

DRAFT

AN ORDINANCE AMENDING THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, BY ADDING CHAPTER 18A “VENUES NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION;” ESTABLISHING A PERMIT PROGRAM FOR BUSINESSES THAT ALLOW PATRONS TO BRING ALCOHOLIC BEVERAGES ONTO THEIR PREMISES FOR CONSUMPTION (“BYOB VENUES”); PRESCRIBING REGULATIONS FOR BYOB VENUES THAT ARE NOT LICENSED OR PERMITTED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION; PROVIDING A PENALTY, AN EFFECTIVE DATE, AND SAVINGS AND SEVERABILITY CLAUSES.

WHEREAS, the City of Irving, Texas (the "City") is a home-rule municipality possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution; and

WHEREAS as a home-rule municipality, the City of Irving has the power to enact ordinances in accordance with Article III, Section 2 of the Irving City Charter; and

WHEREAS, pursuant to the laws of the State of Texas, including Section 51.001 of the Texas Local Government Code, the City Council has the authority to adopt an ordinance that, among other things, is for the good government, peace, or order of Irving; and

WHEREAS, the Texas Alcoholic Beverage Code (the “Code”) regulates the manufacture, sale, distribution, transportation, and possession of alcoholic beverages by licensed and permitted establishments; and

WHEREAS, the Texas Alcoholic Beverage Commission ("Agency") only regulates and enforces the Code as it applies to licensed and/or permitted establishments; and

WHEREAS, venues that allow patrons to bring their own alcoholic beverages on the premises (“BYOB Venues”) are not licensed or permitted by the Agency and therefore have no regulations imposed on them by the Code; and

WHEREAS, establishments that are licensed or permitted by the Agency are regulated by the Code in a manner designed to prevent them from becoming a nuisance to the surrounding neighborhood, community and the general public; and

WHEREAS, without similar regulations for unlicensed and/or unpermitted venues, BYOB venues can become a nuisance to the surrounding neighborhood, community, and the general public; and

WHEREAS, data collected over a two-year period shows that calls for service to the Irving Police Department generated from known BYOB Venues in the City of Irving are

highest during the hours from 12:00 am until 5:00 am, and peak between the hours of 2:00 am to 4:00 am; and

WHEREAS, the calls for service received by the Irving Police Department to known BYOB Venues include calls for disturbances, assaults, fights, drunk persons, suspicious persons, unconscious persons, thefts, and shots fired; and

WHEREAS, the calls for service at known BYOB Venues in Irving show the types of nuisance activity that can result from having unregulated venues where alcohol is consumed on-premises at all hours of the late night and into the early morning; and

WHEREAS, the City Council desires to enact an ordinance which creates a permitting process for BYOB Venues and imposes restrictions on the hours of operation for said BYOB Venues to mirror state law restrictions on the hours of consumption of alcohol at licensed or permitted alcohol establishments; and

WHEREAS, the City Council finds that creating a permitting process for BYOB Venues and imposing restrictions on hours of operation for BYOB Venues are regulations that are ancillary to, not any stricter than, and in harmony with the general scope and purpose of what is imposed on licensed and permitted establishments under the Code, and that the regulations contained in this ordinance do not conflict with the Texas Alcoholic Beverage Code; and

WHEREAS, the City Council finds that the City will incur costs to review, process, and issue BYOB Permits and that establishing a fee is necessary to recover these costs associated with the BYOB Permits; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace, order, health and safety of the City and its residents, visitors and the general public to adopt an ordinance regulating BYOB Venues;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS, THAT:

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2 That Chapter 18 of The Code of Civil and Criminal Ordinances of the City of Irving, Texas is hereby amended to add a new Chapter 18A, "Venues Not Licensed or Permitted By The Texas Alcoholic Beverage Commission", to read as follows:

"CHAPTER 18 A. - VENUES NOT LICENSED OR PERMITTED BY THE
TEXAS ALCOHOLIC BEVERAGE COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Sec. 18A-1 Short title and purpose.

This chapter may be known and cited as the "BYOB Venue Regulations."

(A) The purpose of this chapter is to protect the health, safety, and welfare of the citizens of the City of Irving by monitoring and regulating BYOB Venues. This chapter establishes a permit program for BYOB Venues, imposes regulations of business operations of BYOB venues, and imposes civil and criminal penalties for violations of this chapter.

