

AN ORDINANCE OF THE CITY OF LEON VALLEY, TX, CITY COUNCIL AMENDING ORDINANCE ARTICLE 4.03 ALCOHOLIC BEVERAGES BY AMENDING SECTION 4.03.034 LATE HOURS PERMIT, AMENDING SECTION 4.03.035 CITY FEES LEVY, AMENDING SECTION 4.03.036 BEVERAGE FEE DUE DATE, AMENDING SECTION 4.03.038 DISPLAY OF RECEIPT, AMENDING SECTION 4.03.041 DEFINITIONS AND AMENDING SECTION A17.011 BYOB ESTABLISHMENTS

WHEREAS, Effective September 1, 2023, the 88th Legislature amended Chapter 437 of the Health and Safety Code;

WHEREAS, the Health and Safety Code Sec. 437.01235. Fees For Premises With Alcoholic Beverage Permit or License, states "A county or a municipality with a public health district that charges a fee for the issuance or renewal of a permit under Section 437.012 or 437.0123 for premises located in the county or municipality and permitted or licensed by the Texas Alcoholic Beverage Commission may not also charge a fee under Section 11.38 or 61.36, Alcoholic Beverage Code, for issuance of an alcoholic beverage permit or license for the premises".

WHEREAS, City of Leon Valley cannot charge for both a Health Inspection and an Alcohol beverage permit.

WHEREAS, Under Division 3. Bring Your Own Bottle Establishments (BYOB) under Section 4.03.041, Definitions, a definition for the term operator was added.

WHEREAS, Section A17.011 BYOB Establishments, increase the application fee from \$50.00 to \$80.00

WHEREAS, the amendments are attached as Exhibit A.

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

SECTION 1. The Amendments to Article 4.03 Alcohol Beverages are hereby authorized.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

SECTION 4. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Leon Valley this the 5th day of March, 2024.

APPROVED

Chris Riley

CHRIS RILEY
MAYOR

Attest:

Crystal Caldera

CRYSTAL CALDERA, PhD
CITY MANAGER

Approved as to Form:
Arturo D. Rodriguez

ARTURO D. 'ART' RODRIGUEZ
CITY ATTORNEY



Exhibit A

ARTICLE 4.03 ALCOHOLIC BEVERAGES¹

DIVISION 1. GENERALLY

Sec. 4.03.001 Penalty

Each violation of this article shall be punishable by a fine in accordance with section 1.01.009 of this Code. Each day shall constitute a separate offense.

(1972 Code, sec. 13.302; 2008 Code, sec. 4.03.001; Ordinance adopting 2017 Code)

Secs. 4.03.002—4.03.030 Reserved

DIVISION 2. LICENSE AND PERMIT FEES²

Sec. 4.03.031 Definitions

Except as otherwise provided in this section, all words, and phrases in this article, which are defined in the Texas Alcoholic Beverage Code, shall, for the purposes of this article, have the definition ascribed to them in such Act.

Code means the Texas Alcoholic Beverage Code as same may be amended, revised or re-codified in the future.

(Ord. No. 2022-54 , § II, 12-6-2022)

Sec. 4.03.032 Code adopted

The Texas Alcoholic Beverage Code is hereby adopted and made part of this article by reference for all purposes as though fully set out herein.

(Ord. No. 2022-54 , § II, 12-6-2022)

¹State law reference(s)—Regulation of alcoholic beverages generally, V.T.C.A., Alcoholic Beverage Code; local regulation of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code, § 109.31 et seq.

²Ord. No. 2022-54 , § II, adopted December 6, 2022, amended in its entirety the former Division 2, §§ 4.03.031—4.03.036, and enacted a new Division 2 as set out herein. The former Division 2 pertained to similar subject matter and derived from 1972 Code, secs. 13.101—13.104, 13.201, 13.301; 2008 Code, secs. 4.03.031—4.03.036.

State law reference(s)—Local fee authorized on alcoholic beverage permits, V.T.C.A., Alcoholic Beverage Code, § 11.38; local fee authorized on alcoholic beverage licenses, V.T.C.A., Alcoholic Beverage Code, § 61.36.

