ORDINANCE NO. -110926

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWCASTLE, TEXAS; PROVIDING FOR REGULATION OF BRINING ALCOHOLIC BEVERAGES BY PATRONS TO COMMERCIAL ESTABLISHMENTS NOT LICENSED OR PERMITTED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION; PROVIDING THAT VIOLATION OF ORDINANCE IS AN OFFENSE AND ESTABLISHING A CRIMINAL PENALTY THEREFORE, PROVIDING FOR PUBLICATION; PROVIDING A SEVERABILITY AND A REPEALER CLAUSE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds that a condition is present that necessitates the regulation of commercial establishments that allow patrons on bring alcoholic beverage into such commercial establishment in the City of Newcastle; and

WHEREAS, the City Council finds that regulating the bringing of alcoholic beverages into commercial establishments not licensed by the Texas Alcoholic Beverage Commission by patrons of such commercial establishments promotes the safety, health, and welfare of the residents of the City of Newcastle.

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

Part 1. Enacted

THAT, the regulation of the bringing of alcoholic beverages into establishments not licensed by the Texas Alcoholic Beverage Commission within the City of Newcastle shall be as follows:

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

DIVISION 1. GENERALLY

Sec. 1-001. Purpose.

The purpose of this Ordinance is to regulate commercial establishments not licensed or permitted by the Texas Alcoholic Beverage Commission (the "***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. 1-002. Definitions.

The following words, terms, and phrases, when used in this Ordinance, shall have the

meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) **Alcoholic Beverage** has the meaning assigned by the Texas Alcoholic Code.

(2) **Applicant** - owner or operator of the BYOB establishment.

(3) **BYOB Establishment** – an establishment to which this Ordinance applies.

(4) **Operator** – the manager or other natural person principally in charge of who will be physically present at the establishment during operations hours.

(5) **Owner** – the person or persons who are the principal owners of the BYOB establishment.

(6) **Premises** – 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 owner.

Sec. 1-003. Applicability.

(a) Except as provided in subsection (b), this Ordinance applies to an establishment that:

(1) Is not licensed or permitted by the TABC; and

(2) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.

(b) This Ordinance 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; or

(5) A banquet hall.

DIVISION 2. PERMITS

Sec. 1-004. 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 City as required by this Ordinance.

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

Sec. 1-005. Permit application.

(a) An applicant shall apply for a BYOB permit annually. Application forms shall be supplied by the City. 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) A copy of the BYOB establishment's certificate of occupancy;

(8) A copy of the lease agreement where the BYOB establishment will be operating, or proof of ownership of the property, if applicable; and

(9) Other information reasonably required by the City.

(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. 1-006. Permit approval.

(a) The City secretary shall approve a permit application if they determine that the applicant and the proposed BYOB establishment meet the requirements of this Ordinance.

(b) The City secretary shall deny a permit application if they determine that:

(1) The applicant is under the age of 21 years;

(2) The BYOB establishment as proposed would not comply with this Ordinance;

(3) Any operator or owner had a permit required by this Ordinance 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 City secretary may deny a permit application if they determine 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 felony or a misdemeanor involving alcohol, drugs, or assault.

(d) The City secretary 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 1-013.

Sec. 1-007 Permit not transferable.

A permit issued under this Ordinance 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 1-005.

Sec. 1-008. Permit not a right.

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

Sec. 1-009. Permit expiration, renewal.

(a) A permit issued under this Ordinance 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. 1-010. 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 City Secretary in the permit application if the information is or becomes inaccurate, incomplete, or misleading.

Sec. 1-011. Permit revocation.

(a) The City may revoke a permit issued under this Ordinance if they determine that:

(1) The owner or operator of the BYOB establishment has been convicted of violating any of the provisions of this Ordinance on two or more occasions within the term of the permit or has been convicted of violating any provisions of this Ordinance 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 Ordinance; or

(4) The permit was obtained or issued as a result of error.

(b) The City secretary shall revoke a permit issued under this Ordinance if they determine that the BYOB establishment violated section 1-026 of this Ordinance.

(c) Before revoking a permit, the City secretary shall provide the owner with written notice in conformity with section 1-014 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 Mayor 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 City shall comply with the appeal process set forth in section 1-013; and

(2) The revocation is stayed pending the outcome of the hearing.

(f) The City secretary shall give written notice in conformity with section 1-014 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 this section 1-012 of this Ordinance 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.

(h) The City may revoke a permit issued under this Ordinance if a BYOB establishment is determined by City staff to be making any loud, unnecessary or unusual noise that annoys,

disturbs, injures, or endangers the comfort, repose, health, peace, or safety of neighboring person(s) of ordinary sensibilities. In determining whether a noise is loud, unnecessary, or unusual, the following factors shall be considered: time of day; whether the noise is recurrent, intermittent, or constant; the volume and intensity; and where the noise has been enhanced in volume or range by any type of electronic or mechanical means.

(i) The below listed offenses shall be grounds for denial, revocation, or refusal for renewal of BYOB establishment permits issued, 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 offenses 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:

(1) Any offense involving fraud or misrepresentation;

(2) Any offense involving bribery or perjury;

(3) 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;

(4) Any felony conviction for any violation of any state or federal laws regulating firearms;

(5) Any violation of the Texas liquor laws;

(6) Any offense involving prostitution or aiding, abetting, or promotion of prostitution; or

(7) 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.

(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 City secretary. 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 twenty (20) business days after the City secretary 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 Mayor 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 on their own behalf;

(3) Each party shall have the right to cross-examine all witnesses; and

(4) The Mayor shall consider only the evidence presented at the appeal hearing in rendering a final decision.

(c) *Authority of Mayor.* The Mayor may affirm or reverse a denial or revocation under this Ordinance. The Mayor shall affirm a denial or revocation if they determine by a preponderance of the evidence that grounds exist for the denial or revocation, respectively. The decision of the Mayor is final.

(d) *Notice of decision.* The Mayor 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. 1-012. Permit posting and sign required.

(a) After a BYOB establishment complies with the provisions of this section, the City secretary 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.

Sec. 1-013. Public place.

A BYOB establishment is a public place.

DIVISION 3. MINIMUM REQUIREMENTS FOR BYOB ESTABLISHMENTS

Sec. 1-014. 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. 1-015. 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.

(a) By accepting a permit under this Ordinance, the owner consents that the City, the City'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 Ordinance.

(b) The owner, the operator, and an employee shall provide the City'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 City 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 City official's request to enter the premises to inspect or perform the duties imposed by this Ordinance or to inspect or review records relating to compliance with this Ordinance, the City official shall have recourse to the remedies provided by law to secure entry.

(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. 1-016. Sale of alcoholic beverages prohibited.

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

(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. 1-017. 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.

Part 2. Open Meetings Act

This meeting was open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

Part 3. Severability Clause

If any section, sub-section, clause, phrase, or portion of this ordinance shall be held unconstitutional or invalid by a court of competent jurisdiction, such section, sub-section, sentence, clause, phrase or portion shall be deemed to be a separate, distinct and independent provision and such invalidity shall not affect the validity of the remaining portions.

Part 4. Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Part 5. Publication

The City Secretary is hereby authorized and directed to cause publication of this Ordinance in accordance with law.

Part 6. Effective Date

This Ordinance shall be in force and effect from and after its publication as required by law.

PASSED and ADOPTED this 9th day of November 2026.

Dickey Baynes, Mayor
City of Newcastle, Texas

ATTEST:

Alice Winder, City Secretary