

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

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DEPARTMENT: Environmental Services

AGENDA DATE: October 1, 2019
PUBLIC HEARING DATE: October 15, 2019

CONTACT PERSON NAME AND PHONE NUMBER: Ellen Smyth, P.E., Director
915-212-6000
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 (AMPLIFIED SOUND PERMIT), ARTICLE I (GENERAL PROVISIONS), SECTION 5.03.020 (DEFINITIONS); TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE II (PERMIT APPLICATION PROCESS), SECTION 5.03.030 (PERMIT APPLICATION), SUBSECTION A (PERMIT APPLICATION) TO CLARIFY THE APPLICATION REQUIREMENT, AND PARAGRAPH 5 THEREUNDER; ADD SECTION 5.03.35 (EXTENDED HOURS ALLOWED BY PERMIT); TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE VI (VIOLATION, PENALTY), SECTION 5.03.130 (VIOLATION), SUBSECTION D; TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), TO ADD ARTICLE VII (SEVERABILITY), SECTION 5.03.140 (SEVERABILITY) TO ALLOW FOR OUTDOOR AMPLIFIED SOUND UNTIL 2 A.M. WITH DULY ISSUED PERMIT, PROVIDED REQUIRED NOISE CONTROL MEASURES HAVE FIRST BEEN INSTALLED OR CONSTRUCTED AND VERIFIED BY A DESIGNATED CITY INSPECTOR; THE PENALTY BEING AS PROVIDED IN SECTION 5.03.130 (VIOLATION) OF THE EL PASO CITY CODE.

BACKGROUND / DISCUSSION:

On August 20, 2019, City Council directed staff to return to Council with amendments to Chapter 5.03 (Amplified Sound Permit) to allow for outdoor amplified sound at establishments between midnight and 2:00 a.m. The current ordinance requires permitted establishments to cease outdoor amplified sound at midnight; however, the amendments will provide for outdoor amplified sound during the extended hours, provided noise control measures have first been installed or constructed and verified by a designated City inspector.

PRIOR COUNCIL ACTION:

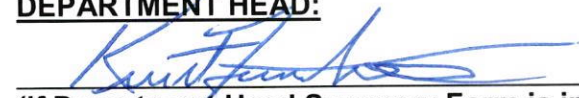
Chapter 5.03 of the El Paso City Code was adopted by Council on February 26, 2019, effective August 26, 2019.

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 NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE I (GENERAL PROVISIONS), SECTION 5.03.020 (DEFINITIONS); TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE II (PERMIT APPLICATION PROCESS), SECTION 5.03.030 (PERMIT APPLICATION), SUBSECTION A (PERMIT APPLICATION) TO CLARIFY THE APPLICATION REQUIREMENT, AND PARAGRAPH 5 THEREUNDER; TO ADD SECTION 5.03.35 (EXTENDED HOURS ALLOWED BY PERMIT); TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), ARTICLE VI (VIOLATION, PENALTY), SECTION 5.03.130 (VIOLATION), SUBSECTION D; TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.03 (AMPLIFIED SOUND PERMIT), TO ADD ARTICLE VII (SEVERABILITY), SECTION 5.03.140 (SEVERABILITY) TO ALLOW FOR OUTDOOR AMPLIFIED SOUND UNTIL 2 A.M. WITH DULY ISSUED PERMIT, PROVIDED REQUIRED NOISE CONTROL MEASURES HAVE FIRST BEEN INSTALLED OR CONSTRUCTED AND VERIFIED BY A DESIGNATED CITY INSPECTOR; THE PENALTY BEING AS PROVIDED IN SECTION 5.03.130 (VIOLATION) OF THE EL PASO CITY CODE.

WHEREAS, on February 26, 2019, City Council amended Title 5 to provide for an outdoor amplified sound permit for persons seeking to utilize sound amplification equipment at non-residential properties at any outdoor area between the hours of 10:00 p.m and 12:00 a.m.; and

WHEREAS, the amplified sound permit will take effect on August 26, 2019; and

WHEREAS, on August 20, 2019, City Council sought to amend the sound amplification permit to allow for outdoor amplified sound until 2:00 a.m. with duly issued permit, provided required noise control measures are first installed or constructed and verified by a designated City inspector.

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 (Amplified Sound Permit), Article 1 (General Provisions), Section 5.03.020 (Definitions) be amended to read as follows:

5.03.020-Definitions.

