

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Development and Infrastructure Services
AGENDA DATE: Introduction: May 15, 2007, Public Hearing June 5, 2007
CONTACT PERSON/PHONE: Larry Nichols, Building Official – 541-4556
DISTRICT(S) AFFECTED: City-wide

SUBJECT:

An Ordinance amending Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code by adding Chapter 5.30 (Flea Market Operator Permit), Chapter 5.34 (Home Occupation License) and Chapter 5.94 (Sign Permit Fees, Licenses and Bonds) in order to set forth the requirements for licensing, permits, fees and revocation of such licenses; providing for a criminal penalty of a Class C Misdemeanor and a fine not to exceed Two Thousand Dollars (\$2,000.00); and a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day.

BACKGROUND / DISCUSSION:

As part of the Building and Zoning Advisory Committee (BZAC) review, sections of the existing text in Title 20 were recommended to be moved to other Titles of the code to more accurately reflect their purpose. Several of these sections pertained to permits, licenses, and registration fees for specific uses, and bonding requirements, all issues that are addressed in Title 5 (Business Taxes, Licenses and Regulations). This ordinance deletes sections relating to Flea Market Operator Permits, Home Occupation Licenses, and Sign Permit Licenses and Bonds from Title 20 and adds them to Title 5.

It was recommended to increase the amount of the required bond to \$50,000 from \$10,000 to more accurately reflect current values.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: R. Alan Shubert

APPROVED FOR AGENDA:

CITY MANAGER: Patricia D. Aduato, Deputy City Manager **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE EL PASO CITY CODE BY ADDING CHAPTER 5.30 (FLEA MARKET OPERATOR PERMIT), CHAPTER 5.34 (HOME OCCUPATION LICENSE) AND CHAPTER 5.94 (SIGN PERMIT FEES, LICENSES AND BONDS) IN ORDER TO SET FORTH THE REQUIREMENTS FOR LICENSING, PERMITS, FEES AND REVOCATION OF SUCH LICENSES. PROVIDING FOR A CRIMINAL PENALTY OF A CLASS C MISDEMEANOR AND A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); AND A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) PER DAY.

WHEREAS, in order to set forth the regulation of the qualifications of the installers of signage, and to add the requirements of a home occupation license and flea market operator, the regulations are being amended to update the provisions and relocate them within the El Paso City Code; and,

WHEREAS, the Building and Zoning Advisory Committee recommended the amendments enumerated herein in order to regulate certain businesses, and to establish procedures for the permitting and licensing of those businesses and the assessment of fees; and,

WHEREAS, the City Council finds these amendments are the minimum requirements in order to regulate these businesses in order to secure and promote the public health, safety and welfare of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code shall be amended to add Chapter 5.30 (Flea Market Operator Permit) to read as follows:

“5.30 FLEA MARKET OPERATOR PERMIT

A. Operator Permit Application and Processing.

1. First time application and renewal for an operator permit shall be made on a form provided by the Development Services Department.

2. A plot plan of the site area shall accompany the application and shall show the location and dimension of the following:

- a. All proposed vendor stalls/spaces, including food vendors,
- b. Off-street parking,
- c. Sanitary portables or fixed sanitary facilities,
- d. Existing or proposed structures and uses,
- e. Pedestrian walkways, fire accessways and required setback areas,

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f. Storage areas,

3. Within thirty (30) days of receipt of the application, the Development Services Department shall issue the operator permit if all applicable provisions have been met. If all applicable provisions have not been satisfied, then the application shall be denied and the permit shall not be issued, until the applicant complies with all applicable regulations.

5. A new operator's permit shall be required if the outdoor flea market is expanded or changed in any capacity or with any change in owner or operator of the outdoor flea market.

6. The annual fee for an operator permit shall be as established by formal action of the El Paso City Council, and shall be non-refundable.

7. The operator shall cooperate and permit the City to conduct inspections of the premises at reasonable times to ensure compliance with this chapter.

B. Permit denial, suspension and revocation.

1. The City may suspend or revoke any permit granted hereunder by serving the permittee with written notice by hand-delivery or certified mail, return-receipt requested, if the permittee is found to be in violation of the Code or found to pose a significant health risk to the public.

