

ORDINANCE NO: O-2013- 06

AN ORDINANCE IMPOSING REQUIREMENTS ON PERSONS AND ESTABLISHMENTS NOT LICENSED BY THE TEXAS ALCOHOL BEVERAGE COMMISSION (TABC) INCLUDING B.Y.O.B. ESTABLISHMENTS; GENERAL PROVISIONS; AUTHORITY; AREA; DEFINITIONS; PERMIT REQUIRED; PERMIT APPLICATION; QUALIFICATIONS; PERMIT REVIEW; PERMIT NOT TRANSFERABLE; EXPIRATION; RENEWAL; DUTY TO SUPPLEMENT; POSTING; MANAGEMENT; AGE FOR ADMITTANCE; PREMISES UNOBSTRUCTED; CONSENT TO INSPECTION; HOURS OF OPERATION; MANAGEMENT OF CONSUMPTION AND PARKING AREAS; CRIME PREVENTION AND REPORTING REQUIREMENTS; ENFORCEMENT; PUNISHMENT; PENALTIES; CUMULATIVE CLAUSE; REPEALER; SEVERABILITY; DECLARING AN EMERGENCY CLAUSE; PROPER NOTICE AND MEETING

WHEREAS, in accordance with Article I, Section 3 of the Pharr City Charter, the enumeration of powers granted and authorized by the charter shall not be held or deemed exclusive, but shall be in addition to the powers appropriate for the exercise necessary of local self government, and shall all powers granted by law, constitution, and ordinance;

WHEREAS, pursuant to Texas Local Government Code section 51.001, the City has authority to adopt ordinances that are for the good government, peace, or order of the municipality or for the trade and commerce of the municipality and that are necessary to carry out powers granted to the City; and

WHEREAS, pursuant to the Texas Constitution, article XI, section 5, and Texas Local Government Code section 51.072, the City, as a home-rule municipality, has full power of local self government; and

WHEREAS, 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." The City invokes its powers to regulate the management of these and related activities.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, THAT:

SECTION 1: GENERAL PROVISIONS; AUTHORITY; AREA.

- A. The City of Pharr hereby adopts and enacts this Ordinance that shall be enforceable within the municipality's municipal boundaries and extra territorial jurisdiction. This Ordinance and provisions herewith shall be included in the Pharr Code of Ordinances.
- B. As matters related to the public's health, safety, and welfare is of the utmost concern, the City of Pharr shall be authorized to enforce, through its City Attorney, City Manager, and other personnel, this Ordinance as may be allowed by law herein.
- C. Except as provided in Subsection D, this chapter applies to any person, business, entity, corporation, partnership, establishment, or event 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.
- D. This chapter does not apply to:
 - (1) a residence, or a private residential community that is governed by a home owner's association or other managing association;
 - (2) an establishment or event 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;

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- (5) a college and university use;
- (6) a religious assembly use;
- (7) a restaurant, general or limited;
- (8) a theater use;

SECTION 2: DEFINITION(S).

BYOB shall be defined for purposes of this Ordinance as an establishment, venue, or event that is not licensed or permitted by the Texas Alcoholic Beverage Commission, and allows persons or patrons to bring alcoholic beverages onto the establishment, venue, or premises for possession and consumption. A BYOB establishment, venue, or event is a public place.

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 from the establishment, venue, or event. A deck, patio, and garden are considered part of the premises. A parking area is not considered the premises.

SECTION 3: PERMIT REQUIRED; PERMIT APPLICATION.

- A. A person, business, entity, corporation, or partnership, shall obtain a permit issued by the Director of the Office of Community Development before operating a BYOB venue or event. A permit issued under this ordinance is a grant of privilege and is not a property right.
- B. A person must obtain a separate permit for each BYOB venue location or event.
- C. A person, business, entity, corporation, or partnership who seeks a permit to operate a BYOB venue or event must submit an application to the Office of Community Development on a form provided by the Department. The application must include:
 - (1) the names, addresses, and birth dates of all persons who have an ownership or other interest in, and who will manage, the proposed BYOB venue or event;
 - (2) the authorization for the City to conduct a criminal background check on each person described in Paragraph (1) and also the authorization allowing city personnel and law enforcement personnel the right to enter the establishment, venue, and premises at all times to ensure compliance with this ordinance and other applicable laws.

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- (3) the name of the BYOB venue and its physical address, and a copy of any lease or rental agreements for that location;
 - (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, occupancy, and conditional uses;
 - (6) a security plan that for review including the name and license of any security business and security personnel;
 - (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 other ordinances; and
 - (9) other information reasonably required by the Director.
- D. The maximum amount of persons the event will allow to attend on each day of the activity;
- E. An applicant shall pay the nonrefundable permit and renewal fees established by ordinance along with the application.

SECTION 4: QUALIFICATIONS.

