

Chapter 28 MISCELLANEOUS OFFENSES AND PROVISIONS

ARTICLE XXII. ESTABLISHMENTS NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION

DIVISION 1. GENERALLY

Sec. 28-681. Purpose.

The purpose of this chapter is to regulate commercial establishments not licensed or permitted by the Texas Alcoholic Beverage Commission (TABC) that allow patrons to bring their own alcoholic beverages onto the premises for consumption. This practice is commonly referred to as “BYOB”, an initialism standing for “bring your own bottle.”

Sec. 28-682. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Applicant means owner or operator of the BYOB establishment.

BYOB establishment means an establishment to which this article applies, as described in section 28-683.

Department means the Department of Administration and Regulatory Affairs.

Director means the Director of the Department of Administration and Regulatory Affairs or the director’s designees.

Hearing officer means an individual designated by the director to conduct administrative appeal hearings.

Inspection means the annual or any subsequent on-site assessment by officers of the Houston Police Department of the physical, operational, and on-site measures in effect on the property to comply with the minimum requirements in section 28-700.

Operator means the manager or other natural person principally in charge who will be physically present at the establishment during operating hours.

Owner means the person or persons who are the principal owners of the BYOB establishment.

Police official means the chief of police or the chief’s designees.

Premises means the grounds and all buildings and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the owner.

Sec. 28-683. Applicability.

- (a) Except as provided in subsection (b), this article applies to an establishment that:
 - (1) Is not licensed or permitted by the TABC;
 - (2) Is open to the public between 12:01 a.m. and 7:00 a.m.; and
 - (3) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.

- (b) This chapter does not apply to:
 - (1) A residence;
 - (2) A fraternal or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
 - (3) A university or college providing a degree program;
 - (4) A church, as defined in section 28-121;
 - (5) A certified farmer's market licensed pursuant to section 20-192;
 - (6) A bingo facility licensed under chapter 2001 of the Texas Occupations Code;
 - (7) A banquet hall; or
 - (8) A theater that accommodates more than 100 persons.

DIVISION 2. PERMITS

Sec. 28-684. Permit required.

- (a) It shall be unlawful for any person to operate a BYOB establishment in the city who has not obtained a permit issued by the department as required by this section.

- (b) An owner must obtain a separate permit for each BYOB establishment location.

Sec. 28-685. Permit application.

- (a) An applicant shall apply for a BYOB permit annually. Application forms shall be supplied by the director. The applicant shall be required to give the following information on the application form:
- (1) The name, street address (and mailing address if different), email address, personal telephone number, and state driver's license number of each owner and operator, and the name, street address (and mailing address if different), personal telephone number, and email address of each owner;
 - (2) The name under which the BYOB establishment is to be operated;
 - (3) The nature and extent of each owner's interest in the BYOB establishment;
 - (4) The address and telephone number of the BYOB establishment. The use of a public or private post office box or other similar address shall not be sufficient for the purposes of complying with this subsection;
 - (5) If the BYOB establishment is in operation, the date on which the current owner acquired the BYOB establishment for which the permit is sought;
 - (6) If the BYOB establishment is not in operation, the expected start-up date;
 - (7) For each owner and operator, fingerprints and the signed authorization form described in section 28-686 of this Code in order to facilitate the criminal history check required by that section;
 - (8) The registration certificate or assumed name certificate of the BYOB establishment from the Secretary of State, or the registration of assumed name filed in the office of the Harris, Fort Bend, or Montgomery County Clerk;
 - (9) A copy of the BYOB establishment's certificate of occupancy;
 - (10) Scaled drawings of the premises, including:
 - a. A site plan;
 - b. The floor plan of each building; and
 - c. A designation of the areas where consumption of alcohol is to be allowed;
 - (11) A security plan that meets or exceeds the minimum standards established by this chapter, as determined by the police official;
 - (12) A copy of the lease agreement where the BYOB establishment will be operating, or proof of ownership of the property, if applicable; and

- (13) Other information reasonably required by the director.
- (b) The annual permit and inspection fee stated in the city fee schedule shall be payable upon the submission of the application and shall be nonrefundable.

Sec. 28-686. Criminal history check.

Upon receipt of an application for a permit under this article, the director shall cause the criminal history of each owner and operator designated in the application to be researched. In accordance with the provisions of section 28-685 of this Code, each owner and operator shall complete any forms, including any state or federal request and release forms, required for the director to obtain a criminal history report for the owner and operator in accordance with Section 1-15 of this Code, and the applicant shall present the required completed forms to the director and shall reimburse the city for any fees imposed by state or federal agencies for the report. This provision shall not be construed to preclude the director from obtaining interim reports at the expense of the city.