2. The Building Official shall issue the written notice of denial, suspension or revocation of a permit to the permittee and shall contain, as a minimum, the following:

- a. State the name and address of the location of the flea market and name of the permit holder;
- b. State the permit is denied, suspended or revoked;
- c. Indicate the reason(s) for the denial, suspension or revocation;
- d. Order all or a portion of the flea market to be closed and not accessible to the public;
- e. A statement prohibiting the further use and operation of the flea market;
- f. Recommended corrective measures to bring the structure or flea market into compliance with the requirements of this chapter and any other applicable provision of the Code;
- g. Establish a reasonable time limit for the completion of the corrective measures;
- h. State the permit, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and,
- i. State that the denial, suspension or revocation may be appealed to the Construction Board of Appeals.

3. The Building Official may post a sign at any location where a permit has been suspended or revoked pursuant to this chapter alerting the public that the location no longer has a valid permit.

C. Enforcement - Penalty

1. Civil and Criminal Penalties

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The Building Official shall have the power to administer and enforce the provisions of this chapter as may be required by governing law. Any person violating any provision of this chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this chapter is hereby declared to be a nuisance.

2. Criminal Prosecution

Any person violating any provision of this chapter shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this chapter is violated shall constitute a separate offense. An offense under this chapter is a Class C Misdemeanor.

3. Civil Remedies

Nothing in this chapter shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this chapter and to seek remedies as allowed by law, including, but not limited to the following:

- a. injunctive relief to prevent specific conduct that violates this chapter or to require specific conduct that is necessary for compliance with this chapter; and
- b. a civil penalty up to five hundred dollars (\$500.00) a day when it is shown that the defendant was notified of the provisions of this chapter and after receiving notice committed acts in violation of this chapter or failed to take action necessary for compliance with this chapter; and
- c. any other remedy available by law."

SECTION 2. That Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code shall be amended to add Chapter 5.34 (Home Occupation License) to read as follows:

"5.34 HOME OCCUPATION LICENSE

- A. Proof of a State of Texas license must be provided, where applicable, for child and adult care facilities prior to a home occupation license being granted.
- B. Application for a home occupation license shall be made on a form provided by the Development Services Department and shall be accompanied by the appropriate fee as may be established by formal action of the El Paso City Council. Such fee is non-refundable.
- C. As part of the application, the applicant shall provide written permission for the City of El Paso to conduct an inspection of the property that is subject of the application prior to a home occupation license is issued. Deficiencies will be noted in writing and must be corrected before the license is issued.
- D. A home occupation license expires after one year from the date of issuance and must be renewed on an annual basis. A request for renewal and renewal fee must be paid prior to expiration of the license. A penalty for late submittal of the home occupation license renewal shall result in a late fee of twenty percent of the renewal fee to be paid in addition to the renewal fee. If the licensee fails to fulfill any of the conditions stated herein, the City of El Paso may terminate such license within ten (10) days after providing written notice to the licensee of the

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failure to correct such deficiencies. The licensee may appeal the City of El Paso's decision to the Construction Board of Appeals.

E. Fees for new applications and renewals of home occupation licenses shall be as adopted by formal action of City Council, and shall be non-refundable.

F. License denial, suspension and revocation.

1. The Building Official may suspend or revoke any license granted hereunder by serving the licensee with written notice by hand-delivery or certified mail, return-receipt requested, if the licensee is found to be in violation of this chapter or found, in the opinion of the Building Official, to pose a significant health risk to the public.

2. The Building Official shall issue the written notice of denial, suspension or revocation of a license to the licensee and shall contain, as a minimum, the following:

- a. State the name and address of the location of the home occupation and name of the licensee;
- b. State the license is denied, suspended or revoked;
- c. Indicate the reason(s) for the denial, suspension or revocation;
- d. Order the portion of the dwelling used for a home occupation to be closed and not accessible to the public;
- e. A statement prohibiting the further use of the structure for a home occupation;
- f. Recommended corrective measures to bring the structure into compliance with the requirements of this chapter and any other applicable provision of the Code;
- g. Establish a reasonable time limit for the completion of the corrective measures;
- h. State the license, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and,
- i. State that the denial, suspension or revocation may be appealed to the Construction Board of Appeals.

3. The Building Official may post a sign at any location where a license has been suspended or revoked pursuant to this chapter alerting the public that the location no longer has a valid license.

G. Enforcement - Penalty

1. Civil and Criminal Penalties

The Building Official shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this ordinance is hereby declared to be a nuisance.

2. Criminal Prosecution

Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this ordinance

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is violated shall constitute a separate offense. An offense under this ordinance is a Class C Misdemeanor.