Sec. 4.03.033 Hours for sale and consumption

The "Standard Hours Area" provisions as established by Chapter 105 of the Texas Alcoholic Beverage Code are hereby adopted for the City of Leon Valley.

(Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Ord. No. 2023-36 , § II, adopted September 19, 2023, repealed § 4.03.033 and renumbered the remaining sections, 4.03.034—4.03.040, as 4.03.033 through 4.03.039. The original § 4.03.033 pertained to sales near churches, public schools, or private schools and derived from Ord. No. 2022-54 , § II, December 6, 2022.

Sec. 4.03.034 Late hours permit

- (a) *Adoption of extended hours by city.* All establishments in the city limits and in compliance with the conditions of the city late hours permit will have their application for extended hours approved by the city secretary. The late-hours permit holder may thereafter legally offer alcohol for sale between midnight and 2:00 a.m. on any day, as prescribed by Texas Alcoholic Beverage Code §§ 105.03 and 105.05.
- (b) *Application for late hours permits.* Establishments seeking extended sale of alcohol hours must file an application for a permit with the Texas Alcoholic Beverage Commission and with the office of the city secretary. Applications for late-hour permits must be approved by the city secretary before an establishment can observe extended hours in the city. An establishment seeking a permit from the city must pay a fee of one-half of the fee charged by the state for a mixed beverage late-hours permit, except when said fee is waived according to the provisions of the Texas Alcoholic Beverage Code **and those that are issued a permit in compliance with Texas Health and Safety Code § 437.0123 or § 437.012.**
- (1) An application for a permit must include but may not be limited to the following provisions: name, title, address, and telephone number of the authorized representative of the applicant.
- (2) The application must include a sworn affidavit demonstrating that:
- a. At least 51 percent of the establishment's gross daily receipts will be non-alcohol; and
 - b. The establishment will continue offering for sale food or its other non-alcohol commodities or services for the duration of the extended alcohol service hours.
- (3) The city secretary shall make a determination on an application for a permit on or before the 30th day after the date the application was filed.
- (c) *Appeals process.* An applicant or permittee whose application is denied, or permit is revoked by the city secretary under the provisions of this article may appeal the city secretary's decision to city council.
- (d) *City late hours permit.* The city secretary may not grant a permit unless the applicant has complied with the requirements of the application. Continued operation of late hours is conditioned on compliance with the statements in the affidavit for the entirety of the permit period. The non-refundable fee for the certification of the application by the city secretary is \$25.00.
- (1) The permit must show that the establishment may:
- a. Legally offer alcohol for sale between midnight and 2:00 a.m. any day, as prescribed by Texas Alcoholic Beverage Code, §§ 105.03 and 105.05.
 - b. Conditioned on:
 1. At least 51 percent of the establishment's gross daily receipts being non-alcohol; and

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2. The establishment continuing to offer the sale food or its other non-alcohol commodities or services for the duration of the extended alcohol service hours; and
 - c. The time frame for which the permit is valid.
 - (2) *Compliance procedure.* The permit holder shall fully cooperate with city officials, the Texas Alcoholic Beverage Commission, and local law enforcement in their efforts deemed reasonably necessary to ensure compliance with the conditions of the permit. Compliance may be assessed by, but is not limited to, the following mechanisms: random audits, checking receipts upon yearly application, and reporting by citizens.
 - (3) *Expiration.* The permit will expire ~~two~~ **at the end of the calendar year (new business will be prorated).** The establishment must apply for the permit **every January 1 of each year.** ~~every two years~~ to maintain extended hours. The establishment's compliance with the conditions of the permit will be formally re-evaluated with each yearly application.
 - (4) *Permit revocation.* If a permit holder fails to comply with this article or applicable state law, a permit issued under this article may be revoked for a period of six months.

(Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Editor's note(s)—See editor's note at § 4.03.033.

