

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

DEPARTMENT: Environmental Services

AGENDA DATE: October 18, 2011 – Introduction
November 1, 2011 – Public Hearing

CONTACT PERSON NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 621-6719

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

An Ordinance amending Title 9 (Health and Safety), Chapter 9.52 (Fire Prevention Code), Section 9.52.020 (Adopted), 105.6 (Operational Permits) by adding Subsection 105.6.52 (Outside Storage of Combustible Material); The penalty as provided in El Paso City Code Subsection 9.52.030.19 (Violation Penalties).

BACKGROUND / DISCUSSION:

In an effort to increase the protection of public health and safety, the Environmental Services Department (ESD) and Fire Department (EPFD) were tasked with implementing an operational permit for facilities that store more than 75 cubic yards of combustible material outside. While this permit does not specifically apply to any particular operation, the industrial sector most affected is recyclers that deal with outside storage of combustible material. In developing the requirements for the permit, ESD and FD worked extensively with stakeholders, both in meetings and facility tours. In addition, diligence was taken to ensure that the permit requirements referenced established International Fire Code and National Fire Protection Association standards for fire safety. The proposed Outside Storage of Combustible Material Permit places restrictions on the manner in which combustible material is stored at a facility and requires permit holders to secure financial assurance to cover damage caused to third parties during a fire at the facility, benefitting the health and safety of City residents.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

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AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.52 (FIRE PREVENTION CODE), SECTION 9.52.020 (ADOPTED), 105.6 (Operational Permits) BY ADDING SUBSECTION 105.6.52 (Outside Storage of Combustible Material); THE PENALTY AS PROVIDED IN EL PASO CITY CODE SUBSECTION 9.52.030.19 (VIOLATION PENALTIES).

WHEREAS, the City Council of the City of El Paso has determined that it is in the interest of the public health, safety, and welfare of the residents of the City of El Paso to adopt updated standards to assist in the prevention of fires at facilities that store combustible materials outdoors within the City limits of the City of El Paso and its extraterritorial jurisdiction.

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

Section 1. That Title 9 (Health and Safety), Chapter 9.52 (Fire Prevention Code), Section 9.52.020 (Adopted), 105.6 (Required operational permits) shall be hereby amended in its entirety as follows:

105.6 Required Operational Permits. The code official is authorized to issue operational permits and/or licenses for the operations set forth in sections 105.6.1 through 105.6.52.

Section 2. That Title 9 (Health and Safety), Chapter 9.52 (Fire Prevention Code), Section 9.52.020 (Adopted), 105.6.52 (Outside Storage of Combustible Material) shall be hereby added in its entirety as follows:

105.6.52 Outside Storage of Combustible Material Permit. Except for operations subject to 105.6.25, 105.6.29, and 105.6.42, an operational permit is required for facilities located at non-residential properties, where the Outside Storage of Combustible Material exists, in a quantity greater than de minimis, as defined in this Subsection.

105.6.52.1 Definitions.

"Baled storage" means combustible material that has been placed in containers other than fully-enclosed containers approved by the Department or grouped together by use of metal or plastic bands for ease in loading, transporting and storing in units.

"Combustible Material" means any material or solid waste that poses a significant fire hazard if ignited by a flame, spark, or any other source of ignition, will readily burn under such conditions, and includes, but is not limited to paper, cardboard, wood, plastics, rubber and fluff (as defined in this sub chapter). Combustible Material shall not include non-solids, or explosives, as defined by Chapter 33 of the IFC.

"De minimis" means the Outside Storage of Combustible Material (as defined in this sub chapter) of a total volume of less than seventy-five (75) cubic yards at a facility.

"Department" means the Fire Department of the City of El Paso, Texas.

"Fluff" means any material that is a by-product of the recycling process that includes but is not limited to, shredding operations, metals separation, compacting or transport operations.

"Loose storage" means the storage of combustible material that is neither baled nor enclosed in containers.

"Non-residential Property" means any property in a district other than a residential- or apartment-zoned district.

"Outside Storage" means storage of any Combustible Material not in a building or structure. Storage of Combustible Material in a fully-enclosed container approved by the Department shall not be considered Outside Storage.

"Pile" means any accumulation of Combustible Material in a heap or mound.

"Unit" means a separate and distinct aggregate of homogeneous stacks, bales, pallet storage units, containers and/or piles of Combustible Material.