3. Civil Remedies

Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- a. injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and
- b. a civil penalty up to five hundred dollars (\$500.00) a day when it is shown that the defendant was notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
- c. any other remedy available by law."

SECTION 3. That Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code shall be amended to add Chapter 5.94 (Sign Permit Fees, Licenses and Bonds) to read as follows:

"5.94 SIGN PERMIT FEES, LICENSES AND BONDS

A. Sign Permit Fees

Sign permit fees as established by formal action of the El Paso City Council shall be paid at the time of issuance of the permit. For purposes of sign permit fees, the formulas and valuations shall set forth the calculation to determine the amount of the permit fees owed. The formulas and valuations shall be established by formal action of the El Paso City Council.

1. Plan Checking Fee and Plan Deposit.

a. For a preliminary plan review requested prior to application for a permit, the fee shall be determined by formal action of the City Council of the City of El Paso.

b. At the time of submitting plans for an application, a deposit equal to the preliminary plan review fee shall be required and paid in the amount of one percent of the estimated value of the sign.

2. Portable Sign Permit Fees and Renewal. The permit fee for any new or relocated portable sign shall be established by formal action of the El Paso City Council.

3. Off-Premise Sign Demolition Permits. The permit fee for off-premise sign demolition permits shall be established by formal action of the El Paso City Council.

4. Replacement Permits. The fee for a replacement permit shall be established by formal action of the El Paso City Council.

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B. LICENSES AND BONDS

1. License Required.

a. Except as provided herein, no person shall engage in the business of erecting, installing, servicing or maintaining signs for sale, rental or leasing purposes, and no permit shall be issued for the erection, construction or demolition of a sign, until such person shall have received from the Development Services Department a license to conduct such work, and has paid to the city a fee as established by formal action of the El Paso City Council.

2. Exemptions. Compliance with this section shall not be required in the following instances:

a. If the type of sign installed is exempt from the applicable provisions of Title 20 (Zoning) and does not require a permit prior to installation.

b. Electrical sign contractor licensed by the state and the sign installed requires electricity as a source of energy or in the operation of the sign; provided, that all electrical work shall be in compliance with Title 18 (Building and Construction) of the El Paso City Code. A copy of the state license shall be provided to the City.

3. Term. All licenses issued pursuant to this chapter shall continue in full force for one year from the date of issuance, and may be renewed annually thereafter, unless the license has been suspended or revoked.

4. Renewal date. A person licensed under this chapter must renew his license within thirty (30) days prior to the expiration of their license or the license shall automatically expire and a new license shall be required prior to completing any work to which this chapter is applicable.

5. License Fees. A license or renewal fee shall be paid as part of the application and renewal submission, and is nonrefundable. The fee shall be paid in the amount as established by formal action of the El Paso City Council for all sign classifications, businesses engaged in painting signs and for the issuance of a duplicate license for one lost, destroyed or mutilated.

6. License Numbers. Each recipient of a license shall have painted, or placed, using a permanent type decal, within forty-eight hours after receipt of the license, the license number in a prominent position on all company vehicles used on job sites, as well as on all signs installed, erected or serviced by the licensee.

7. License Nontransferable. No license shall be transferable and no holder of any license issued under this chapter shall allow his name to be used by any other party, either for the purpose of doing work or obtaining a permit under the penalty of forfeiting his license, in addition to paying any fine levied under this chapter. The Development Services Department is authorized to refuse to issue permits to the holder of any license violating this provision. This provision shall not be construed to preclude or impede the use of subcontractors by any license

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holder, although in such event, the license holder shall be held responsible as though he performed the work personally.

8. Suspension or Revocation of License.

a. The City of El Paso may suspend or revoke the license and permit privileges of a person, or request the suspension of a state licensed electrical sign contractor after determining that the person is guilty of:

- (1) fraud or deceit in obtaining a license under this chapter;
- (2) allowing a person other than the licensee who obtained the sign permit, or an employee acting under the direct supervision of that person, to perform work for which that permit is required;
- (3) gross negligence, incompetency, or misconduct in the performance of sign work;
- (4) intentionally making a false or misleading material statement on the application for a sign installation permit, sign license application or to support the zoning administrator's determination that a particular sign is a nonconforming sign;
- (5) installing, moving, or structurally altering or repairing a sign in violation of this chapter; or
- (6) failing to maintain the insurance required by this chapter.

b. A licensee may appeal the Building Official's decision to revoke or suspend the licensee's license to the Construction Board of Appeals.

c. A person whose license is revoked may not apply for a license for a period of one year after the revocation.

d. Operating while suspended or revoked. It shall be unlawful for any person whose license has been suspended or revoked by the Board to engage in, construct, install or otherwise attempt any work regarding signs for which a permit is required under Title 20 (Zoning) of the El Paso City Code.