Sec. 4.03.035 City fees levy

- (a) *Levy against permit.* The city does hereby levy a city alcoholic beverage fee equal to one-half of the state fee, as provided by Section 11.38, of the Texas Alcoholic Beverage Code and other relevant provisions of said code, against each permit issued. Notwithstanding the forgoing, the following shall be exempted from the levy:
 - (1) Agent's, industrial, carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permits.
 - (2) Wine and beer retailer's permit issued for a dining, buffet, or club car; and
 - (3) A mixed beverage permit during the three-year period following the issuance of the permit.
- (b) *Levy against licenses.* The city does hereby levy a city alcoholic beverage fee equal to one-half of the state fee, as provided by Section 61.36, of the Texas Alcoholic Beverage Code and other relevant provisions of said Code, against every permittee who is domiciled within the corporate limits of the city and who holds a permit from the state alcoholic beverage commission for the purchase, transportation, importation, sale or manufacture of alcoholic beverages or other permits in regard thereto; except a temporary or agent's beer license, issued for premises located within the county.
 - (1) A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a Class "C" misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.

This section does not apply to those who are issued a permit in compliance with Texas Health and Safety Code § 437.0123 or § 437.012.

(Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Editor's note(s)—See editor's note at § 4.03.033.

Sec. 4.03.036 Beverage fee due date; fees for portion of year; separate fee for each outlet

- (a) All fees levied by this article shall be due and payable ~~annually in advance for two year~~ **annually** from the date of the issuance of the permit or license issued by the state alcoholic beverage commission, unless such fee is collected for only a portion of the year. In such event, the fee required shall cover the period of time from the date of such permit to midnight of the last day of August succeeding and only the proportionate part of the fee levied for such permit shall be collected. The fractional part of any month remaining shall be counted as one month in calculating the fee which shall be due.
- (b) A separate fee shall be paid for each sales location in this city.
- (Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Editor's note(s)—See editor's note at § 4.03.033.

Sec. 4.03.037 Refund of fees

- No refund of the fee shall be made for any reason, except when the permittee is prevented from continuing in business by reason of the result of a local option election, or a rejection of an application for a permit by the state alcoholic beverage commission or its administrator.
- (Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Editor's note(s)—See editor's note at § 4.03.033.

Sec. 4.03.038 Display of city alcoholic beverage ~~fee receipt~~ Permit

- The City of Leon Valley Alcoholic Beverage ~~Permit-Fee Receipt~~ shall be displayed in a conspicuous place at all times on the licensed premises. Failure to so display said ~~receipt~~ **permit** shall constitute a Class "C" misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.
- (Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Editor's note(s)—See editor's note at § 4.03.033.

Sec. 4.03.039 Cancellation or denial of license or permit

- (a) The commission or administrator may cancel or deny a license for the retail sale of alcoholic beverages, including a license held by the holder of a food and beverage certificate, if it finds that the license holder or applicant has not paid delinquent ad valorem taxes due on that licensed premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a license holder or applicant is presumed delinquent if the payment of taxes due from the license holder or applicant:
- (1) Is placed on a delinquent tax roll prepared under Section 33.03, Tax Code.
 - (2) Has received a notice of delinquency under Section 33.04, Tax Code; and
 - (3) Has not made the payment required under Section 42.08, Tax Code.
- (b) The city may cancel or deny an application or permit issued by the city if the permit holder or applicant has not paid delinquent ad valorem taxes due on the permitted premises or due from a business operated on the premises to any taxing authority in the county of the premises. Failure to renew on time with the city may also result in permit cancellation.

(Ord. No. 2022-54 , § II, 12-6-2022; Ord. No. 2023-36 , § II, 9-19-2023)

Editor's note(s)—See editor's note at § 4.03.033.

