

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

CITY CLERK DEPT  
2019 JAN 30 PM1:42

**DEPARTMENT:** Planning & Inspections

**AGENDA DATE:** February 5, 2019  
**PUBLIC HEARING DATE:** February 19, 2019

**CONTACT PERSON NAME AND PHONE NUMBER:** Philip Etiwe, Director 915-212-1553  
Karl Rimkus, Operations Manager, 915-212-6053

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 1 - Create an Environment Conducive to Strong Sustainable Economic Development

**SUBGOAL:** 1.6 Provide business friendly permitting and inspection processes

**SUBJECT:**

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (RESERVED), IN ITS ENTIRETY TO INCLUDE A PERMIT REQUIREMENT FOR NON-RESIDENTIAL PROPERTY WHERE SOUND AMPLIFICATION EQUIPMENT IS USED TO EMIT SOUND IN AN OUTDOOR AREA FROM 10PM TO MIDNIGHT; THE PENALTY AS PROVIDED IN 5.03.120 OF THE EL PASO CITY CODE

**BACKGROUND / DISCUSSION:**

The increasing trend over the past several years in El Paso of business establishments providing outdoor areas for dining, smoking, and entertainment has at times caused problems when amplified sound is emitted, either from recordings or live bands, especially when the establishments are in close proximity to residential neighborhoods.

Currently, no rules specific to amplified sound at outdoor areas exist in the El Paso City Code and complaints against establishments have been addressed under the City's Noise Ordinance (Chapter 9.40, El Paso City Code), which has proven largely ineffective. The proposed ordinance (Chapter 5.03) would require a permit for business establishments that utilize amplified sound at outdoor areas after 10 p.m. The permit will regulate the outdoor area and would allow amplified sound until midnight.

Key aspects of the permit involve notification of residential property owners within 150 feet of the outdoor area, notification of all property owners within 350 feet of the outdoor area, inspection of the outdoor area by the City, maximum sound level of 70 dB at the establishment's property line, and the power of the City to suspend or revoke permit for more than two violations within the permit term of one year.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (RESERVED), IN ITS ENTIRETY TO INCLUDE A PERMIT REQUIREMENT FOR NON-RESIDENTIAL PROPERTY WHERE SOUND AMPLIFICATION EQUIPMENT IS USED TO EMIT SOUND IN AN OUTDOOR AREA FROM 10 PM TO MIDNIGHT; THE PENALTY AS PROVIDED IN 5.03.120 OF THE EL PASO CITY CODE.**

**WHEREAS**, City Code Title 5 (Business License and Permit Regulations), contains various sections regarding permits for various topics;

**WHEREAS**, City Council now wishes to move all of the language regarding permits from Title 9 for noise-related topics over to Title 5 of the City Code, so that only nuisance noise language remains in Chapter 9.40.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**Section 1.** That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Reserved), Section 5.03.010 – 5.03.0150 (Reserved) be amended as follows:

Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit)

**ARTICLE I – GENERAL PROVISIONS**

**5.03.010 Compliance Required**

- A. An Establishment regulated by this chapter must be in possession of a permit allowed by this chapter when emitting sound at any outdoor area at the premises covered by said permit.
- B. All persons subject to regulation by this Chapter 5.03 shall also comply with all applicable state law including Texas Penal Code Chapter 42.01.

**5.03.020 Definitions**

The following words shall have the following meanings:

- A. "Establishment" means any business entity in the City that utilizes amplification equipment at a non-residential property for the purpose of emitting sound at any outdoor area on the premises between the hours of 10:00 p.m. and 12:00 a.m.



- B. "Mixed Use Building" means a building that includes a residential occupancy and one or more other occupancy type group(s), as defined by the International Building Code.
- C. "Noise Nuisance" is as defined in Chapter 9.40 of the El Paso City Code, as amended.
- D. "Operations" means the continued use of sound amplification equipment at non-residential property for the purpose of emitting sound at any outdoor area on the premises between the hours of 10:00 p.m. and 12:00 a.m.
- E. "Outdoor Area" means any portion of the Establishment premises that is not fully enclosed by permanent, solid walls and a roof and is identified in the Sound Impact Plan where sound amplification equipment will be utilized for the enjoyment of Establishment customers; includes fixed, non-portable structures used in conjunction with sound amplification equipment, including but not limited to stages, decks, risers, and lighting support structures.
- F. "Permit" means a current, valid permit issued by the Permit Official, in accordance with this chapter in regulation of outdoor sound at an Establishment, and subject to the entire process set forth in Chapter 5.01 of the El Paso City Code, as amended, with any specific differences specified in this Chapter governing over the provisions of Chapter 5.01.
- G. "Permit Official" is as defined in Section 1.04.030.I of the El Paso City Code.
- H. "Residential property" means a parcel of real property which is developed and used in part or in whole for human habitation, other than transient uses such as hotels and motels.
- I. "Sound" means sound including but not limited to music, singing or spoken words that are conveyed through the utilization of sound amplification equipment; this definition does not include a noise nuisance, as defined in Chapter 9.40 of the El Paso City Code.
- J. "Sound Amplification Equipment" means a loud speaker, public address system, amplification system for voice and musical instruments, or other sound producing device that relies on electrical power to generate and/or amplify sound.
- K. "Sound Meter" – means a device approved by the Permit Official for the purpose of measuring the level of emitted sound (in decibels) and is recognized as adhering to an established industry technical standard and is capable of calibration to ensure precision and accuracy.