105.6.52.2 Permit Application.

The owner or a legally-authorized representative of the owner of a facility regulated by this ordinance shall complete and submit a permit application to the Department, in accordance with the following requirements:

- A. An applicant shall submit to the Department an application for an Outside Storage of Combustible Material Permit upon exceeding the de minimis volume of Combustible Material stored outside at the facility;
- B. An applicant that holds a current, valid Outside Combustible Material Storage Permit shall submit a permit renewal application 60 days prior to the permit's expiration;
- C. An applicant for an initial permit or permit renewal shall submit at a minimum, the following information, which shall be requested on the permit application form supplied by the Department:
 1. Name and physical address of facility;
 2. Name and mailing address of facility owner;
 3. Name and mailing address of property owner;
 4. Description of all Combustible Material stored outside;
 5. Estimated quantity (volume) of Combustible Material stored outside;
 6. Facility diagram indicating storage area locations for each Unit stored outside;
 7. Method of storage for each Unit (baled or loose);
 8. Proof of financial responsibility in accordance with Section 105.6.52.8 of this ordinance and as required by any other applicable ordinance; and,
 9. The appropriate Tier 1 or Tier 2 permit fee in the amount set by City Council through its budget resolution or other duly adopted resolution.
- D. If an owner or a legally-authorized representative of the owner of a facility regulated by this Section fails to submit to the Department an application required by this Section, said failure shall be considered a violation of this Section and shall be subject to the penalties described in Section 9.52.030.19.

105.6.52.3 Issuance, Term and Denial of Permit

- A. The Department shall review all permit applications submitted in accordance with Section 105.6.52.2 and,
- B. Within 60 days of a permit renewal or new permit application submitted in accordance with Subsection 105.6.52.2, the Department shall issue a permit renewal or a new permit

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which, unless revoked, shall be valid for a period of twelve (12) calendar months to the applicant, or

- C. The Department shall deny the application in writing and shall inform the applicant of any deficiencies of the permit application if the permit application was incomplete, or
- D. Within 30 days of a permit application for a previously revoked permit, the Department shall deny the application in writing if the revocation period of twelve (12) months has not yet elapsed.

105.6.52.4 Revocation of Permit.

The Department may revoke, for a period of up to twelve (12) calendar months from date of written notification, an Outside Storage of Combustible Material Permit issued to an owner or a legally authorized representative of the owner of a facility if one of the following conditions occur:

- A. Applicant has supplied the Department false, incorrect or misleading information on an application for permit renewal or new permit;
- B. More than two (2) written notices of violation of this Section resulting from inspections by the Fire Official have been issued within a period of twelve (12) months to a holder of a current, valid permit; or
- C. During or immediately following a fire at a permitted facility, a violation of this Section has occurred and has been documented by the Fire Official.

105.6.52.5 Right to Appeal Permit Revocation.

The right to appeal a permit revocation is provided in the City Fire Prevention Code 9.52.030.18 Section 108.1 Board of Appeals and in accordance with Chapter 2.30 of the City Code.

105.6.52.6 Permit Requirements.

A. Tier 1

For facilities that maintain no more than one (1) Unit of loose storage and/or no more than one (1) Unit of baled storage, the following requirements shall be met:

1. A facility fire plan, subject to approval by the Fire Official, that includes: a description of all Combustible Material at the facility and the manner in which it is stored, routes of facility evacuation for employees, fire awareness and prevention orientation training for facility employees, site plan indicating fixed structures, Units and fire extinguisher locations, a facility fire alarm system, and a description of security measures to restrict public access to Combustible Material stored outside;
2. A minimum of one (1) type 2A20BC fire extinguisher per Unit, with a distance of no more than 50 feet between the extinguisher and the closest point of the Unit;
3. A minimum of one (1) type 2A20BC fire extinguisher mounted on each vehicle used to manage, load, or move Combustible Material;
4. Installation of a security measure to restrict public access to Combustible Material stored outside by use of a physical barrier, such as a fence or wall, in accordance with applicable zoning ordinance(s);
5. Payment of Outside Storage of Combustible Material Permit Tier 1 permit fee in the amount set by City Council through its budget resolution or other duly adopted resolution.
6. Proof of Financial Responsibility for the facility, in the principal sum of \$1,000,000.00 and in accordance with Subsection 105.6.52.8 of this ordinance.

