

AN ORDINANCE OF THE CITY OF LEON VALLEY, TX, CITY COUNCIL AUTHORIZING THE AMENDING OF THE LEON VALLEY CODE OF ORDINANCE, CHAPTER 4 BUSINESS REGULATIONS, ARTICLE 4.03 ALCOHOLIC BEVERAGES, BY ADDING DIVISION 3. BRING YOUR OWN BOTTLE (BYOB) ESTABLISHMENTS, SECTIONS 4.03.041-4.03.045 TO REQUIRE A PERMIT; AMENDING APPENDIX A, ARTICLE A1700 MISCELLANEOUS FEES BY ADDING SECTION A17.011 BYOB PERMIT; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; SAVINGS; AN EFFECTIVE DATE; NOTICE OF OPEN MEETING CLAUSES AND PROVIDING FOR A PENALTY.

WHEREAS, Chapter 51 of the Local Government Code grants the City the authority to adopt an ordinance or rule that is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and is necessary or proper for carrying out a power granted by law to the municipality;

WHEREAS, The City of Leon Valley City Council wishes to update Chapter 4 Business Regulations, Article 4.03 Alcoholic Beverages by adding Division 3. Bring your own bottle (BYOB) Establishments, Sections 4.03.041-4.03.045 governing Bring Your Own Beer (BYOB) establishments within City Limits;

WHEREAS, The City of Leon Valley City Council believes that it is in the best interest of the citizens of Leon Valley and to the general public that an establishment, who does not possess a TABC license, be allowed to operate a BYOB establishment within City limits;

WHEREAS, The City of Leon Valley City Council hereby authorizes the use of BYOB permit to allow a BYOB establishment to operate for a limited time and under special circumstances;

WHEREAS, the City Council has established fees for a variety of City services, has from time to time amended the Fee Schedule as needed to cover the cost of services provided in accordance with the City's authority under state law, and has codified the Fee Schedule as Appendix A of the Code of Ordinances of the City ("Fee Schedule");

WHEREAS, having reviewed the fees for a BYOB Permit, the City Council has determined those fees to be reasonable, commensurate with the services provided, are not excessive, and are necessary fees for the services provided to Leon Valley citizens;

WHEREAS, the City Council further finds and determines that the amendments adopted hereby serve to benefit the health, safety, and welfare of the citizens of the City of Leon Valley; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, THAT:

SECTION 1. All the above premises are hereby found to be the true and correct legislative and factual findings of the City of Leon Valley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2. Chapter 4 Business Regulations, Article 4.03 Alcoholic Beverages, Division 3. Bring Your Own Bottle (BYOB) Establishments, Sections 4.03.041-4.03.04 shall read as follows:

Division 3. Bring Your Own Bottle (BYOB) Establishments

Sec.4.03.041 - Short Title and Purpose

- (a) This division may be known and cited as "BYOB Establishments."
- (b) The purpose of this division is to protect the welfare of the citizens of the City of Leon Valley by monitoring and regulating BYOB businesses. To this end, this division establishes a permit program for BYOB businesses, imposes regulations of business operations of BYOB businesses, and imposes civil and criminal penalties for violations of this division by BYOB businesses.

Sec.4.03.042 – Definitions

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this division.

- (a) It is a common practice for an establishment that is open to the public, not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages to allow its patrons to bring their own alcoholic beverages onto the premises for possession or consumption. This practice is often referred to as "BYOB," an acronym for "bring your own bottle."
- (b) In this division:

Alcoholic Beverage has the meaning assigned by the Texas Alcoholic Beverage Code.

BYOB Permit means a permit, issued pursuant to this division, to operate a BYOB venue.

BYOB venue or Event means an establishment to which this division applies, as prescribed by Sec.4.03.043.

Department means the Planning and Zoning Department of the City of Leon Valley.

Director means the Director of the Planning and Zoning Department or designated agent.

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.

Public Place means any place accessible by the public, a business or public facility, a way or place, of whatever nature, opened to use of the public as a matter of right, or for purposes of vehicular travel as a street, or in the case of a sidewalk thereof, for pedestrian travel.

