



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

DEPARTMENT: ENGINEERING & CONSTRUCTION
MANAGEMENT DEPARTMENT

AGENDA DATE: INTRODUCTION: OCT 4, 2011
PUBLIC HEARING: OCT 18, 2011

CONTACT PERSON NAME AND PHONE NUMBER: R. ALAN
SHUBERT, (915) 541-4428

DISTRICT(S) AFFECTED: ALL

SUBJECT:

An ordinance amending Title 18 (Building and Construction), Chapter 18.02 (Building and Construction Administrative Code) Section 18.02.108.5.1 (Bond Required), of the El Paso City Code, decreasing the required bond amount for contractors from \$50,000.00 to \$25,000.00 and allowing for additional exceptions to the \$25,000.00 bond requirement, the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.

BACKGROUND / DISCUSSION:

Exceptions are being provided for work that does not rise to the level of risk for which a \$25,000 is required.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

LRC – Sept 15, 2011 approved to take to council for action.

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*****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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Engineering & Construction Management
Two Civic Center Plaza – 5th Floor · El Paso, Texas 79901
Phone (915) 541-4622 · Fax (915) 541-4799

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 18 (BUILDING AND CONSTRUCTION), CHAPTER 18.02 (BUILDING AND CONSTRUCTION ADMINISTRATIVE CODE) SECTION 18.02.108.5.1 (BOND REQUIRED), OF THE EL PASO CITY CODE, DECREASING THE REQUIRED BOND AMOUNT FOR CONTRACTORS FROM \$50,000.00 TO \$25,000.00 AND ALLOWING FOR ADDITIONAL EXCEPTIONS TO THE \$25,000.00 BOND REQUIREMENT, THE PENALTY BEING AS PROVIDED IN SECTION 18.02.107 (VIOLATIONS AND PENALTIES) OF THE EL PASO CITY CODE.

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

Section 1. That 18.02 (Building and Construction Administrative Code), Section 18.02.108.5.1 (Bond required), of the El Paso City Code be deleted in its entirety and replaced with the following:

18.02.108.5.1 Bond required. It shall be the duty of every contractor, owner, firm, partnership, corporation, builder who shall make contracts to construct, install, maintain or repair buildings, structures or systems for which a permit is required, and every contractor, owner, or builder making such contracts and subletting the same, or any part thereof, to have on file with the City, a bond in the sum of twenty five thousand dollars (\$25,000.00) executed in a form prescribed and approved by the city attorney. This section shall apply to plumbing, mechanical, electrical, irrigation and fire contractors acting as general contractors, whether or not state law requires a bond for their particular discipline.

Exceptions:

1. The following type of work shall require a bond in the sum of \$10,000.00 executed in the form prescribed and approved by the city attorney:
 - a. Irrigation installations
 - b. Site lighting and landscape installations
 - c. Temporary structure placement
 - d. Mobile placement permits
 - e. Temporary sign placements
 - f. Tents in excess of 200 square feet
 - g. Fences
 - h. Patch & paint permits
 - i. Pavement cuts or excavation in the public right of way.

However, the building official shall have the authority to require a bond in the amount of \$25,000.00 if the subject work exceeds \$10,000.00 in valuation.

2. The following type of work shall not require a bond:
- a. Residential property owners doing all the construction work or who will be hiring workers without employing a licensed contractor to perform the construction work on the residence they claim as their homestead.
 - b. Federal, state, county and city agencies and departments performing building work on their facilities and using only their employees to perform the construction work.
 - c. Commercial building and facilities owners, agents or lessees requesting permits for change of occupancy permits or minor nonstructural remodeling work which does not affect means of egress, such as non-load bearing partitions within tenant spaces and whose cost does not exceed five thousand dollars.

Section 2. Except as herein provided, Title 18 (Building and Construction) shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

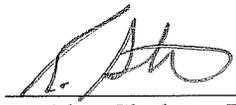
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
City Engineer

**ENGINEERING AND CONSTRUCTION
MANAGEMENT DEPARTMENT**



MEMORANDUM

DATE: September 26, 2011
TO: Honorable Mayor & City Council
FROM: Alan Shubert, P.E.
City Engineer
SUBJECT: **Contractors Bond**

This memorandum is drafted in response to requests for more information and questions posed at the September 15th Legislative Review Committee and provides requested information regarding bonds in various municipalities in the State of Texas. The specific questions posed were:

- Obtain the current cost of bonds
- Obtain further information regarding bond requirements in other cities in Texas
- Assess the average roofing costs in El Paso
- Explain how the \$50,000 bond amount was determined

Information was gathered from Mr. John Rindt, President National Association of Surety Bond Producers, and Mr. Richard King, President of the El Paso Roofing Association as well as direct contact with representatives from the cities identified.