(B) The restrictions of Sections 1.06 and 109.57 of the Alcoholic Beverage Code preempt the City of Irving from regulating licensed and/or permitted alcohol establishments and the manufacture, sale, distribution, transportation, and possession of alcoholic beverages. The intent of this ordinance is not to regulate permitted or licensed premises or any of these activities, but to establish a process by which establishments licensed and/or permitted by the Texas Alcoholic Beverage Commission ("Agency") are not discriminated against within the City of Irving such that all businesses which allow consumption of alcohol on premises are treated equally; to protect health, life, and property; and to preserve the good government, order, and security of the municipality and its inhabitants by establishing a city permitting process for businesses that are not regulated by the Agency.

Sec. 18A-2 Administration.

The Director, as defined herein, shall administer and implement the provisions of this chapter. Any powers granted to, or duties imposed upon the Director or the Director's designee, may be delegated to other city personnel or authorized representatives.

Sec. 18A-3 Definitions.

(A) In this chapter:

ALCOHOLIC BEVERAGE. Has the meaning assigned by the Texas Alcoholic Beverage Code.

BOARD. The Irving Construction Board of Appeals as established in Chapter 8B of this code.

BYOB. The practice of allowing patrons to bring their own alcoholic beverages onto the premises for consumption, referred to as "BYOB," an acronym commonly used for "bring your own bottle," or "bring your own beverage."

BYOB PERMIT. A permit issued pursuant to this chapter, to operate a BYOB Venue.

BYOB VENUE. An venue not licensed or permitted by the Texas Alcoholic Beverage Commission where patrons are allowed to bring their own alcoholic beverages for on-premise consumption.

DIRECTOR. The Inspections Director for the City of Irving. This term may include the Director's designee or delegated staff, employees, and representatives of the City of Irving.

PERMIT APPLICANT. Any person listed on the BYOB permit application as an applicant, or agent acting on behalf of the applicant.

PERMIT HOLDER. The person operating the BYOB Venue for which a permit has been issued. This term includes any agent, manager, or employee of the permit holder that has the responsibility for operating the BYOB Venue or acts as a person in charge of a BYOB Venue.

PERSON. Defined in the same manner as Texas Penal Code Section 1.07.

PLACE OF WORSHIP. Means building where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious activity.

PREMISES. The grounds and all buildings and structures thereon.

Sec. 18A-4 Applicability.

- (A) Except as provided in subsection (B), this chapter applies to a venue 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/or consumption.
- (B) This chapter does not apply to:
- (1) A residence.
 - (2) An establishment operated by a governmental entity.
 - (3) A private club permitted pursuant to Chapter 32 of the Texas Alcoholic Beverage Code.
 - (4) A fraternal organization or veteran's organization, as defined by Chapter 32 of the Texas Alcoholic Beverage Code.

- (5) A Place of Worship as defined herein.
- (6) An organization licensed to conduct bingo under the Bingo Enabling Act, Chapter 2001 of the Texas Occupations Code.

Sec. 18A-5 Notice.

- (A) Any notice issued under this chapter may be provided to a permit applicant or permit holder by:
 - (1) Regular U.S. Mail,
 - (2) Hand delivery,
 - (3) Posting of a notice on a public entry door to the BYOB Venue, or
 - (4) Email delivery if consent for such method is given by the Permit Applicant
- (B) Mailed notice is deemed to be delivered on the fifth day after it is mailed.
- (C) Emailed, hand delivered, and posted notices are deemed to be delivered on the date the notice is emailed, hand delivered, or posted.
- (D) If more than one manner of notice is utilized, the earliest date of notice shall be deemed the date notice was provided.

Sec. 18A-6 Permit required.

- (A) A person shall obtain a BYOB Permit issued by the Director before operating a BYOB Venue.
- (B) A person must obtain a separate BYOB Permit for each BYOB Venue location.

Sec. 18A-7 Qualifications.

- (A) An individual must be at least Twenty-one (21) years of age to apply for or hold a BYOB Permit under this chapter.
- (B) There must be at least one individual Applicant, or at least one designated agent for a legal entity, that is able to establish residency in the state of Texas. The address of said individual must be provided, and the individual must be a signatory on the application. The Applicant or designated agent may represent the BYOB Venue in matters before the Board, except where state law provides otherwise.

Sec. 18A-8 Permit application.