As provided in section 28-687 of this Code, the permit application for a BYOB establishment may be denied or revoked at the time of initial application or for any renewal in accordance with section 1-9 of this Code if the owner or operator has been convicted of a criminal offense listed in section 1-10(b)(10) of this Code.

Sec. 28-687. Permit approval.

- (a) The director shall approve a permit application if the director determines that the applicant and the proposed BYOB establishment 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 21 years;
 - (2) The BYOB establishment as proposed would not comply with this chapter;
 - (3) Any operator or owner had a permit required by this chapter that was revoked within the preceding 12-month period; or
 - (4) The applicant had a TABC permit that was involuntarily cancelled or suspended 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 owner or operator of the BYOB establishment has been convicted of a criminal offense listed in section 1-10(b)(10) of this Code.

- (d) The director shall give written notice of a denial of an application to the applicant.
- (e) An applicant may appeal a denial of a permit application to the director in accordance with section 28-693.

Sec. 28-688. Permit not transferable.

A permit issued under this chapter is not transferable to another person. 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 in accordance with section 28-685.

Sec. 28-689. Permit not a right.

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

Sec. 28-690. Permit expiration, renewal.

- (a) A permit issued under this chapter expires one year after the date it is first issued.
- (b) The owner shall file an application for permit renewal not sooner than the 90th day and not later than the 20th day before the permit expires. An application that is not filed within the described time period is a new application.

Sec. 28-691. Requirement to supplement information.

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

Sec. 28-692. Permit revocation.

- (a) The director may revoke a permit issued under this chapter if the director determines that:
 - (1) The owner or operator of the BYOB establishment has been convicted of violating any of the provisions of this article on two or more occasions within the term of the permit or has been convicted of violating any provisions of this article within the 24-month period immediately preceding the date of application for a BYOB establishment permit;
 - (2) The BYOB establishment does not comply with any applicable provisions of this article;
 - (3) The owner does not qualify for a permit under this article; or
 - (4) The permit was obtained or issued as a result of error.

- (b) The director shall revoke a permit issued under this article if the director determines that the BYOB establishment violated section 28-706 of this article.
- (c) Before revoking a permit, the director shall provide the owner with written notice in conformity with section 28-694 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 owner files a written request for a hearing with the director not later than the 10th business day after the date listed on the written notice of revocation.
- (d) A permit revocation becomes effective on expiration of the time period prescribed by the notice if the owner does not file a written request for a hearing with the director not later than the 10th business day after the date listed on the written notice of revocation.
- (e) If the owner timely files a hearing request:
 - (1) The director shall comply with the appeal process set forth in section 28-693; and
 - (2) The revocation is stayed pending the outcome of the hearing.
- (f) The director shall give written notice in conformity with section 28-694 to the owner of a decision to revoke the permit or a revocation that becomes effective under subsection (c).
- (g) A BYOB establishment whose permit has been revoked pursuant to items (1) and (2) of subsection (a) and subsection (b) of section 28-692 of this Code shall be required to wait a period of one year from the date the revocation became final before becoming eligible to reapply for a BYOB permit.

Sec. 28-693. Appeal.

- (a) *Request for appeal.* An applicant may appeal a denial of the application for or renewal of a permit or the revocation of a permit within 10 business days after the date listed on the written notice by submitting a written request for an appeal to the director. If the applicant does not request a hearing within ten business days, the denial is effective and final on the eleventh business day after the date of the director's notice of denial.
- (b) *Conduct of hearing; rules and procedures.* An appeal hearing shall be conducted on a single weekday within 20 business days after the director receives a request

for appeal and shall last no longer than eight hours. Further, an appeal hearing shall be informal and conducted under rules established by the director consistent with the informal nature of the proceedings; provided, however, the following rules shall apply to all appeal hearings conducted under this section:

- (1) All parties shall have the right to representation by an attorney licensed to practice in Texas, though an attorney is not required;
 - (2) Each party may present witnesses in his own behalf;
 - (3) Each party shall have the right to cross-examine all witnesses; and
 - (4) The hearing officer shall consider only the evidence presented at the appeal hearing in rendering a final decision.
- (c) *Authority of hearing officer.* The hearing officer may affirm or reverse a denial or revocation under this article. The hearing officer shall affirm a denial or revocation if he determines by a preponderance of the evidence that grounds exist for the denial or revocation, respectively. The decision of the hearing official is final.
- (d) *Notice of decision.* The hearing official shall give written notice of the decision to the applicant and the reasons therefor. The notice shall be provided by certified mail, return receipt requested, as soon after the conclusion of the hearing as practicable, but not more than 30 business days thereafter.

