

**AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, SETTING FORTH REGULATIONS FOR BUSINESSES NOT LICENSED OR PERMITTED TO SELL OR SERVE ALCOHOLIC BEVERAGES WHICH ALLOW PATRONS TO BRING ALCOHOLIC BEVERAGES ONTO THEIR PREMISES FOR CONSUMPTION (“BYOB BUSINESSES”), PROVIDING A PENALTY CLAUSE, AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

WHEREAS, the City Council (“*Council*”) of the City of Harker Heights (“*City*”) finds that it is necessary and desirable to amend the Code of Harker Heights (“*Code*”) as hereinafter provided in order to further clarify the standards for establishments not licensed by the Texas Alcoholic Beverage Commission; and

WHEREAS, the meeting at which this Ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS:**

**SECTION 1:** The City Council officially finds and declares that the facts and recitations set forth in the preamble to this ordinance are true and correct.

**SECTION 2:** Title XI of the Code of Harker Heights is hereby supplemented by the addition of Chapter 125, to read as follows:

**CHAPTER 125: ESTABLISHMENTS NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION.**

**GENERAL PROVISIONS**

**§ 125.01 SHORT TITLE AND PURPOSE.**

- (A) This chapter may be known and cited as “BYOB Businesses Regulation.”
- (B) The purpose of this chapter is to protect the welfare of the citizens of the City of Harker Heights by monitoring and regulating BYOB businesses. To this end, this chapter 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 Chapter by BYOB businesses.

**§ 125.02 DEFINITIONS.**

- (A) It is a common practice for an establishment 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 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 PERMIT** means a permit, issued pursuant to this Chapter, to operate a BYOB venue
- (3) **BYOB VENUE** means an establishment to which this chapter applies, as prescribed by § 125.03 (Applicability).
- (4) **DEPARTMENT** means the Planning and Development Department of the City of Harker Heights.
- (5) **DIRECTOR** means the Director of the Planning and Development Department.
- (6) **PREMISES** mean 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.

#### **§ 125.03 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 to sell or serve alcoholic beverages; 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;
- (6) A religious assembly use;
- (7) A restaurant; or
- (8) A theater use.

#### **§ 125.04 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.

#### **§ 125.05 ADMINISTRATIVE RULES.**

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

### **PERMITS**

#### **§ 125.06 PERMIT REQUIRED**

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

#### **§ 125.07 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 BYOB 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.

#### **§ 125.08 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 Police Chief;

- (7) Scale drawings of the site, including:
    - (a) All site improvements;
    - (b) The floor plan of each building; and
    - (c) A designation of the areas where the consumption of alcohol is to be allowed;
  - (8) Information required by administrative rule;
  - (9) Proof that the applicant has a commercial general liability insurance policy providing minimum premises/operations coverage of \$500,000 per occurrence and \$1,000,000 in the aggregate on an occurrence basis; and
  - (10) Other information reasonably required by the Director.
- (B) An applicant shall pay the nonrefundable permit fee established by ordinance.
- (C) A BYOB permit is void if the applicant obtains the BYOB permit by knowingly providing false information on the application.

**§ 125.09 PERMIT APPROVAL OR DENIAL.**

- (A) The Director shall approve a BYOB permit application if the Director determines that the applicant and the proposed BYOB venue meet the requirements of § 125.07 (Qualifications) and § 125.08 (Permit Application), and are not disqualified by Subsections (B) and (C) of this section.
- (B) The Director shall deny a BYOB 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 BYOB permit required by this chapter revoked within the preceding 12-month period.
- (C) The Director may deny a BYOB 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 Council a denial of a BYOB permit application in accordance with § 125.16 (Appeal).

**§ 125.10 PERMIT NOT TRANSFERABLE.**

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

**§ 125.11 PERMIT NOT A RIGHT.**

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

**§ 125.12 PERMIT EXPIRATION; RENEWAL.**

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

**§ 125.13 REQUIREMENT TO SUPPLEMENT INFORMATION.**

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

**§ 125.14 PERMIT SUSPENSION.**

- (A) The Director may suspend a BYOB permit issued under this chapter without prior notice or hearing if the Director determines that:

- (1) The BYOB 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 BYOB permit holder does not qualify for a permit under this chapter.