- (A) A person who seeks a permit to operate a BYOB Venue must submit an application to the City of Irving on a form provided by the Inspections Department. The application must include:
- (1) The names, addresses, phone numbers, email addresses, and birth dates of all individuals who have an ownership interest in, or who will manage or otherwise exercise control over, the proposed BYOB Venue.
 - (2) The names, addresses, phone numbers and email addresses for all owners of the property upon which the BYOB Venue is located.
 - (3) The name of the BYOB Venue and its physical address.
 - (4) For Applicants that are a legal entity:
 - (a) Written proof from the Secretary of State that the entity is authorized to transact business in Texas.
 - (b) Designation of a local agent to represent the entity in matters before the City and to be responsible for the proper conduct of any activity of a Permit Holder.
 - (5) Proof that the Permit Applicant has all other permits and approvals required to operate the BYOB Venue;
 - (6) Information about the site, including:
 - (a) The floor plan of the building(s); and
 - (b) A designation of the areas where the consumption of alcohol is to be allowed.
 - (7) If security is or will be employed at the BYOB Venue, the name of the commissioned security officer contracted to provide security services, including license number(s) as issued by the Texas Department of Public Safety.
 - (8) Other information reasonably required by the Director.
- (B) Applicant(s) shall pay a BYOB Permit application fee of \$35.00. This fee is non-refundable should the application to operate a BYOB Venue be denied.

- (C) A Permit Applicant or Permit Holder shall immediately supplement the information provided as part of the BYOB Permit application if the information is, or becomes in any manner, inaccurate or incomplete. This obligation continues after a BYOB Permit is issued for as long as the BYOB Permit is in effect and shall also continue during any period of suspension or appeal period.

Sec. 18A-9 Permit approval; denial.

- (A) Except as otherwise provided in this chapter, the Director shall approve a BYOB permit application if the Director determines that the applicant and the proposed BYOB Venue meet the requirements of this Chapter.
- (B) The Director shall deny a BYOB Permit application if the Director determines that:
 - (1) The BYOB Venue as proposed would not comply with any provision of this chapter; or
 - (2) A BYOB Permit required by this chapter was revoked within the preceding 12-month period for the same location; or
 - (3) The Permit Applicant or Permit Holder had a BYOB Permit revoked within the preceding 12-month period at another BYOB Venue; or
 - (4) The Permit Applicant provided incorrect or incomplete information on the application; or
- (C) The Director shall give written notice of a determination on an application to operate a BYOB Venue to the Permit Applicant no later than 45 days from the submission of a complete application.
- (D) A BYOB Applicant may appeal a denial of a BYOB Permit application to the Construction Board of Appeals in accordance with section 18A-22 of this chapter.
- (E) Notice of a determination of approval, suspension, denial, or revocation may be delivered as provided elsewhere for notices in this chapter.

Sec. 18A-10 Permit not transferable.

A BYOB Permit issued under this chapter is not assignable or transferable to any other person, or BYOB Venue location.

Sec. 18A-11 Permit not a right.

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

Sec. 18A-12 Permit expiration; renewal.

Unless it is revoked, a Permit Holder's BYOB Permit issued under this chapter expires three (3) years after the date it is issued for the BYOB Venue. A renewal application for a BYOB Permit must be filed not sooner than the ninetieth day and not later than the forty-fifth day before the BYOB Permit expires. An application that is not filed within the described time period shall be deemed a new application and shall comply with all new application requirements.

Sec. 18A-13 through 19 – Reserved.

Article II. SUSPENSION; REVOCATION; AND APPEAL

Sec. 18A-20 Permit Suspension.

- (A) A BYOB Permit may be suspended if the Director finds that the BYOB Permit was issued in error or on the basis of incorrect information supplied; that the Permit Holder has violated any provision of this chapter or any other state or local law; or that the building, structure or use of the BYOB Venue is in violation of any provision of this chapter or any other state or local law.
- (B) If the Director suspends a BYOB Permit, they shall provide the BYOB Permit Holder with written notice of the BYOB Permit suspension that includes:
 - a. The reason(s) the BYOB Permit is being suspended;
 - b. The time period of the suspension;
 - c. Any items that require compliance or correction in order to have the suspension lifted and the BYOB Permit reinstated; and
 - d. A statement that a failure to comply with the items in the notice within the designated time period may result in a revocation of the BYOB Permit.
- (C) Suspension of a BYOB Permit is effective on delivery of notice in accordance with this chapter.
- (D) Upon delivery of notice of the suspension, the BYOB Permit Holder shall immediately cease allowing BYOB at the BYOB Venue and surrender the BYOB Permit to the Director.

