

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

AGENDA DATE: May 10, 2022
PUBLIC HEARING DATE: May 24, 2022

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Brenda R. Cantu, (915) 212-1500

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection processes
3.2 Improve the visual impression of the community

SUBJECT:

An ordinance to amend Title 5 (Business License and Permit Regulations) Chapter 5.02 (Alcoholic Beverages), Section 5.02.090 (City Protest of Permit/License), Section 5.02.100 (City Liquor License/Permit – Fee) and Section 5.02.140 (Liquor License/Permit – Term); The penalty as provided in 5.02.170 (Violations and Penalties) of the El Paso City Code.

BACKGROUND / DISCUSSION:

This modification to the City Code is required in order to comply with recent changes made by the Texas Alcoholic Beverage Commission (TABC). The TABC changes were made because of amendments enacted by the 87th Texas Legislature directing the TABC to consolidate the number of license and permits that they offered. Based on the amendments, the El Paso City Code requires changes to comply with new TABC license and permit consolidations.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

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

DEPARTMENTHEAD: Kevin Smith for

(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 REGULATION) CHAPTER 5.02 (ALCOHOLIC BEVERAGES) SECTION 5.02.090 (CITY PROTEST OF PERMIT/LICENSE) AND SECTION 5.02.100 (CITY LIQUOR LICENSE/PERMIT—FEE) AND SECTION 5.02.140 (LIQUOR LICENSE/PERMIT—TERM); THE PENALTY AS PROVIDED IN 5.02.170 OF THE EL PASO CITY CODE.

WHEREAS, El Paso City Code, Title 5 (Business License and Permit Regulations), Chapter 5.02 (Alcoholic Beverages) contains various permits related to alcoholic beverages in accordance with the Texas Alcoholic Beverage Code;

WHEREAS, the 87th Texas Legislature recently enacted legislation requiring the City to update Chapter 5.02 (Alcoholic Beverages) of the El Paso City Code;

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

SECTION 1: That Title 5 (Business License and Permit Regulation) Chapter 5.02 (Alcoholic Beverages) Section 5.02.090 (City Protest of Permit/License) is amended in its entirety and replaced with the following section:

5.02.090 – City protest of permit/license

- A. The City Manager for the City of El Paso may protest the issuance of alcoholic beverage licenses to the County Judge and the Texas Alcoholic Beverage Commission in accordance with Texas Alcoholic Beverage Code Section 61.314. Evidence supporting the protest shall be presented by the City Manager with the assistance of the City Attorney if necessary.
- B. The City Manager may protest the issuance or renewal of a state permit or license in compliance with Texas Alcoholic Beverage Commission Code Sections 11.432 and 61.314. Evidence supporting the protest shall be presented to the City Manager with the assistance of the City Attorney if necessary.

SECTION 2: That Title 5 (Business License and Permit Regulation) Chapter 5.02 (Alcoholic Beverages) Section 5.02.100 (City Liquor License/Permit—Fee) is amended in its entirety and replaced with the following section:

5.02.100 – City Liquor License/Permit –Fee

- A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the City prior to operations. There shall be charged and collected by the City the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the City is given the power by the Texas Alcoholic Beverage Code to collect a fee. The City license or permit shall correspond to the same class of license or permit issued to such licensee or permittee by the state.

B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining applicable license(s) or permit(s) from the City in accordance with the Texas Alcoholic Beverage Code.

SECTION 3: That Title 5 (Business License and Permit Regulation) Chapter 5.02 (Alcoholic Beverages) Section 5.02.140 (City Liquor License/Permit—Term) is amended in its entirety and replaced with the following section:

5.02.140 – City Liquor License/Permit—Term

A license or permit issued under this Chapter expires on the second anniversary of the date it is issued.

Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

ADOPTED this _____ day of _____, 20__.

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Russell Abeln

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Kevin Smith for

Philip F. Etiwe, Director
Planning & Inspections Department

Chapter 5.02 ALCOHOLIC BEVERAGES

Sections:

5.02.010 Compliance required.

No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages unless the use is authorized by and the person has complied with all applicable requirements of the Texas Alcoholic Beverage Code, and Title 20 and 21 of the City Code, as amended, and the person has paid the established fee and obtained a permit of the type required pursuant to the terms of this chapter.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.020 Definitions.