- (B) If the Director suspends a BYOB permit:

- (1) The Director shall give written notice to the BYOB permit holder that:
  - (a) The BYOB permit is immediately suspended on receipt of the notice; and
  - (b) The BYOB permit holder may file a written request for a hearing not later than the 10th day after the date of receipt of notice of suspension; and
- (2) The BYOB permit holder shall immediately close the BYOB venue.

- (3) Any BYOB permit which has been suspended under this chapter shall be surrendered upon demand to the Director. At the end of the period of suspension, in the absence of further violations, the surrendered BYOB permit shall be returned to the BYOB permit holder and shall be valid under the provisions of this code. If the period of suspension extends beyond the normal expiration date of the BYOB permit, the BYOB permit holder shall pay all BYOB permit fees without proration in order to receive a valid BYOB permit.
- (C) Suspension of a BYOB permit is effective on receipt of notice.
- (D) A BYOB permit holder may file with the Director a written request for a hearing on a BYOB permit suspension. The request must be filed not later than the 10th day after the date of receipt of notice of suspension.
- (E) If a BYOB permit holder timely files a hearing request:
- (1) The Director shall hold a hearing on the permit suspension not later than the 14th day after the date the hearing request is filed. At such hearing, the BYOB permit holder may present information to the Director addressing the Director's suspension of a BYOB permit and reasons, if any, that the BYOB permit holder believes the suspension is not warranted; 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) After hearing, the Director shall give written notice to the BYOB permit holder as to whether suspension is continued in effect after a hearing under Subsection (E).
- (H) The Director may reinstate a permit if the reason for suspension no longer exists.

#### **§ 125.15 PERMIT REVOCATION.**

- (A) The Director may revoke a BYOB 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 BYOB permit, the Director shall provide the BYOB permit holder with written notice of the pending permit revocation. The written notice shall include:
- (1) The reason the BYOB permit is subject to revocation;

- (2) The date on which the BYOB permit is scheduled to be revoked; and
  - (3) A statement that the BYOB permit will be revoked on the scheduled date unless the BYOB permit holder files a written request for a hearing with the Director not later than the 10th day after the date the notice is received.
- (C) A BYOB permit revocation becomes effective on expiration of the time period prescribed by the notice if the BYOB permit holder does not file a written request for hearing with the Director not later than the 10th day after the notice is received.
- (D) If a BYOB permit holder timely files a hearing request:
- (1) The Director shall hold a hearing on the BYOB permit revocation not later than the 14th day after the date the hearing request is filed. At such hearing, the BYOB permit holder may present information to the Director addressing the Director's intent to revoke the BYOB permit and reasons, if any, that the BYOB permit holder believes the revocation is not warranted; and
  - (2) A revocation is stayed pending the outcome of the hearing.
- (E) The Director shall give written notice to the BYOB permit holder of a decision regarding the revocation of the BYOB permit or a revocation that becomes effective under Subsection (C).

**§ 125.16 APPEAL.**

- (A) An applicant or a permit holder may appeal to the Board of Adjustment a permit application denial, a permit suspension, or a permit revocation. To stay a suspension or revocation under this Chapter, appeal to the Board of Adjustment must be made within 10 days after the applicant/ BYOB permit holder receives written notice of the decision that it is appealing.
- (B) If the permit holder timely files a notice of appeal pursuant to §125.16 (A), a suspension or revocation is stayed.

**REGULATIONS FOR OPERATION OF A BYOB ESTABLISHMENT****§ 125.17 PUBLIC PLACE.**

A BYOB venue is a public place.

**§ 125.18 PERMIT POSTING REQUIRED.**

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

**§ 125.19 MANAGER REQUIRED ON PREMISES.**

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

**§ 125.20 SECURITY PLAN IMPLEMENTATION.**

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

**§ 125.21 MINIMUM AGE FOR ADMITTANCE AND ALCOHOL CONSUMPTION.**

- (A) A BYOB 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.
- (B) A BYOB permit holder, a manager, or an employee of a BYOB venue may not allow a person under the age of 21 years to consume alcohol on the premises.