- (E) At the end of the period of suspension, in the absence of further violations or noncompliance, a surrendered BYOB Permit shall be returned to the BYOB Permit Holder and shall be valid under this chapter.
- (F) The period of suspension does not extend the expiration date of the BYOB Permit. If a period of suspension extends beyond the normal expiration date of the BYOB Permit, the BYOB Permit Holder shall apply for renewal pursuant to this chapter.
- (G) If an appeal is not timely filed pursuant to section 18A-22 of this chapter, the Director's decision to suspend is final, and the suspension continues in effect.
- (H) The Director may reinstate a BYOB Permit if the reason for suspension no longer exists.

Sec. 18A-21 Permit Revocation.

- (A) The Director may revoke a BYOB Permit issued under this chapter if the Director determines that:
 - (1) The Permit Holder has engaged in serious or repeated violations of this chapter or any other state or local law.
 - (2) The Permit Holder no longer qualifies for a BYOB Permit under this chapter and does not have the ability to qualify within a reasonable time period not to exceed 90 days.
 - (3) The BYOB Permit was issued in error, or the basis of false information provided on or with the application, renewal application, or supplemental information submitted as part of the application or renewal process or as required by this chapter.
 - (4) The building, structure or use of the BYOB Venue is in violation of this any provision of this chapter or any other state or local law, which has not been cured after suspension of the BYOB Permit.
- (B) The Director shall provide the BYOB Permit Holder with written notice of the BYOB Permit revocation that includes the reason(s) the BYOB Permit is being revoked.
- (C) Revocation of a BYOB Permit is effective on delivery of notice.
- (D) Upon delivery of notice of the revocation, the BYOB Permit Holder shall immediately cease allowing BYOB at the BYOB Venue and surrender the BYOB Permit to the Director.

(E) If an appeal is not timely filed pursuant to section 18A-22 of this chapter, the Director's decision to revoke is final.

(F) A revocation of a BYOB Permit is not stayed pending the outcome of an appeal.

Sec. 18A-22 Appeals.

(A) If the Director denies the issuance or renewal of a BYOB Permit, or suspends or revokes a BYOB Permit issued under this chapter, the action is final unless the Permit Holder files a written appeal, and pays the associated appeal fee as established in the Inspections Department Fee Schedule, to the Construction Board of Appeals within ten (10) days of delivery of the Director's decision in writing. For purposes of an appeal under this chapter, the Board shall sit as a permit, license and appeal board. If a written request for a hearing is filed timely, the Board shall hear the appeal within thirty (30) days after the date the appeal is filed.

(B) The Board shall hear and consider evidence offered by any interested person; the formal rules of evidence do not apply. The Board's decision must be by a majority vote. Failure to reach a majority vote will leave the decision of the Director unchanged. The decision of the Board is final, and no rehearing may be granted.

(C) The notice of appeal shall set forth the following:

- (1) The name and contact information of the person filing the appeal; and
- (2) The name and address of the BYOB Venue; and
- (3) A brief statement setting forth the material facts that are the bases for the appeal; and
- (4) A verification signed by the Applicant, under penalty of perjury, to the truth of the matters stated in the appeal.

Section 18A-23 Board Determination.

(A) In deciding an appeal under this chapter, the Board is limited to the issue of whether the decision to deny, suspend, or revoke the BYOB Permit by the Director was made in accordance with this chapter or in error.

(B) The Board shall affirm the decision of the Director if the Board finds that the Director's decision to deny, suspend or revoke the BYOB Permit was made in accordance with the provisions of this chapter.

(C) The Board may reverse the Director's decision only if the Board finds that sufficient evidence was presented in the hearing to prove that the Director erred in denying,

suspending or revoking the BYOB Permit because the decision was not in compliance with the provisions of this chapter.

- (D) The Permit Applicant or Permit Holder bringing the appeal carries the burden of proof to show that the Director erred to overturn a decision by the Director to deny, suspend or revoke a BYOB Permit.
- (E) No later than fourteen (14) days after the appeal hearing, the Board shall give written notice to the City Manager, the City Attorney, and the BYOB Permit Applicant or Permit Holder of the Board's determination.

Secs. 18A-24 and 18A-29 - Reserved.

ARTICLE III. REGULATIONS FOR OPERATION OF A BYOB VENUE

Sec. 18A-30 Permit posting required.

A BYOB Permit Holder shall post a valid BYOB Permit required by this chapter in a prominent and conspicuous location on the Premises at the BYOB Venue. A person may not display a BYOB Permit that has been suspended or revoked at the BYOB Venue.