9. Insurance and Indemnification Requirements.

a. Prior to the issuance of a license all persons applying for a license shall agree to indemnify and hold harmless the city, its members, agents, officers and employees, their successors and assigns, individually or collectively, from and against all liability for any fines, claims, suits, demands, action or causes of action of any kind and nature including, but not limited to, personal injury or death, and property damage, in any way arising out of or resulting from any activity or operation of the licensee. The licensee shall pay all expenses incurred in defending against any such claims made against the city; however, the license holder shall not be

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liable for any injury, damage, or loss caused by the sole negligence or willful misconduct of the city, its agents or employees. The licensee and the city shall give prompt and timely notice of any claim made, or suit initiated which in any way affects or might affect either party.

b. The licensee shall procure and maintain at his own expense, the following types and amounts of insurance:

Type	Amount
(1) Workers compensation and employer's liability	Statutory amount of \$100,000 for each accident
(2) Comprehensive general (public) liability, to include, but not be limited to, the following:	Combined single limit for bodily injury or property damage: \$300,000 or its equivalent
(a) Premises/operations	
(b) Independent contractors	
(c) Personal injury	
(d) Products/completed operations	
(e) Contractual liability	
(f) Explosion, collapse and underground property damage	
(3) Comprehensive automobile liability, to include coverage for:	Combined single limit for bodily injury or property damage: \$300,000 or its equivalent
(a) Owned/leased automobiles.	
(b) Non-owned automobiles.	
(c) Hired cars.	

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c. In addition, the insurance policy shall state that the City shall:

- (1) Be named as additional insured/or insured, as its interest may appear.
- (2) Be provided with a waiver of subrogation.
- (3) Be provided with thirty (30) days advance notice, in writing, of cancellation or material change.
- (4) Be provided with certificates of insurance evidencing the required insurance types and amounts, prior to the commencement of the city's fiscal year. Notices and certificates of insurance shall be provided to the director of development services and the city clerk.

d. Should a person holding a license sever employment connections with a firm which is jointly covered by the same insurance, a new certificate showing proper coverage will be required of both parties prior to either party receiving a new or renewal license.

e. If the insurance is canceled or renewed at periods other than the annual license renewal date, new evidence to show that the licensee is maintaining proper coverage shall be furnished to the city.

10. Bond Required.

a. No person shall erect, install or maintain any sign within the city, for which a permit is required, until such person has filed with the Building Official a bond in the sum of fifty thousand dollars (\$50,000.00). The licensee shall provide the bond annually to the city no later than thirty (30) days prior to the expiration of the bond currently in force. Such bond shall ensure the full and faithful compliance by the licensee of all the covenants, terms, and conditions of the construction codes of the city and the laws of the state; and provide for the indemnification of the city for any and all damages or liabilities that may accrue to or against the city by reason of erection, maintenance, demolition, repair, removal or defects in or collapse of any sign erected by or under the direction of such person; and further provide for the indemnification of any person who shall, upon public property of the city, incur damages for which the person erecting such sign is liable by reason of the erection, maintenance, demolition, repair, removal or defects in or collapse of any such sign. Persons, who erect, install or maintain and small businesses engaged only in sign painting shall be exempt from bonding provisions.

b. Bond Recovery and Disposition. The Building Official shall report each violation of this chapter to the city attorney who shall immediately make demand on the compliance bond holder and his sureties for the amount of liability for each offense. Should the compliance bond holder default, the city attorney may file suit upon the bond or seek any other lawful remedy for recovery of any amount due the city.

11. Enforcement - Penalty

a. Civil and Criminal Penalties

The Building Official shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this ordinance is hereby declared to be a nuisance.

b. Criminal Prosecution

Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a Class C Misdemeanor.

c. Civil Remedies

Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

(1) injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and

(2) a civil penalty up to five hundred dollars (\$500.00) a day when it is shown that the defendant was notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and

(3) any other remedy available by law.

12. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.”

SECTION 4. Except as herein amended Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2007.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

R. Alan Shubert, P.E., C.B.O.
Director, Development Services Department

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