Sec. 28-694. Notices.

- (a) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this article to any applicant may be given either by electronic mail, or first-class United States mail, addressed to the most recent address as specified in the application for the permit most recently received by the director, or any notice of address change most recently received by the director.
- (b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director.
- (c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director in writing of any change of mailing address.

Sec. 28-695. Permit posting and sign required.

- (a) After a BYOB establishment complies with the provisions of this section, the director will provide to the BYOB establishment a permit which shall be displayed in such a manner that it is conspicuous to patrons of the BYOB establishment.

- (b) Each entrance to a BYOB establishment shall be marked with a sign that:
 - (1) States “BYOB ESTABLISHMENT” in four inch or larger block letters; and
 - (2) Is legible and visible at all times from a distance of 25 feet.
- (c) Any signage required by this section shall be in conformance with the Sign Code.

Sec. 28-696. Public place.

A BYOB establishment is a public place.

DIVISION 3. MINIMUM REQUIREMENTS FOR BYOB ESTABLISHMENTS

Sec. 28-697. Operator required on premises.

The owner shall ensure that the operator is continuously on the premises during the hours of operation. The owner may serve as the operator.

Sec. 28-698. Minimum age for admittance and employment.

- (a) The owner, the operator, or an employee of a BYOB establishment may not allow a person under the age of 18 years on the premises.
- (b) The owner, the operator, or an employee of a BYOB establishment may not allow a person under the age of 21 years to consume alcohol on the premises.
- (c) The owner or operator of a BYOB establishment that the city determines to also be a sexually oriented business under this Code may not employ or allow persons under the age of 21 years at a BYOB establishment.

Sec. 28-699. Security plan implementation.

- (a) A person may not operate a BYOB establishment without an approved security plan.
- (b) The applicant shall provide security for the BYOB establishment in accordance with the security plan.

Sec. 28-700. Minimum security requirements.

All BYOB establishments shall comply with the following minimum security requirements:

- (1) Hand wand or walkthrough metal detectors shall be utilized on all persons entering the BYOB establishment;
- (2) The exterior portion of the premises, including parking areas, shall be well lit during business hours and must have lighting to illuminate parking areas

to at least 0.7 foot-candles. Said lighting shall be designed so as to not unduly interfere with any neighbor's reasonable use and/or enjoyment of the neighbor's premises;

- (3) The BYOB establishment shall provide for at least one security officer per 100 patrons. Security officers must have at least a Level II non-commissioned security guard license;
- (4) The BYOB establishment must have a working security video system with low light recording capabilities. The system must record open areas and all entrances and exits inside and outside of the premises, excluding restroom facilities. The BYOB establishment must also have digital high-resolution surveillance cameras sufficient to provide an overall view from the exterior of the building to the property line. The owner shall maintain a library of the recorded digital images for not less than 90 days. At least one on-site personnel must be able to access the system if requested by law enforcement. All security cameras and security footage is subject to inspection at any time by city personnel; and
- (5) Any requirement that the police official deems reasonably necessary for the BYOB establishment.

Sec. 28-701. 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.

Sec. 28-702. Trespass affidavit.

The owner of a BYOB establishment shall execute a trespass affidavit as promulgated by the police department in order to enforce all applicable trespass laws on the owner's behalf at such property. A true and correct copy of the trespass affidavit shall be posted at the BYOB establishment at all times in a conspicuous place accessible at all times to the public.

Sec. 28-703. Annual compliance inspection.

- (a) Before a BYOB establishment has been permitted pursuant to section 28-687, the owner shall schedule an inspection with the police official to determine the establishment's compliance with the minimum requirements established in this article. Each owner shall pay a nonrefundable inspection fee stated for this provision in the City Fee Schedule for the inspection services described in this section as provided in section 28-685(b). In consideration of such fee the applicant

shall be entitled to the original inspection and one reinspection for deficiencies, if required. An additional fee is hereby imposed and shall be collected for the second and each subsequent reinspection required due to deficiencies as provided in the city fee schedule. The fee shall be paid to the department prior to the commencement of the inspection.

- (b) During the inspection the police official shall identify any violations of section 28-700 and provide an action plan specifying the measures to be implemented at the property to bring it into compliance with section 28-700.
- (c) The owner of the BYOB establishment must within 60 days after the inspection either cure the violations or demonstrate to the police official that the finding of non-compliance was incorrect. If, after the 60-day period has elapsed, the police official determines that the establishment has failed to cure the violation, the commercial establishment will be subject to a penalty as set forth in section 28-710.