Sec. 18A-31 Manager required on premises.

A BYOB Permit Holder shall be continuously on the BYOB Venue Premises during the hours of operation.

Sec. 18A-32 Minimum age for admittance and alcohol consumption.

A BYOB Permit Holder may not allow a person under the age of 21 years to consume alcohol on the Premises of the BYOB Venue.

Sec. 18A-33 Doors to remain unlocked.

During the hours of operation, a person may not lock or obstruct:

- (A) An exterior entrance door that is designated or available for use by patrons at the BYOB Venue; or
- (B) An interior door that provides access to a portion of the Premises that is designated or available for use by patrons at the BYOB Venue.

Sec. 18A-34 Hours of operation.

(A) A BYOB Permit Holder shall close a BYOB Venue:

1. Between 12:15 a.m. and 7:00 a.m. Monday through Saturday; and
2. Between 1:15 a.m. and 12:00 p.m. on Sunday.

(B) A person may not consume an alcoholic beverage on the Premises of a BYOB Venue between 12:15 a.m. and 7:00 a.m. on Monday through Saturday, or between 1:15 a.m. and 12:00 p.m. on Sunday.

(C) A BYOB Permit Holder may not allow a member of the public to remain on the Premises of the BYOB Venue. This prohibition does not apply to a person who is providing a product or service directly to the BYOB Venue.

Sec. 18A-35 Alcoholic Beverage Consumption areas.

(A) A Permit Holder shall designate, subject to the approval of the Director, the portions of the Premises at the BYOB Venue on which the consumption of alcoholic beverages is permitted. A designated area:

- (1) Must be located within the interior of a building or an enclosed deck, patio, or garden; and
- (3) Must exclude parking areas.

(B) A person may not consume, and a Permit Holder of a BYOB Venue may not allow the consumption of, an alcoholic beverage outside of a designated area of a BYOB Venue.

(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 designated area where alcoholic beverages may be consumed, the Permit Holder must provide a revised floor plan to the Director prior to the implementation of such change or modification.

Sec. 18A-36 Security.

If the BYOB Venue uses security guards who are charged with preventing violations of law and enforcing compliance by patrons, the security guards shall, at all times while providing security services at the BYOB Venue, comply with all regulations governing commissioned security officers as set forth by the Texas Department of Public Safety. This includes, but is not limited to, being uniformed in such a manner so as to be readily identifiable as a security guard by the public and be licensed as a commissioned security officer by the Texas Department of Public Safety under Texas Occupations Code

Chapter 1702. Upon request by an Irving police officer, a commissioned security officer shall provide proof of the security officer's commission by showing a copy of the pocket card issued by the Texas Department of Public Safety pursuant to section 1702.165 of the Texas Occupations Code to the officer.

Sec. 18A-37 through 39- Reserved.

ARTICLE IV - ENFORCEMENT

Sec. 18A-40 Criminal penalty.

(A) A person commits a Class C misdemeanor if the person:

- i. Operates a BYOB Venue without a BYOB Permit required by this chapter;
- ii. Operates a BYOB Venue during prohibited hours of operation as provided in this chapter; or
- iii. Violates any provision of this chapter.

(B) An offense under this chapter is a strict liability offense and proof of a culpable mental state is not required to prove an offense under this chapter.

(C) Each day that a violation occurs or continues is a separate offense.

(D) A person who commits an offense under this chapter, upon conviction, shall be fined an amount not to exceed \$500.00.

Sec. 18A-41 Civil remedies.

(A) A violation or threatened violation of this chapter may be enjoined by a court of competent jurisdiction upon application and filing of a sworn petition for injunctive relief, and any other remedies available under law or in equity, by the City Attorney's Office.

Sec. 18A-42 Cumulative remedies.

The remedies authorized under this chapter are cumulative. If the city files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

Secs. 18A-43 through 49- Reserved.

SECTION 3. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior

ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

SECTION 4. In the event of a conflict between this ordinance and all other ordinances of the City of Irving, this ordinance shall control and supersede such other ordinances and the conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 5. Should any paragraph, sentence, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof.

SECTION 6. This ordinance shall take effect July 8, 2023, and shall be published in accordance with the provisions of the Texas Local Government Code and the Irving City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS, on this _____ day of _____, 2023.

RICHARD H. STOPFER
MAYOR

ATTEST:

Shanae Jennings, City Secretary

APPROVED AS TO FORM:

Kuruvilla Oommen, City Attorney