A word or term used in this chapter that is specifically defined by the Texas Alcoholic Beverage Code shall be construed to have the same meaning established by the Texas Alcoholic Beverage Code, as amended.

"Alcoholic beverage" means alcohol or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

"City secretary" means the permit official or other designee of the city manager whenever referenced in the Texas Alcoholic Beverage Code.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.030 Construction consistent with state law.

This chapter is intended to be in conformity with the Texas Alcoholic Beverage Code and with all the rules and regulations promulgated under authority of the Texas Alcoholic Beverage Commission, both as amended.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.040 No vested right conferred.

The sale of alcoholic beverages is a privilege and this chapter is not intended to give any person a vested right to engage in such business.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.050 Existing liquor districts are repealed.

Liquor districts were repealed as of August 1, 2000.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.060 Applicability to annexed territories.

- A. When at the time of any annexation of territory to the city there was in actual existence in the annexed area a place of business at which alcoholic beverages or intoxicating liquors were lawfully sold, the room in which such business was then being conducted shall be deemed a nonresidential section for the purposes of this section, and such business may continue to operate, but only upon the following conditions:
 - 1. The person operating or desiring to operate such business shall file with the permit official an affidavit made by himself and by another person knowing the facts and competent to testify, showing the fact that such business was in lawful operation at the time of annexation, the location then actually occupied by the business, and the name and address of the owner of the business.
 - 2. Such person shall also produce for inspection a current valid state license or permit under which the business was being operated at the time of annexation and shall file a copy thereof.
 - 3. A business operated under authority of this section shall not be enlarged or extended; and if the business shall cease to be conducted for a continuous period of one hundred and twenty days, it shall be deemed to be permanently abandoned, and all rights to operate an alcoholic beverage business in that location by virtue of this section shall expire.
- B. The privilege granted by the above provision shall apply in the case of both past and future annexations.
- C. Nothing in this section shall authorize any act which is unlawful under Title 20 or 21 of this Code, relating to zoning.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.070 Certification of compliance with city requirements for application to the Texas Alcoholic Beverage Commission.

- A. This section applies to an application for a permit or license required by the Texas Alcoholic Beverage Code when the Texas Alcoholic Beverage Code requires certification by the city that the sale of alcoholic beverages at the place of business is authorized by city ordinance. This section also applies to a permittee seeking to change the place, address, premises, or location for which the permit or license is issued, when the Texas Alcoholic Beverage Code requires certification by the city that the sale of alcoholic beverages at the place of business is authorized by city ordinance.
- B. The applicant for a permit or license subject to this section shall file a completed and verified application with the permit official. The application shall be on forms promulgated by the Texas Alcoholic Beverage Commission.
- C. The permit official shall forward copies of the completed and verified application to the appropriate city officials.
- D. Each city official receiving a copy of the application under subsection C. shall require that a proper investigation and inspection be conducted necessary to certify the findings required by the official under this section. If the place of business was inspected in the twelve months preceding the date the application was filed, the city official may make his certification without reinspecting the place of business if there has been no material change since the previous inspection that would affect the certification required by this section, as determined by the official in his sole discretion.
- E. The applicant shall make the business place available for all inspections authorized and undertaken under this section. Inspections under subsection D. may relate, without limitation, to the requirements established by the zoning code, building code, plumbing code, mechanical code, gas code, electrical code and fire code,

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as may be amended; and to any provisions of this Code of ordinances and state requirements that are administered or enforced by the department of public health.