- A. A person may not apply for or hold a permit under this chapter unless the person is at least 21 years of age.
- B. A person may not hold a permit under this chapter or manage a BYOB establishment or venue if the person has been convicted of a felony or misdemeanor that directly relates to an alcohol related offense, organized criminal activity, providing alcohol to a minor, sale or transporting of narcotics, the duties and responsibilities for operating a BYOB venue, and any other conviction that makes the person unfit to hold a permit or manage a BYOB establishment or venue.

SECTION 5: PERMIT REVIEW.

- A. The Director of Community Development shall adopt rules to implement, administer, and enforce this ordinance. Following timely submission of the initial or renewal application, fees, and all necessary information and materials, the application shall be subject to review for not less than three (3) business days by the following:

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- (1) Director or designee of the Community Development Department;
 - (2) Director or designee of the Public Works Department;
 - (3) Fire Chief or designee;
 - (4) Police Chief or designee; and
 - (5) Representative of the Health Department.
- B. The personnel considering the initial application or renewal shall determine compliance and suitability of the application.
- C. An initial and renewal application shall also be subject to the requirements contained in this ordinance as well as the following factors:
- (1) Adequacy of the location of the property where the event will be held;
 - (2) The dates and times of the activity;
 - (3) The maximum amount of persons the activity will allow to attend on each day of the activity;
 - (4) Reasonableness of the plan that will govern any and all cleanup procedures for the entire activity that comply with legal and established standards of sanitation and health and prevention;
 - (5) Reasonableness of the plan that will govern any and all fire, smoke, traffic, food preparation and sales, parking, and security hazards and prevention;
 - (6) Reasonableness of the plan that will govern any and all parking;
 - (7) Reasonableness of the preparations made to provide adequate medical care if necessary; and
 - (8) Adequacy and sufficiency of the general and/or special liability insurance policy and declarations and/or bonds covering the event or activity, personnel, visitors, invitees, and participants.
- D. After review, a permit application shall be denied if it is determined that:
- (1) the applicant is under the age of 21 years;
 - (2) the BYOB establishment or venue as proposed would not comply with this chapter;
 - (3) the applicant had a permit required by this chapter revoked within the preceding 12-month period; or
 - (4) the applicant provided incorrect or incomplete information on the application.

- E. An issued permit may be rescinded, revoked, voided, suspended, or terminated if it is determined that:
- (1) the applicant no longer complies with the qualifications of this ordinance;
 - (2) the applicant provided incorrect or incomplete information on the application;
 - (3) the applicant obtained the permit by knowingly providing false information on the application;
 - (4) it is in the best interests of the public's health, safety, and welfare;
 - (5) the permit holder, the manager, or an employee of the BYOB venue has engaged in serious or repeated violations of this ordinance.
- F. An applicant or permit holder may appeal the determination of the application or action taken toward the permit by submitting a written appeal to the City Manager not later than three (3) days after receipt of notice. The City Manager may reconsider the action. If the City Manager has not acted on the written request within three (3) days from receipt of the request, the appeal is considered denied. The City Manager shall be charged with the final decision in consideration the application.

SECTION 6: PERMIT NOT TRANSFERABLE; EXPIRATION; RENEWAL; DUTY TO SUPPLEMENT; POSTING; MANAGEMENT; AGE FOR ADMITTANCE; PREMISES UNOBSTRUCTED; CONSENT TO INSPECTION

- A. A permit issued under this ordinance is not transferable or assignable.
- B. A permit issued for a venue expires one (1) year after the date it is issued. A permit issued for an event expires seventy-two (72) hours after it is issued.
- C. A permit holder shall file an application for permit renewal not sooner than the 90th day and not later than the 45th day before the permit expires. An application that is not filed within the described time period is a new application.
- D. A permit application or renewal is not considered timely unless accompanied by the required fees.

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- E. While a permit application or renewal is pending or a permit is in effect, an applicant or permit holder shall immediately supplement the required information provided in the permit application if the information is or becomes inaccurate, incomplete, or misleading.
- F. A permit holder shall post the permit at or reasonably near the entry of the premises of each event or venue.
- G. A permit holder shall ensure that a qualified manager is continuously present on the premises of the BYOB establishment or venue during the hours of operation. A permit holder may serve as the manager.
- H. A permit holder, manager, employee, and security personnel at a BYOB establishment or venue shall not allow a person under the age of 21 years of age onto the premises unless accompanied by a parent or legal guardian.
- I. 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.
- J. A permit holder, manager, or an employee of a BYOB establishment or venue shall provide immediate access to all portions of the premises to City representatives and personnel including but not limited: administration, law enforcement, code enforcement, health inspectors, and firefighters.

SECTION 7: HOURS OF OPERATION.

- A. A permit holder, manager, or an employee of a BYOB establishment or venue shall close a BYOB between the hours of 2:00 a.m. and 7:00 a.m. each day. A person who is on the premises at 2:00 a.m. may remain until not later than 2:15 a.m.
- B. A permit holder, manager, or an employee of a BYOB establishment, event, or venue may not allow a person to consume an alcoholic beverage between the hours of 2:15 a.m. and 7:00 a.m.
- C. A permit holder, manager, or an employee of a BYOB establishment, venue or event shall not allow a member of the public on the premises, including the parking area between 2:30 a.m. and 7:00 a.m.