Sec. 28-704. Consent to inspection.

- (a) By accepting a permit under this chapter, the owner consents that the director, the director's representative, law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel may enter the premises at reasonable times to investigate or inspect the premises to determine compliance with this chapter.
- (b) The owner, the operator, and an employee 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. If the BYOB establishment is occupied, the police official must present credentials to the owner or other person having charge or control of the commercial establishment and request entry.
- (c) If the owner or other person having charge or control of the BYOB establishment refuses the police official's request to enter the premises to inspect or perform the duties imposed by this article or to inspect or review records relating to compliance with this article, the police official shall have recourse to the remedies provided by law to secure entry.

Sec. 28-705. Parking area restrictions.

- (a) The owner, the operator, or an employee may not allow persons to loiter in a parking area.
- (b) The owner, the operator, or an employee may not allow persons to consume an alcoholic beverage in a parking area.
- (c) The owner shall post signs in each parking area stating that the consumption of an alcoholic beverage is prohibited.

Sec. 28-706. Sale of alcoholic beverages prohibited.

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

Sec. 28-707. Consumption and purchase of alcohol by owner prohibited.

The owner, operator, employee, or agent of a BYOB establishment 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.

Sec. 28-708. Hours of operation.

- (a) The owner, operator, employee, or agent of a BYOB establishment may not allow persons to bring alcoholic beverages onto the premises for possession and consumption between 2:15 a.m. and 7:00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday.
- (b) A person may not consume an alcoholic beverage on the premises of a BYOB establishment between 2:15 a.m. and 7:00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday.

Sec. 28-709. Compliance with other laws.

The owner, the operator, or an employee of a BYOB establishment shall comply with all applicable local and state laws relating to the operation of the BYOB establishment. The application and issuance of a BYOB permit does not exempt the owner and operator from applying for and obtaining other permits required for the business.

Sec. 28-710. Violation.

- (a) Any failure to comply with any applicable provision of this article shall be an offense punishable as provided in section 1-6 of this Code. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.
- (b) The procedures set forth in this article are cumulative of all other remedies available to the city relating to the subject matter hereof. Specifically, the city attorney may institute any legal action to enforce this ordinance or enjoin or otherwise cause the abatement of any condition described in this article, as well as for the recovery of all expenses incurred in connection therewith, including without limitation administrative and legal expenses, attorney's fees, and costs, and for civil penalties as provided by law.

* * *

Sec. 1-10. Same—Specific permits, licenses, and registrations.

(c) The authorizations enumerated in this subsection shall be denied if the applicant has been convicted of any of the designated offenses within the five-year period immediately preceding the date of the filing of the application or has spent time in jail or prison during the five-year period immediately preceding the date of the filing of the application for such a conviction. Additionally the following authorizations shall be subject to denial, revocation, or refusal for renewal, as applicable, if the holder has been convicted of any of the designated offenses since the application was filed. Provided however, no such authorization shall be denied, revoked or refused for renewal if the conviction was set aside as invalid or if it is found that the authorization should not be denied, revoked or refused for renewal under chapter 53 of the Texas Occupations Code:

* * *

(10) Permits issued for BYOB establishments pursuant to chapter 28, article XXII, of this Code:

- a. Any offense involving fraud or misrepresentation;
- b. Any offense involving bribery or perjury;
- c. Any offense involving violence to any person except for conduct that is classified as no greater than a class C misdemeanor under the laws of Texas;
- d. Any felony conviction for any violation of any state or federal laws regulating firearms;
- e. Any violation of the Texas liquor laws;
- f. Any offense involving prostitution or aiding, abetting, or promotion of prostitution; or
- g. Any violation of the Texas Controlled Substances Act or other state or federal law regulating drugs that permits punishment of confinement for one year or more upon conviction for such violation.

The above listed offenses shall be grounds for denial, revocation, or refusal for renewal of BYOB establishment permits issued pursuant to article XXII, chapter 28 of this Code, as permits authorized thereunder allow persons to engage in businesses and occupations in which there is a high degree of personal contact with and danger to the

public and a serious need to protect the members of the public patronizing BYOB establishments from the type of criminal conduct represented by such offenses.

Sec. 1-15. Conducting national criminal background checks.

- (a) This section applies to the following licenses, permits or authorizations or renewals thereof:

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(13) Permits for BYOB establishments issued pursuant to chapter 28, article XXII of this Code.