## **ARTICLE II.—PERMIT APPLICATION PROCESS**

### **5.03.030 Permit Application.**

- A. Permit Application. A person seeking to utilize sound amplification equipment at non-residential property for the purpose of emitting sound at any outdoor area on the premises between the hours of 10:00 p.m. and 12:00 a.m., shall submit a signed, verified application, with the established application fee(s), to the Permit Official. Applications shall be on forms obtained from the Permit Official, and shall contain, at a minimum, the following information:
1. The name, address and telephone number of the applicant;
  2. All names under which the applicant is doing business and has conducted business during the past three calendar years;
  3. The address of the person responsible for the Establishment;
  4. A current, valid certificate of occupancy issued by the City Building Official, as defined in Section 18.02.111.1 in the City Code, for the Establishment; and
  5. A Sound Impact Plan containing the following components:
    - a. A site diagram, including location of outdoor area(s) where amplified sound will be emitted, and location of sound amplification equipment;
    - b. Technical specifications of sound amplification equipment used in the outdoor area;
    - c. Description of any sound barrier(s) or sound mitigation device(s) installed in or around the outdoor area; and
    - d. Method of monitoring of sound amplification equipment by the Establishment owner, the operator of said equipment, or by an electronic device.
- B. A person responsible for an Establishment shall submit a permit application in accordance with this chapter and the policies and procedures established by the Permit Official.
- C. The person responsible for the Establishment shall, under penalty of perjury, swear that all information contained in the permit application and all information submitted in connection with the permit is true and correct.

### **5.03.040 Permit Application Processing.**

- A. Upon receipt of a proper application as provided in this Chapter and payment of the established fee, the Permit Official shall review and process the application.

**B. Notification.**

1. On behalf of the applicant, the City must issue written notice of intent to acquire a permit to any property owner and any neighborhood association within a 350-foot radius, measured from the center point of the outdoor area of the Establishment. Each notification shall provide recipients with pertinent information to inform the City of the recipients' opportunity to provide comment on the application.
2. An applicant shall post in a place visible to the public, such as in a window or on a wall facing the street address, at the Establishment written notice of the Establishment's intent to acquire a permit. Said notice must comply with the requirements listed in the application as to size, color, construction, etc., for purposes of public visibility. Said notice must be posted from the time the application is submitted to the Permit Official until the permit application is approved or denied. The notice shall provide recipients with pertinent information to inform the City of the recipients' opportunity to provide comment on an application. The written response to an opportunity to provide comment shall allow a person to submit evidence and specific reasons why the issuance of the permit would be detrimental to the community.
3. On behalf of the applicant, the City shall notify every abutting residential property owner and any other residential property owner(s) within a 150-foot radius, measured from the center point of the outdoor area of the Establishment, for the purpose of securing a written response from each notified property owner. Each notification shall provide recipients with pertinent information regarding his or her opportunity to contest an application. The written response to an opportunity to contest shall allow a person to submit evidence and specific reasons why the issuance of the permit would be detrimental to the community.
4. When an Establishment is located in a mixed use building, the City shall issue written notice of intent to acquire a permit to the building owner.
5. The Permit Official shall allow thirty (30) calendar days for the notified parties to submit comments or a written response to an opportunity to contest which should include evidence and identify specific reasons of why the issuance of the permit would be detrimental to the community prior to approving or denying a permit application.

- C. The Permit Official shall issue the permit unless he finds that the permit should be denied as provided in Section 5.03.080 of this Code.

**5.03.050 Term.**

A permit issued pursuant to this Chapter shall expire one year from the date of issuance, unless otherwise suspended or revoked.



#### **5.03.060 No Transfer of Permit.**

- A. In the event the Establishment changes its location, a new Permit shall be required. A Permit is not transferrable to a new address.
- B. In the event the person responsible for the Establishment changes, a new Permit shall be required. A Permit is not transferrable to a new owner of an Establishment.

