of a BYOB venue from allowing a person under the age of 18 years on the premises during business hours.

10.2 Minimum age of BYOB venue employees must conform to state law.

11.0 CIVIL PENALTIES

11.1 The director may issue a written notice of a violation.

- 11.2 The notice shall include:
 - 11.2.1 the violation and the monetary penalty for the violation;
 - 11.2.2 a statement that the permit holder may submit to the director a written response which describes a plan of action to correct or abate the violation not later than the 10th day after the date the notice is received; and
 - 11.2.3 a statement that if the permit holder denies the occurrence of the violation or contends that no corrective action is necessary, then the permit holder may file a written request for a hearing with the director not later than the 10th day after the date the notice is received.
- 11.3 If a permit holder timely requests a hearing, then the director shall hold the hearing not later than the 10th day after the written request is filed on a form provided by the director.
- 11.4 A permit holder may be represented by counsel and may appear by counsel. The City may be represented by an Assistant City Attorney or an employee of a City Department.
- 11.5 After the hearing is closed, the director shall render a decision within 7 days.
- 11.6 If the director determines that an agreement between the City and the permit holder is appropriate to accomplish compliance with this chapter, then the director may allow for an agreed resolution.
 - 11.6.1 Neither the City nor the director is required to make an agreement with a permit holder as a means to resolve violations.
 - 11.6.2 The agreement may require the permit holder to comply with additional conditions that relate to a violation in order to gain compliance with these rules and this chapter.
- 11.7 A failure to request a hearing or to appear at a hearing makes the imposition of the monetary penalty final.
- 11.8 If a permit holder fails to timely file his or her request for a hearing, then the director may grant a permit holder's untimely request for hearing upon a showing of good cause for failing to timely file. Good cause includes but is not limited to:

- 11.8.1 presumption of receipt of notice is overcome by evidence; or
- 11.8.2 inability to timely file due to illness, injury, or emergency.
- 11.9 If a permit holder fails to appear for his or her hearing, then the director may grant a permit holder's request for an additional hearing upon a showing of good cause for failing to appear. Good cause includes but is not limited to:
 - 11.9.1 presumption of receipt of notice is overcome by evidence; or
 - 11.9.2 inability to appear due to illness, injury, or emergency.
- 11.10 The plan shall include specific actions to be taken by the permit holder and a specific completion date in which the violation will be corrected or abated.
- 11.11 Submission of a plan of action in no way relieves the permit holder of liability for any violations occurring before or after the receipt of notice.
- 11.12 If the director agrees to a plan of action and the plan of action is completed by the permit holder as verified by the director, then the monetary penalty may not be imposed.
- 11.13 Issuance of a notice of violation shall not bar the City from taking any other action against the permit holder, nor shall the issuance of a notice of violation be a prerequisite for taking any other action against the permit holder.