Restaurant means an establishment engaged in the preparation and retail sale of food and beverages for on-premise consumption or in a ready-to- consume state. To qualify as a restaurant under this chapter, the establishment must produce at least 80% of its total revenue, exclusive of tips and gratuities, from the provision of food service.

Sec.4.03.043 Applicability

- (a) Except as provided in (b) below, this division applies to an establishment that:
 - (1) Is not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages; and
 - (2) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.
- (b) This chapter division 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;
 - (6) A religious assembly use;
 - (7) A restaurant;
 - (8) A licensed farmer's market;
 - (9) A banquet hall; or
 - (10) A theater use.

Sec.4.03.044 Notice

- (a) Official mailed notice shall be by certified tracking.
- (b) Notice to a permit holder may be delivered to the manager at the BYOB venue and is effective on delivery.

Sec.4.03.044 Administrative Rules

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

Sec.4.03.045 Permit Required

- (a) A person shall obtain a permit issued by the Department before the person may operate a BYOB venue. A BYOB establishment may operate for a period of no longer than 90 days, and under special circumstances.
- (b) The director must take all approved BYOB permit applications directly to the City Council for approval.
- (c) If approved by the City Council, the business must apply for an alcoholic permit from the City, and it must be fully displayed at the approved establishment.

Sec.4.03.045 Permit Approval

- (a) The Planning and Zoning Director shall approve a permit application if the director determines that the applicant and the proposed BYOB establishment meets the requirements of this section.
- (b) The director shall deny a permit application if the director determines that:
 - 1. The applicant is under the age of 21 years;
 - 2. Any owner, operator, employee, and/or staff member had a TABC permit that was involuntarily cancelled or suspended within the preceding 12-month period;
 - 3. The applicant provided incorrect or incomplete information on the application; or
 - 4. The owner or operator of the BYOB establishment has been convicted of a criminal offense.
- (c) The director shall give written notice of a denial of an application to the applicant.

1. An applicant may appeal a denial of a permit application to the director in writing within 10 days of notice of denial and request for City Council to overturn the denial. A City Council hearing will require two (2) City Council members to vote to place the item on the agenda.
 2. If denied, an applicant may not re-apply for a period of 12 months.
- (d) Permit is not Transferable. A permit issued under this section is not transferable to another person and/or business. Any change in ownership of a BYOB establishment, including, but not limited to, the sale of the BYOB establishment or any ownership interest therein, shall require the purchaser or transferee to submit a permit application.
- (e) Permit expiration, renewal.
1. The City Council may only approve a maximum period of 90 days for a permit.
 2. The owner shall file an application for permit renewal if they wish to continue operating as a BYOB after 90 days.
 3. An establishment may not be granted more than four (4) consecutive permits.

Sec.4.03.045 Permit Revocation

The Planning and Zoning Director may suspend or revoke the permit for good cause. The holder of the permit may appeal the suspension or revocation within ten days of receiving notice to the City Council. The City Council may uphold or overturn the suspension or revocation after notice and public hearing.

Appendix A, Article A1700 Miscellaneous Fees Section A17.011 BYOB establishments shall read as follows:

Sec. A17.011 - BYOB establishments

BYOB establishment permit fee (per application): \$ 50.00.

SECTION 3. REPEALER CLAUSE. The provisions of the Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent by any other ordinance.

SECTION 4. SEVERABILITY CLAUSE. If any provision, section, sentence, clause, or phrase of this ordinance or application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provisions or regulation contained herein shall become inoperative or fall by reason of any unconstitutionally or invalidity of any portion, provision, or regulation.

SECTION 5. SAVINGS CLAUSE. The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective on and after its passage, approval and the meeting of all publication requirements as provided by law.

SECTION 7. NOTICE OF MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION 8. PENALTY. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Chapter 1. General Provisions, Article 1.01 Code of Ordinances, Section 1.01.009 General penalty for violations of code: continuing violations of the City of Leon Valley Code, and/or applicable state law.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Leon Valley this the 1st day of August, 2023.

APPROVED

CHRIS RILEY
MAYOR

Attest:

SAUNDRA PASSAILAIGUE, TRMC
City Secretary

Approved as to Form:

NICOLE WARREN

City Attorney