#### **5.03.070 Renewal.**

- A. A Permit shall be renewed under the following conditions:
  - 1. If an application for renewal is submitted not more than forty-five (45) calendar days and not less than thirty (30) calendar days from the expiration of the Permit in effect;
  - 2. If the Permit in effect has not been suspended or revoked during the previous term; and
  - 3. If no more than two violations of the Permit have been documented during the previous term.
- B. A renewal application shall require any updates to the outdoor area and/or Sound Impact Plan.
- C. The notification required under 5.03.040.B shall not be required for the Permit renewal application process.

### **ARTICLE III.- DENIAL, SUSPENSION, REVOCATION AND APPEALS**

#### **5.03.080 Denial.**

The Permit Official shall deny an application for Permit whether original or renewal, by serving the applicant with written notice by hand delivery or certified mail, return-receipt requested, if:

- A. The applicant is found to be in violation of this chapter; or
- B. The permit official finds:
  - 1. That the applicant has supplied false or incorrect information on any application for a Permit;
  - 2. That the applicant has failed to supply all information required on the application form;

3. That the applicant has failed to pay the application fee;
  4. Failure to provide the notice required by 5.03.040B.2, as amended;
  5. That more than 25% of notified residential property owners within 150 feet of the outdoor area provide the Permit Official with a written response contesting the Permit;
  6. More than two violations of this Chapter within the term of the Permit (in the case of a renewal); or
  7. A failure to renew a Permit within thirty (30) calendar days of an expired Permit;
- C. In event that an applicant's current or prior Permit is under suspension, no new Permit shall be issued until the term of such suspension has expired.
- D. In the event that an applicant's current Permit is revoked, no new Permit shall be issued until the term of such revocation has expired.
- E. The Permit Official shall issue the written notice of denial of a Permit to the application which shall contain, as a minimum, the following:
1. The name of the applicant;
  2. Statement that the Permit is denied; and
  3. Reason(s) for the denial, as listed in subsection B.1-7 of this chapter.

#### **5.03.090 Suspension and Revocation.**

- A. The Permit Official may issue a written notice of intent to suspend a Permit for not more than sixty (60) calendar days or a written notice of intent to revoke an original or renewal Permit subject to this chapter if the Permit Official determines that any of the following is true:
1. The Permit holder supplied false or misleading information on any application for a Permit;
  2. Except in the case of a Compliance Plan approved by the Permit Official, during the time frame covered by the Plan, the Permit holder is found, after notice to the Permit Holder and opportunity for hearing, to be in violation of a provision of this Chapter or a rule adopted under this Chapter, including, but not limited to the issuance of more than ten (10) citations resulting from Chapter 9.40 of the City Code, or more than two (2) issued violations of the permit at the Establishment;
  3. The Permit holder is indebted to the City for fees or payment of penalties imposed by this Chapter or by a rule adopted under this Chapter.

- B. The Permit Official may issue a written notice of intent to revoke a Permit, as applicable, if the holder violates this Chapter on two or more occasions during the term of the Permit.
- C. A Permit holder that has had their Permit suspended or revoked shall be required to surrender said permit to the Permit Official within seven (7) calendar days of receiving notice from the City of suspension or revocation, regardless of whether the Permit holder requests an appeal in accordance with Section 5.03.100 of this Code. In the case of suspension, failure to surrender Permit within seven (7) calendar days of notice shall cause the Permit Official to revoke the Permit. In the case of revocation, the holder's period of revocation shall be extended to twelve (12) months before they can apply for a new Permit.
1. A Permit holder shall not commence Operations after the term of suspension has ended without first retrieving their Permit from the Permit Official; and
  2. A Permit holder shall not continue Operations subject to the Permit during the period of suspension or revocation of their Permit.
- D. Notice. The Permit Official shall issue a written notice of suspension or revocation of a Permit to the holder, or a proposed suspension or revocation pursuant to subsection A.3., 4. or 5. of this section, which shall contain, as applicable, the following:
1. Name and address of the Permit holder;
  2. Statement of whether the Permit is suspended or revoked;
  3. Reason(s) for the suspension or revocation;
  4. Where applicable, order that the activity permitted by the Permit immediately cease;
  5. Recommendation of corrective measures to bring the Establishment into compliance with the requirements of this chapter;
  6. Reasonable time limit for the completion of the corrective measures;
  7. Statement that the Permit, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time;
  8. Order that the Permit be surrendered to the Permit Official within seven (7) calendar days of receipt of notice;
  9. Statement that the Permit, if suspended, is subject to revocation for failure to surrender Permit within the allotted time; and
  10. Statement that the suspension or revocation may be appealed under the provisions set forth in Section 5.03.100 of this Code.