SECTION 8: MANAGEMENT OF CONSUMPTION AND PARKING AREAS.

- A. A permit holder, manager, or an employee of a BYOB establishment, event or venue shall oversee and properly manage the consumption of alcoholic beverages to ensure that:
 - (1) no adverse effects or disturbance occurs to adjacent property or residents;
 - (2) the establishment, venue, and premises is clean, safe, and properly maintained for use by patrons;
 - (3) no open alcoholic beverages or open containers are removed from the establishment or venue including the parking areas.
- B. A permit holder, manager, employee, or sub-contractor of a BYOB event or venue shall not allow the consumption of alcohol outside of the premises.
- C. A permit holder, manager, employee, or sub-contractor of a BYOB event or venue may not allow persons to congregate or loiter in a parking area.
- D. A permit holder, manager, or an employee of a BYOB event or venue shall post visible signs in designated parking areas prohibiting alcoholic beverage consumption.
- E. A permit holder, manager, or an employee of a BYOB event or venue shall not allow the sale of alcoholic beverages during or at a BYOB venue or event.
- F. A permit holder, manager, employee, or sub-contractor of a BYOB event or venue shall not:
 - (1) consume alcoholic beverages while on duty or during the effective period of a permitted event;
 - (2) purchase or otherwise acquire an alcoholic beverage for a patron;
 - (3) provide an alcoholic beverage to a patron.

SECTION 9: CRIME PREVENTION AND REPORTING REQUIREMENTS.

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A permit holder, manager, employee, or sub-contractor of a BYOB event or 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 in the establishment, venue, or the surrounding areas.

SECTION 10: ENFORCEMENT; PUNISHMENT; PENALTIES.

- A. Should any person or business violate the prohibitions contained herein, or allow the commission of any act or condition that proximately resulted in a violation of this ordinance, the City Manager, City Attorney, and other designated personnel may take any action to enforce this or any ordinance to prevent and summarily abate the action and remove or seize any objects used to violate this ordinance. These actions may also include but not be limited to allowing for municipal resources and personnel to: abate any premises or property, closure, condemn, remove any person or thing, court action, suspend, cancel, or void any license or permit issued by the City of Pharr or a state or federal agency, and any and all other relief as may be necessary.
- B. Any violation of this Ordinance shall be subject to both civil and criminal penalties. A criminal conviction shall be a Class C misdemeanor. A violator shall also be subject to the maximum penalties allowed by law for failing to appear in Court when charged with an offense as described herein. If conduct constituting an offense under this ordinance also constitutes an offense under another law, the person may be prosecuted under all applicable laws.
- C. A liable party shall be subject to a civil penalty up to \$1,000 per violation, or the maximum allowed by law.
- D. It shall also be unlawful for the holder of a permit to knowingly conspire to circumvent this ordinance by allowing the use of its permit, facility or property by any person, business, or entity that does not have a legally obtained permit from the City of Pharr.
- E. An appellant who seeks judicial review of the action taken by the City must file a petition with a court of competent jurisdiction not later than thirty (30) days of the action.

SECTION 11: CUMULATIVE CLAUSE; REPEALER.

This Ordinance shall incorporate herein all other ordinances defining a firearm or firework and those that exist in the Pharr Code of Ordinances. Any ordinance in direct conflict with this Ordinance is repealed to the extent of the conflict, and this Ordinance shall supersede any provisions in conflict herewith. All other provisions of the above described ordinance shall remain in full force and effect.

SECTION 12: SEVERABILITY.

If any section, part of provisions of this Ordinance is declared unconstitutional or invalid, such declaration shall not affect the validity of the remaining sections, parts or provision of this Ordinance.

SECTION 13: DECLARING AN EMERGENCY CLAUSE.

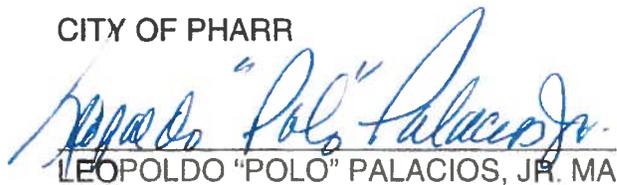
The importance of the subject matter hereof creates an emergency and an imperative public necessity requiring the suspension of the rule that Ordinance be read on three separate days, and such rule is hereby suspended and said requirement is dispensed with—by a vote of not less than a majority of all the members of the Board of Commissioners in accordance with the Charter of the City of Pharr, Texas. Publication, if necessary, may also be in caption form as allowed under Section 9 of the Pharr City Charter.

SECTION 14: PROPER NOTICE AND MEETING.

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.

PASSED AND APPROVED ON THE FIRST AND ONLY READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the 19th day of February, 2013.

CITY OF PHARR


LEOPOLDO "POLO" PALACIOS, JR. MAYOR

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ATTEST:



HILDA PEDRAZA, CITY CLERK