B. Tier 2

For facilities that maintain more than one (1) Unit of loose storage, more than two (2) Units of baled storage, or any combination of more than two (2) Units of loose or baled storage, the following requirements shall be met:

1. Provisions 1 – 4, permit requirements for Tier 1;
2. Payment of Outside Storage of Combustible Material Permit Tier 2 permit fee in the amount set by City Council through its budget resolution or other duly adopted resolution; and
3. Proof of Financial Responsibility for the facility, in the principal sum of \$2,000,000.00 and in accordance with Subsection 105.6.52.8 of this ordinance.

105.6.52.7 Storage.

Combustible Material stored outside shall be maintained in accordance with the following requirements:

A. For Units of loose storage:

1. Unit height shall not exceed eight (8) feet;
2. Unit footprint shall not exceed a perimeter measurement of three hundred (300) feet;
3. A buffer zone shall be established between each Unit and the physical barrier indicated in the permit application of at least twenty (20) feet; and
4. A storage separation space shall be established between individual Units of Combustible Material of at least twenty (20) feet.

B. For Units of baled storage:

1. Unit height shall not exceed twelve (12) feet;
2. Unit footprint shall not exceed a perimeter measurement of five hundred (500) feet;
3. A buffer zone shall be established between each Unit and the physical barrier indicated in the permit application of at least twenty (20) feet; and
4. A storage separation space shall be established between individual Units of Combustible Material of at least twenty (20) feet.

C. Storage Separation Space and Fire Safety Buffer Zone

1. No storage of Combustible Material shall be allowed within the buffer zone or in the storage separation space described in this Subsection. In addition, said buffer zone and storage separation space must at all times be kept free and clear of equipment, material and/or accumulation of waste.
2. A reduction to ten (10) feet for the fire safety buffer zone, as described in the immediately preceding paragraph, may be allowed at a facility where Combustible Material is stored in containers approved by the Department.
3. ~~A reduction of the storage separation space may be allowed where the~~ Combustible Material is stored in containers approved by the Department.

105.6.52.8 Financial Responsibility.

- A. Insurance.** No permit applicant shall be issued a permit until the applicant presents evidence satisfactory to the Fire Official that the applicant meets the following minimum insurance requirements:

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4. The applicant shall procure and shall maintain during the term of the permit such public liability insurance naming the permittee performing work associated with the permit as insured, co-insured or additionally insured for claims for damages for personal injury, including accidental death, as well as for claim for property damage that may arise from outside storage of combustible material associated with the facility identified on the permit.
5. Minimum limits of liability and coverage shall be \$1,000,000.00 or \$2,000,000.00, as required by the permit, for each occurrence and in the aggregate. Permit applicants that are governmental entities may comply with the insurance requirements of this Subsection by providing certification that they are self-insured.
6. Such insurance shall be written by an accredited insurance company under the supervision of the Board of Insurance Commissioners of the State of Texas. Evidence of compliance with these insurance requirements shall be considered as having been met when a copy of the insurance policy or a certificate of insurance has been filed with and approved by the fire official. Such policy shall include an endorsement that the City is named as an additional insured to the full amount of the policy limits and that the fire official shall be notified at least thirty (30) days in advance in the event the policy or policies are canceled and ten (10) days in advance for non-payment of policy premiums. The certificate of insurance shall recite or attach such endorsement for additional insured and the notice requirements. The permittee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees, and permittee, his officers, agents, servants or employees. Failure to keep the insurance policy in full force and effect throughout the term of the permit shall be grounds for permit revocation.
7. A permit applicant who has provided certificates of insurance to the City pursuant to the requirements of a Chapter of the City Code other than this Subchapter that meet all of the requirements established in this Subchapter shall not be required to obtain an additional insurance but is required to provide such certificates of insurance showing present coverage as required in this Subchapter. A permittee who has multiple permits under this Chapter is required to provide only one current valid certificate of insurance for all such permits but may be required to provide a copy of the current certificate of insurance with each application under this Subchapter.

105.6.52.9 Nontransferable.

Permits issued under this chapter shall be personal to the permittee, and shall not be assigned or transferred to any other person or entity.

Section 3. Any application of this Section is subject to the requirements of this Chapter and Titles 5, 9, 15 and 20 of the City Code, and whichever being the more restrictive shall govern.

Section 4. This ordinance, including permit applicability, shall take effect on March 1, 2012.

Section 5. Except as expressly herein amended, Title 9 (Health and safety), Chapter 9.52 (Fire prevention code), of the El Paso City Code shall remain in full force and effect.

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ADOPTED this _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Otto Drozd, III
Fire Chief