**§ 125.22 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.

**§ 125.23 CONSENT TO INSPECTION; IMMEDIATE ACCESS REQUIRED.**

- (A) By accepting a BYOB 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 BYOB 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.

#### **§ 125.24 HOURS OF OPERATION.**

- (A) A BYOB 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 BYOB 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.

#### **§ 125.25 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.
- (C) The BYOB permit holder shall indicate the portions of the premises on which the consumption of alcoholic beverages is permitted on the floor plan provided with the BYOB permit application. If the BYOB permit holder desires to change or modify the area where alcoholic beverages may be consumed, it must first provide a revised floor plan to the Director.

#### **§ 125.26 PARKING AREA RESTRICTIONS.**

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

**§ 125.27 SALE OF ALCOHOLIC BEVERAGES PROHIBITED.**

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

**§ 125.28 RESTRICTION ON CONSUMPTION AND PURCHASE OF ALCOHOL BY PERMIT HOLDER AND EMPLOYEES.**

A BYOB 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.

**§ 125.29 INSURANCE REQUIREMENT.**

A BYOB permit holder, a manager, or owner shall maintain a commercial general liability insurance policy providing minimum premises/operations coverage of \$500,000 per occurrence and \$1,000,000 in the aggregate on an occurrence basis. The policy must be provided by an insurer licensed by the Texas Department of Insurance, and must be endorsed to name as additional insured the city, its elected and appointed officials, and employees acting within the scope of their duties. Prior to opening for business the BYOB permit holder, manager, or owner shall deliver a certificate of insurance and copies of all endorsements for additional insured to the Director, and thereafter at least ten days prior to the expiration of such policies. The permit holder, manager, or owner shall prominently display a sign at the facility stating that the owner or operator has purchased liability insurance to cover activities at the facility.

**§ 125.30 COMPLIANCE WITH OTHER LAWS.**

A BYOB 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.

**§ 125.31 CRIME PREVENTION AND REPORTING.**

The BYOB 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.

## ENFORCEMENT

### § 125.32 CRIMINAL PENALTY.

- (A) A person commits a Class C misdemeanor if the person:
- (1) Operates a BYOB venue without a permit required by this chapter; or
  - (2) Violates a provision of this chapter, other than § 125.27 (Sale of Alcoholic Beverages Prohibited) or § 125.30 (Compliance with Other Laws).
- (B) Proof of a culpable mental state is not required to prove an offense under this chapter, except for Section § 125.24(B) (Hours of Operation).
- (C) Each day that a violation occurs or continues is a separate offense.

### § 125.33 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 not to exceed \$1,000 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.

### § 125.34 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.

### § 125.35 AUTHORITY OF CITY ATTORNEY.

The City Attorney may, without further authorization of the City Council, undertake the enforcement of this chapter by all legal means appropriate or necessary, including but not limited to: enforcement in municipal court; filing of appropriate criminal or civil actions in courts of appropriate jurisdiction; and to defend the city from suit if suit is taken to appeal any action of the city.

**SECTION 3:** The City Fee Schedule is hereby supplemented by the addition of the following entry in the section entitled, "Examinations, Licenses, Permits, Special Inspections, and Administrative Fees:"

Application for BYOB Permit	\$50.00
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**SECTION 4:** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

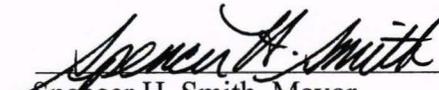
**SECTION 5:** All regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this Ordinance, acting for the City in the discharge of official duties, shall not thereby become personally liable, and is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

**SECTION 6:** The change in the law made by this Ordinance applies only to an offense committed on or after the effective date of this Ordinance. For purposes of this section, an offense is committed on or after the effective date of this Ordinance if every element of the offense occurs on or after that date.

**SECTION 7:** An offense committed before the effective date of this Ordinance is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

**SECTION 8:** This Ordinance shall be effective from and after the tenth day after its passage, and the City Clerk shall publish the caption or title of hereof within ten days as required by law.

PASSED AND APPROVED by the City Council of the City of Harker Heights on April 14, 2020.

  
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Spencer H. Smith, Mayor

ATTEST:

  
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Juliette Helsham, City Secretary