Current cost of bonds is between 1% to 3% of the face of the bond depending on other factors such as track record, years in business, credit worthiness/rating, etc.

Information gathered from representatives in other cities includes:
Abilene requires a \$25,000 as well as provides for lesser bond amounts for other trades/activities such as sign contractors etc.
Amarillo - \$20,000

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Austin - no contractor requirements (no bond or insurance required) for registration
Beaumont - \$15,000 as well as lesser bond amounts for specific trades/activities
Fort Worth - \$25,000 as well as lesser bond amounts for specific trades/activities
Houston - \$25,000 as well as lesser bond amounts for specific trades/activities
Lubbock - \$10,000 bond OR City is holder of Certificate of Liability for \$100,000
Midland - bond amounts dependent on specific trades/activities
San Antonio - City is holder of Certificate of Liability for \$100,000 with no bond required

Information on the average costs of roofing in El Paso includes:
Average home of 2000 sq. ft. (30 squares) composed of shingles would cost between \$7,500 & \$10,000, a flat roof would cost approximately \$10,500
Highest cost for local roof was approximately \$70,000 with smallest job costing approximately \$3,500
An average of 2 to 3 roofs per week would be optimum depending on crew size (100 or so jobs per crew annually)

How the \$50,000 bond amount was determined:
Mr. Rindt states that there has been a very high level of claims on bonds over the past three to four years. In fiscal year 09-10 a significantly greater number of permits were issued due to several wind storms and hail storms that year which may account for increase in level of activity in bond claims. In addition that same year a significant number of claims exceeded their bond limit of \$10,000. In the most extreme cases, the claims reached over \$40,000 leaving a number of residents without recourse. Those extreme cases were the basis for setting the bond amount at \$50,000

Currently there are approximately 850 contractors that have obtained the \$50,000 bond and registered with the City. These are in addition to those that do not require a bond such as Electrical, Mechanical and Plumbing contractors who are licensed by the State. Given the continuing research regarding bond amounts in Texas it would appear that the current \$50,000 bond amount should be reduced to \$25,000 in addition to providing for the exceptions identified previously.

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**ENGINEERING AND CONSTRUCTION
MANAGEMENT DEPARTMENT**



MEMORANDUM

DATE: September 27, 2011
TO: Honorable Mayor and City Council
FROM: R. Alan Shubert, P.E.
City Engineer
SUBJECT: Contractor Bond Requirements

This memorandum outlines some additional information relative to the proposed ordinance amendment scheduled for introduction on the October 4th agenda and public hearing to follow on October 18th.

Background:

Historically, the department has received several citizen complaints and complaints from members of Council concerning instances of contractor default. These concerns were exacerbated in 2009-2010 when an influx of permits were issued due to several wind and hail storms that resulted in claims often exceeding the prior bond limit of \$10,000.

In addition, some industry representatives had expressed an interest in creating regulations that require more professional service from the industry and create financial guarantees for work being done.

As an opportunity to address these variant requests, staff researched acceptable thresholds and discussed a proposed increase with surety bond producers and impacted stakeholders. As a result, the contractor bond requirement of \$50,000 was instituted with the comprehensive vetting process to update all technical codes. The latest series of technical codes was adopted by the City Council on September 21, 2010 and took effect on January 1, 2011.

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Proposed Amendment:

On Sept. 15, 2011, the LRC directed us to take this issue to the full council. At the request of the City Manager and Legislative Review Committee, staff has taken another look at the new bond requirements in place to determine if any modifications are warranted.

Over the last several weeks, additional research and benchmarking with other Texas cities was conducted to evaluate best practices. Among the communities surveyed, the bond amount of \$25,000 was most reflective of regulatory standards that align with the City of El Paso. Additional discussions with industry contacts and the President of the National Association of Surety Bond Producers, Mr. John Rindt also helped solidify the revisions brought forward for City Council consideration.

The proposed ordinance amendment being introduced on October 4, 2011 reduces the required bond amount for contractors from \$50,000 to \$25,000. Staff does not propose to modify the bond term from the existing two years, as we have experienced many instances where building code deficiencies are found after one full year has passed. Additional exception language is also included to address minor construction activities with an appropriate bond requirement at the \$10,000 level, such as temporary sign placements, fences and patch and repair. Lastly, general exceptions are also clarified.