- F. An Establishment may not reapply for a new Permit for a period of twelve (12) months after said Permit has been revoked.
- G. The City may allow a Permit holder the option of submitting a Compliance Plan addressing the specific issues of the Establishment's noncompliance in lieu of suspension or revocation. In order to avail itself of this option, the Permit holder must submit within ten (10) calendar days of the notice of suspension or revocation a plan to mitigate the issues specified in the City's Notice. The Compliance Plan must address each issue specified in the Notice and state a date certain for expected compliance. The Establishment shall cease the outdoor amplification of sound until compliance is confirmed by the Permit Official. A Permit Official shall have fourteen (14) calendar days to review the proposed Compliance Plan and provide notice to the Establishment indicating whether the Compliance Plan is approved, denied or requires revision. Failure to comply by the terms of an approved Compliance Plan may result in the suspension or revocation of the Establishment's Permit subject to the provisions set forth in Section 5.03.090 of this Code.

#### **5.03.100 Appeal of Denial, Suspension and Revocation.**

- A. Any applicant/permittee may appeal the denial, suspension or revocation of a Permit as provided in Section 5.01.090 of the El Paso City Code.
- B. The Notice discussed in Section 5.03.040 is not required to be re-posted or re-sent for an appeal.

### **ARTICLE IV. – PERMIT STANDARDS**

#### **5.03.110 Permit Standards.**

- A. An Establishment operating under a Permit shall be allowed to emit sound up to 70 dBA, measured by a sound meter at the property boundary.
- B. Sound emitted in violation of the standard set forth in this Chapter shall be considered a noise nuisance, as defined by Chapter 9.40 of the El Paso City Code, as amended, and a nuisance which is not authorized by a Permit.
- C. Sound emitted from inside an Establishment must comply with Chapter 9.40 of the El Paso City Code, as amended.

D. A Permit must be posted in accordance with Section 5.01.060 of the El Paso City Code, as amended.

E. A copy of the Sound Impact Plan must be maintained at the Establishment and made available to any person authorized by the Chapter to enforce the Permit requirements.

## **ARTICLE V. -- ENFORCEMENT**

### **5.03.120 Enforcement.**

In addition to the requirements set forth in Section 5.01.080 of the El Paso City Code, permit official as well as any peace officer of the City shall be authorized to make inspections of the Establishment and issue citations to any person found to be in violation of this Chapter. If the owner or Permit Holder of such Establishment shall refuse to permit the permit official or peace officer to enter the Establishment for the purpose of making the inspection, the permit official or peace officer shall have recourse to every remedy provided by law to secure entry, including judicial warrant.

## **ARTICLE VI. -- VIOLATION, PENALTY**

### **5.03.130 Violation.**

- A. Any person, including, but not limited to, the property owner, the owner of the Establishment, the employee in control of the Establishment at the time the citation is issued, or the operator of the sound amplification equipment serving the outdoor area, who violates a provision of this Chapter shall, upon conviction, be guilty of a Class C misdemeanor and punished by a fine not to exceed two thousand dollars. Each day the violation occurs shall constitute a separate offense. In addition to any penalties provided for herein, this Chapter is enforceable by injunction.
- B. The City may suspend or revoke the Permit when more than two (2) violations of the Permit have been documented during the term of the Permit. Violations of the Permit include but are not limited to citations issued to the Permit Holder, property owner, the owner of the Establishment, the employee in control of the Establishment at the time the citation is issued, or the operator of sound equipment serving the outdoor area.
- C. The City may suspend or revoke the Permit when more than ten (10) violations of Chapter 9.40 have been documented and citations issued to the Permit Holder at the Establishment to either the Establishment owner, employee or individual in control of the Establishment at the time of issuing the citation.



D. It shall be a violation of this Chapter to emit amplified sound from an outdoor area of a non-residential property from 12:01 a.m. through 7:00 a.m.

**Section 2.** This ordinance shall take effect 180 days after adoption.

**Section 3.** Except as herein provided, Title 5 (Business License and Permit Regulations) shall remain in full force and effect.

*(Signatures on following page)*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

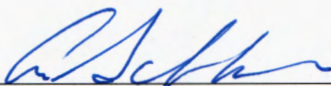
**CITY OF EL PASO**

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Dee Margo  
Mayor

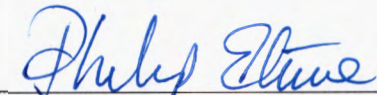
**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ana Schumacher  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Philip Etiwe, P.E., Director of  
Planning & Inspections