- F. If the building official determines that the sale of alcoholic beverages at the place of business is an authorized use at that location and the place of business complies with all applicable provisions of the building code, plumbing code, mechanical code, gas code and electrical code, as may be amended, the building official shall certify that finding.
- G. If the fire chief certifies that the place of business complies with all applicable provisions of the fire code, the fire chief shall certify that finding to the permit official.
- H. If the director of the department of public health determines that the place of business complies with all applicable provisions of the city or state health code that are enforced by the department of public health, the director shall certify that finding to the permit official.
- I. If the departments listed in subsections F., G. and H. are unable to provide the required certifications because a structure, or retrofit or remodeling at the proposed place of business has not been completed, then the departments may provide an interim certification to the permit official, and the permit official may certify the application. However, occupancy and the conduct of business at the place of business is prohibited until a certificate of occupancy for the place of business, a city alcoholic beverage permit or license and a food license have been issued.
- J. When the permit official receives the certifications required in subsections F., G., and H., the permit official shall certify on the application that the place of business is in a "wet area" and that the sale of alcoholic beverages for which the permit or license is sought is not prohibited at that location by any provisions of the El Paso City Charter or City Code. The permit official shall forward the certified application to the Texas Alcoholic Beverage Commission.
- K. If the permit official does not receive the certifications required in subsections F., G., and H., or the permit official cannot otherwise certify on the application that the sale of alcoholic beverages at the place of business is authorized by city charter or city code, the permit official shall not certify the application.
- L. The applicant may appeal the permit official's denial of the certification of the application to the city council by written notice filed with the city clerk within ten days of the applicant's receipt of the notice of denial of the certification from the permit official.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012; Ord. No. 18968, § 5, 9-3-2019)

5.02.080 Resubmission of application.

Once a permit or license has been denied by the city council for a specific place of business, an applicant shall not be allowed to resubmit an application for that same location until twelve months has elapsed from the date the city council denied the previous permit or license application.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.090 City protest of permit/license.

- A. The city manager for the City of El Paso may protest the issuance of ~~state beer licenses, wine and beer permits, beer distributor's and beer manufacturer's alcoholic beverage~~ licenses to the county judge and the Texas Alcoholic Beverage Commission in accordance with Texas Alcoholic Beverage Code Section ~~61.32.61.314~~. Evidence supporting the protest shall be presented by the city manager with the assistance of the city attorney if necessary.

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- B. The city manager may protest the issuance or renewal of a state permit or license in compliance with Texas Alcoholic Beverage Commission Code Sections ~~11.41~~ 11.432 and ~~61.32~~ 61.314. Evidence supporting the protest shall be presented by the city manager with the assistance of the city attorney if necessary.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.100 City Liquor license/permit—Fee.

- A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the City **prior to operations**. There shall be charged and collected by the city the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the city is given the power by the Texas Alcoholic Beverage Code to collect a fee. The city license or permit shall correspond to the same class of license or permit issued such licensee or permittee by the state.
- B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining **the following** applicable license(s) or permit(s) from the city **in accordance with the Texas Alcoholic Beverage Code**.

- ~~A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the city. There shall be charged and collected by the city the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the city is given the power by the Texas Alcoholic Beverage Code to collect a fee. The city license or permit shall correspond to the same class of license or permit issued such licensee or permittee by the state.~~
- ~~B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining the following applicable license(s) or permit(s) from the city:~~
- ~~1. Brewer's permit, as defined by Chapter 12 of the Texas Alcoholic Beverage Code.~~
 - ~~2. Nonresident brewer's permit, as defined by Chapter 13 of the Texas Alcoholic Beverage Code.~~
 - ~~3. Distiller's and rectifier's permit, as defined by Chapter 14 of the Texas Alcoholic Beverage Code.~~
 - ~~4. Winery permit, as defined by Chapter 16 of the Texas Alcoholic Beverage Code.~~
 - ~~5. Wine bottlers permit, as defined by Chapter 18 of the Texas Alcoholic Beverage Code.~~
 - ~~6. Wholesaler's permit, as defined by Chapter 19 of the Texas Alcoholic Beverage Code.~~
 - ~~7. General class B wholesaler's permit, as defined by Chapter 20 of the Texas Alcoholic Beverage Code.~~
 - ~~8. Local class B wholesaler's permit, as defined by Chapter 21 of the Texas Alcoholic Beverage Code.~~
 - ~~9. Package store permit, as defined by Chapter 22 of the Texas Alcoholic Beverage Code.~~
 - ~~10. Local distributor's permit, as defined by Chapter 23 of the Texas Alcoholic Beverage Code.~~
 - ~~11. Wine only package store permit, as defined by Chapter 24 of the Texas Alcoholic Beverage Code.~~
 - ~~12. Wine and beer retailer's permit, as defined by Chapter 25 of the Texas Alcoholic Beverage Code.~~