Included with this memo for your review is the ordinance proposed by staff. I hope this meets with your approval. If you have any questions, please call me at 915-541-4428. Thanks for your attention and interest in this very important matter.

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ENGINEERING AND CONSTRUCTION MANAGEMENT DEPARTMENT

TO: Honorable Mayor & City Council

FROM: Alan Shubert, P.E.
City Engineer

SUBJECT: **Contractor Permit Bond Requirements: Bond Limits and Term**

** Content below sent via e-mail on 10/06/2011*

Honorable Mayor and City Council: Please see below. This is the final diligence requested at the LRC; the comparison of bond terms to other municipalities in Texas. In addition, we have included a narrative describing the meaning of the term and project coverage limits.

City	Amount	Term
Abilene	25k	1 year
Amarillo	20k	1 year plus extensions thereof
Fort Worth	25k	2 years
Houston	25k	Concurrent with license period and extensions thereof
Lubbock	10k	1 year

In discussions with William Peterson, Vice President CNA Surety, whose local office underwrites a number of these bonds, he further explained general conditions under which contractor bonds are provided.

The bond language includes a limit amount (sometimes called a penal sum) and the term in which the bond is in effect. The limit of the bond is the maximum that the Surety will be liable for during the term of the bond if the principal (contractor) fails to comply.

The term of the bond is the period of time in which an obligee (property owner where work is conducted) must submit a claim. The term of the bond is generally no less than a one year period; or tied to the contractor's license period allowing the bond to be in effect as long as the contractor's license is in effect, or other time period specified in the bond form.

Mr. Peterson assured us that bond providers with whom he is associated generally allow for claims "within a reasonable period of time" outside the actual term of the bond (days or weeks)

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Bond forms may also contain language that requires the Surety to notify the principal and other identified parties when and if the bond is terminated by the Surety.

A two year bond term is not out of the ordinary however most municipalities provide their own bond forms and Surety's are concerned over the possible cumulative nature of the bond limit over multiple years. A bond limit of \$50,000 or \$25,000 over a two year period can be construed as a total Surety liability of \$100,000 or \$50,000.

The two year term was developed for the City of El Paso because newly constructed residences generally took several months subsequent to final construction before an owner took actual possession that limited the time frame for discovering any possible defects under the purview of the bond. Staff feels strongly that the two year term is important. We have had many issues where citizens have discovered code deficiencies in their homes and other projects well after occupying the structure for a year. We are recommending the same practice that Ft. Worth uses.

In addition, we have discovered that there are at least two municipalities where bond requirements are equal to or higher than ours. Wichita Falls requires a \$100,000 permit bond amount. Texarkana, TX requires a \$50,000 amount.

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Contractor Permit Bond Requirements

Proposed revisions to 18.02.108.5.1



October 18, 2011



Background

- Historically, several citizen complaints and requests from Council representatives received concerning instances of contractor default
 - Exacerbated in 2009-2010 given influx of permits due to wind and hail storms
 - Resulted in claims often exceeding prior bond limit of \$10,000
- Some industry representatives expressed interest in increasing bond requirement
 - Promotes and protects quality of work
 - Creates financial guarantees



Background

- Summer-Fall 2010: Staff researched acceptable permit bond thresholds nationwide
 - Discussed a proposed increase with surety bond producers and impacted stakeholders
 - Reviewed current claim trends for community to identify comparable construction value
 - Aligned with comprehensive update of technical building codes
- Latest series of technical codes adopted by the City Council on September 21, 2010 and took effect on January 1, 2011
 - Contractor bond requirement of \$50,000 enacted



Key Factors Supporting \$50K Limit:

- Increased level of consumer protection to address claim activities at the time
- Raised industry accountability responsive to some industry comments received
 - Included Border Roofing Contractors Association
- Not unusual bond amount on a national scale
 - National Association of Surety Bond Producers (2010)
- Other Texas communities with bond limit of \$50K or higher
 - Texarkana at \$50,000
 - Wichita Falls at \$100,000



Current Requirements Revisited

- Additional diligence performed to determine if modifications warranted
 - Responsive to comments received since adoption
 - Inability of some local firms to meet new surety bond producer requirements
 - Benchmarking with other Texas Cities
- Closer review of comparative data
 - Additional discussions with industry contacts and the National Association of Surety Bond Producers
 - Among communities surveyed, bond amount of \$25,000 most reflective of COEP regulatory standards