The following words shall have the following meanings:

- A. "Establishment" means any business entity in the city located within three hundred fifty feet of a residential property, as defined in this chapter, measured from the center of the outdoor area closest to the residential property, that conducts operations, as defined in this chapter.
- B. "Extended hours" means the period of time between 12:00 a.m. and 2:00 a.m.

- C. "Independent third party" means an engineer or architect that has demonstrated experience in the fields of acoustics, physics, or sound engineering and that holds a professional license in accordance with a state statute, or a consultant for professional services that holds a license or certification in a field related to acoustics or noise control from a nationally-accredited organization.
- D. "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.
- E. "Noise control measures" means physical barriers to sound that will absorb or redirect sound in such a manner as to substantially reduce noise crossing the property boundary of the establishment, including but not limited to sound baffles, walls, and panels.
- F. "Noise nuisance" is as defined in Chapter 9.40 of the El Paso City Code, as amended.
- G. "Operations" means the continued use of sound 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. or during extended hours, however does not apply if amplification is only intermittent, brief, sound, such as customer announcements or communications to customers.
- H. "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.
- I. "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.
- J. "Permit official" is as defined in Section 1.04.030.1 of the El Paso City Code.
- K. "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.
- L. "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.
- M. "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.
- N. "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.

Section 2: That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Article II (Permit Application Process), Section 5.03.030(A) be amended to read as follows:

- **5.03.030 - Permit application.**

- A. Permit application. A person seeking to conduct operations as defined in Section 5.03.020(G) 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 noise control measures 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.

Section 3: That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Article II (Permit Application Process), Section 5.03.035 be added and read as follows:

5.03.035-Extended Hours Allowed by Permit.

- A. Notwithstanding the requirements set forth in this section, an application to conduct operations during extended hours is subject to all of the rules and requirements contained in this Chapter.
- B. Noise Control Measures Required.
 - 1. Noise control measures allowed by permit in accordance with this section shall be required in order to emit outdoor amplified sound at a permitted outdoor area during extended hours and shall be installed or constructed prior to submitting a permit application for extended hours to the permit official.

2. In the event that an establishment is in possession of a current, valid permit pursuant to this chapter, a permit application for extended hours is allowed provided the establishment has first complied with the requirements set forth in this section.

C. Noise Control Measures Certification and Verification.

1. Noise control measures must be certified by an independent third party as an effective method of controlling noise at the outdoor area. The certification process shall require testing of the measures in accordance with a procedure maintained by the permit official and a signed statement of completion from the independent third party verifying that the measures were properly installed or constructed and tested in accordance with the procedure.

2. Noise control measures shall be documented in the establishment's Sound Impact Plan and shall be verified by a designated City inspector as being installed or constructed at the establishment.

D. Effect on Existing Sound Permit.

1. A permit application for extended hours is subject to the same process and review as set forth in Articles II and III of this Chapter as a sound permit to emit outdoor amplified sound until 12:00 a.m. The extended hours permit application fee will be waived until January 1, 2021.

2. If a permit for extended hours is approved for an establishment by the permit official, the previously-issued permit is superseded by the newly-issued permit. In the event the permit application is withdrawn by the applicant, or canceled or denied by the permit official, the previously-issued permit remains in full effect.

Section 4: That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Article VI (Violation, Penalty), Section 5.03.130 (Violation), subsection D be amended to read as follows:

D. It shall be a violation of this chapter for an establishment to conduct operations beyond hours allowed by permit until 7:00 a.m. each day.

Section 5: That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.140 be added and read as follows:

Article VII.-Severability.

Chapter 5.03.140-Severability.

It is the intention of the city council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance be severable, and if any section, paragraph, sentence, clause, or phrase shall be declared unconstitutional or otherwise invalid by a

court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases herein.

Section 6: Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit) amendments shall take effect on October 1, 2019.

Section 7: Except as herein amended, Title 5 (Business License and Permit Regulations) shall remain in full force and effect.

PASSED AND APPROVED THIS _____ day of _____, 2019.

CITY OF EL PASO

Dee Margo
Mayor

CITY OF EL PASO

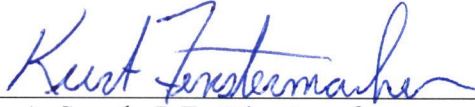
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Kristen L. Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



for Ellen A. Smyth, P.E., Director of
Department of Environmental Services

ORDINANCE NO. _____

18-1005-1643/921172_7/Amendments to Chapter 5.03 to allow for Extended Hours/KLHK