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- ~~13.— Wine and beer retailer's off-premise permit, as defined by Chapter 26 of the Texas Alcoholic Beverage Code.~~
 - ~~14.— Mixed beverage permit, as defined by Chapter 28 of the Texas Alcoholic Beverage Code.~~
 - ~~15.— Mixed beverage late hours permit, as defined by Chapter 29 of the Texas Alcoholic Beverage Code.~~
 - ~~16.— Daily temporary mixed beverage permit, as defined by Chapter 30 of the Texas Alcoholic Beverage Code.~~
 - ~~17.— Caterer's permit, as defined by Chapter 31 of the Texas Alcoholic Beverage Code.~~
 - ~~18.— Other private club late hours permits, as defined by Chapter 33 of the Texas Alcoholic Beverage Code.~~
 - ~~19.— Reserved.~~
 - ~~20.— Beverage cartage permit, as defined by Chapter 44 of the Texas Alcoholic Beverage Code.~~
 - ~~21.— Bonded warehouse permit, as defined by Chapter 46 of the Texas Alcoholic Beverage Code.~~
 - ~~22.— Manufacturer's license, as defined by Chapter 62 of the Texas Alcoholic Beverage Code. A manufacturer's license holder shall pay the established fee for:
 - ~~a.— The first establishment.~~
 - ~~b.— The second establishment.~~
 - ~~c.— The third, fourth and fifth establishments.~~
 - ~~d.— Each establishment in excess of five.~~~~
 - ~~23.— General distributor's license, as defined by Chapter 64 of the Texas Alcoholic Beverage Code.~~
 - ~~24.— Local distributor's license, as defined by Chapter 65 of the Texas Alcoholic Beverage Code.~~
 - ~~25.— Branch distributor's license, as defined by Chapter 66 of the Texas Alcoholic Beverage Code.~~
 - ~~26.— Importer's license, as defined by Chapter 67 of the Texas Alcoholic Beverage Code.~~
 - ~~27.— Importer's carrier's license, as defined by Chapter 68 of the Texas Alcoholic Beverage Code.~~
 - ~~28.— Retail dealer's on-premise license, as defined by Chapter 69 of the Texas Alcoholic Beverage Code.~~
 - ~~29.— Retail dealer's on-premise late hours license, as defined by Chapter 70 of the Texas Alcoholic Beverage Code.~~
 - ~~30.— Retail dealer's off-premise license, as defined by Chapter 71 of the Texas Alcoholic Beverage Code.~~
 - ~~31.— Brewpub license, as defined by Chapter 74 of the Texas Alcoholic Beverage Code.~~

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.110 Issuance of permit or license.

Upon the payment of the established fee to the city, the approval of any required reviews and inspections and exhibition to the permit official of the permit or license duly issued by the state to the applicant or person paying such fee, the permit official shall, in the name of the city, issue and deliver to such applicant or person a permit or license to engage in the business in the city of the character described in and authorized by the permit or license from the state held by such applicant or person. The permit or license so issued in the name of the city shall authorize the conduct of such business upon the premises described in the permit or license from the state, and shall be void upon expiration or revocation of the state license or permit.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.120 License/Permit application processing.

No license or permit required under this chapter shall be issued until the proper application, on a form approved by the permit official accompanied by all required documents, has been filed with the permit official.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.130 Separate permit required.

A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the city.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.140 Liquor license/permit—Term.

A license or permit issued under this chapter expires on the second anniversary of the date it is issued. ~~If the city issues a permit with an expiration date less than two years after the date the permit is issued, the city shall prorate the license or permit fee on a monthly basis so that the license or permit holder pays only that portion of the license or permit fee that is allocable to the number of months during which the license or permit is valid.~~

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.150 Licenses/Permits expired for two months or more.

The permit official shall report to the Texas Alcoholic Beverage Commission all licenses or permits expired for two months or more.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.160 Renewal, assignment and transfer of licenses.

The provisions of the Texas Alcoholic Beverage Code Chapter 11 and Chapter 61 relating to renewal, assignment and transfer of a license or permit, and relating to refund of license and permit fees, shall apply to licenses, permits and fees of the city.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

5.02.170 Violations and penalties.

Any person, firm, corporation or agent who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars. Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed or continued.

(Ord. No. 17691, § 1, 12-6-2011, eff. 2-29-2012)