Texas City Comparison

City	Amount	Term	Other
Austin			No contractor requirements for registration
Abilene	25K	1 year	
Fort Worth	25K	2 years	
Houston	25K	Concurrent with license period and extensions thereof	
Amarillo	20K	1 year plus extensions thereof	
Lubbock	10K	1 year	
San Antonio			City is holder of Certificate of Liability for \$100,000



Proposed Amendments

- Reduces current contractor permit bond requirement from \$50,000 to \$25,000
 - Still places higher requirement on contractor industry
 - Lessens impact to smaller firms
 - Aligns El Paso with most major Texas cities
- Adds exception language for work that does not rise to the level of \$25,000
 - Following type of work shall require a \$10K bond:
 - Irrigation installations, site lighting, temporary structure placement, mobile placement permits, temporary sign permits, tents in excess of 200 square feet, fences and pavement cuts or excavation in the public right of way



Proposed Amendments

- Clarifies general exceptions for work that does require a bond
- Existing bond period of coverage of 2 years is not proposed for revision
 - According to research completed, not out of the ordinary
 - Developed for El Paso community as code deficiencies often noted after first year
 - Newly constructed residences generally take several months before owner occupied
 - Two-year period provides sufficient time frame to discover possible defects
 - In keeping with City of Fort Worth



ENGINEERING & CONSTRUCTION MANAGEMENT
BLANKET BUILDING & CONSTRUCTION BOND

BOND # _____

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as Principal, and _____, a Corporation authorized to do business under the laws of the State of Texas with its principal office in the City of _____, as Surety, are held and firmly bound unto the City of El Paso, Texas in the Sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) lawful money of the United States of America, to the payment of which sum, well and truly to be made, we bind ourselves, our executors, administrators, our successors, and assigns firmly by these presents.

SIGNED, SEALED AND DATED THIS _____ DAY OF _____, 20____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that, whereas the Principal is engaged or intends to engage in the business of contracting or subcontracting for the erection, alteration, repair, removal, demolition, use and occupancy of buildings, or construction of buildings, structures, and systems, or the installation and maintenance of Electrical, Gas, Mechanical, Plumbing, Irrigation or Fire systems, as provided in Chapter 18.02 of the El Paso City Code, or is engaged in or intends to engage in the business of cutting, excavating or drilling of monitoring wells in city right-of-way or on city owned property as provided in Chapter 13.08 of the El Paso City Code, or is engaged or intends to engage in any business within the city right-of-way which impedes or limits the general public from traversing the right-of-way as provided in Chapter 12.30 of the El Paso City Code.

NOW THEREFORE, if the Principal and its agents, employees, and subcontractors shall comply with all provisions, rules and regulations of the El Paso City Code which have been or may be hereafter established by the City of El Paso, and shall pay any damages which are sustained by the City or by the person for whom the work is done which are caused by failure of the Principal, its agents, employees, or subcontractors to comply with Titles 9, 12, 13, or 18 of the El Paso City Code, and shall indemnify the City against all claims arising out of such failure to comply, then this obligation shall be void, otherwise to remain in full force and effect. Provided, however, that any suit against this bond or the Principal shall be filed within two years after completion of the work in connection with which the violation occurred.

Provided further, that regardless of the number of claims which may be made against this bond in any one annual license period, the aggregate liability of the Surety for any and all claims, suits or actions under this bond in any one annual license period shall not exceed the amount stated above. Any revision of the bond amount shall not be cumulative within any one annual license period.

IT IS FURTHER UNDERSTOOD AND AGREED that the Surety may at any time terminate its liability by giving thirty days written notice to the Building Official, El Paso, Texas, and the Surety shall not be liable for any loss after the expiration of thirty days except for losses occurring while this bond is in full force and effect.

THIS BOND is to remain in force and to be binding for a period commencing on the _____ day of _____, 20____, and ending on the _____ day of _____, 20____.

PRINCIPAL'S NAME: _____, Principal
ADDRESS & PHONE #: _____
CITY, STATE AND ZIP CODE: _____

By: Name and Title

SURETY COMPANY: _____, Surety
SURETY AGENT: _____
SURETY TELEPHONE: _____

SEAL

By: Name and Title

Revised 06/13/2011 COSB

Current Bond Form



Questions/Comments