Sec. 4.03.040 Reserved

DIVISION 3. BRING YOUR OWN BOTTLE (BYOB) ESTABLISHMENTS

Sec. 4.03.041 Short title and purpose

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

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.042 Definitions

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

- (a) It is a common practice for an establishment that is open to the public, not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages to allow its patrons to bring their own alcoholic beverages onto the premises for possession or consumption. This practice is often referred to as "BYOB," an acronym for "bring your own bottle."
- (b) In this division:
 - Alcoholic beverage* has the meaning assigned by the Texas Alcoholic Beverage Code.
 - BYOB permit* means a permit, issued pursuant to this division, to operate a BYOB venue.
 - BYOB venue or event* means an establishment to which this division applies, as prescribed by section 4.03.043.
 - Department* means the Planning and Zoning Department of the City of Leon Valley.
 - Director* means the director of the planning and zoning department or designated agent.
 - Premises* means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.
 - Public place* means any place accessible by the public, a business or public facility, a way or place, of whatever nature, opened to use of the public as a matter of right, or for purposes of vehicular travel as a street, or in the case of a sidewalk thereof, for pedestrian travel.
 - Restaurant* means an establishment engaged in the preparation and retail sale of food and beverages for on-premise consumption or in a ready-to-consume state. To qualify as a restaurant under this chapter, the establishment must produce at least 80 percent of its total revenue, exclusive of tips and gratuities, from the provision of food service.

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(Supp. No. 2)

Operator is a manager or supervisor who leads and oversees the organization/business's employees and operations in the absence of the owner.

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.043 Applicability

- (a) Except as provided in (b) below, this division applies to an establishment that:
 - (1) Is not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages; and
 - (2) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.
- (b) This chapter division does not apply to:
 - (1) A residence;
 - (2) An establishment operated by a governmental entity;
 - (3) A private club, as defined by the Texas Alcoholic Beverage Code;
 - (4) A fraternal or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
 - (5) A college and university use;
 - (6) A religious assembly use;
 - (7) A restaurant;
 - (8) A licensed farmer's market;
 - (9) A banquet hall; or
 - (10) A theater use.

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.044 Notice

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

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.045 Administrative rules

The director shall adopt administrative rules to implement, administer, and enforce this chapter [division].

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.046 Permit required

- (a) A person shall obtain a permit issued by the department before the person may operate a BYOB venue. A BYOB establishment may operate for a period of no longer than 90 days, and under special circumstances.
- (b) The director must take all approved BYOB permit applications directly to the city council for approval.

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- (c) If approved by the city council, the business must apply for an alcoholic permit from the city, and it must be fully displayed at the approved establishment.

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.047 Permit approval

- (a) The planning and zoning director shall approve a permit application if the director determines that the applicant and the proposed BYOB establishment meets the requirements of this section.
- (b) The director shall deny a permit application if the director determines that:
- (1) The applicant is under the age of 21 years;
 - (2) Any owner, operator, employee, and/or staff member had a TABC permit that was involuntarily cancelled or suspended within the preceding 12-month period;
 - (3) The applicant provided incorrect or incomplete information on the application; or
 - (4) The owner **and** ~~or~~ operator of the BYOB establishment has been convicted of a criminal offense.
- (c) The director shall give written notice of a denial of an application to the applicant.
- (1) An applicant may appeal a denial of a permit application to the director in writing within ten days of notice of denial and request for city council to overturn the denial. A city council hearing will require two city council members to vote to place the item on the agenda.
 - (2) If denied, an applicant may not re-apply for a period of 12 months.
- (d) Permit is not transferable. A permit issued under this section is not transferable to another person and/or business. Any change in ownership of a BYOB establishment, including, but not limited to, the sale of the BYOB establishment or any ownership interest therein, shall require the purchaser or transferee to submit a permit application.
- (e) Permit expiration, renewal.
- (1) The city council may only approve a maximum period of 90 days for a permit.
 - (2) The owner shall file an application for permit renewal if they wish to continue operating as a BYOB after 90 days.
 - (3) An establishment may not be granted more than four consecutive permits.

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. 4.03.048 Permit revocation

The planning and zoning director may suspend or revoke the permit for good cause. The holder of the permit may appeal the suspension or revocation within ten days of receiving notice to the city council. The city council may uphold or overturn the suspension or revocation after notice and public hearing.

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. A17.011 BYOB establishments

BYOB establishment permit fee (per application): ~~\$50.00~~ **\$80.00.**

(Ord. No. 2023-24 , § 2, 8-1-2023)

Sec. A17.011 BYOB establishments

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(Ord. No. 2023-24 , § 2, 8-1-2023)