



AGENDA REPORT
 SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: July 3, 2012

Agenda Item 7A
 Approvals: _____
 City Manager _____
 Dept. Head _____
 Attorney _____
 Finance _____

Department: Finance & Administrative Services
Prepared By: Kumi Elston, Central Services Officer

Subject: ***ONE DAY BUSINESS LICENSE PERMITS & PRE-HEARING SUSPENSION MODIFICATIONS TO THE BUSINESS LICENSE CODE***

Summary: A request by City Council and recent enforcement actions has prompted a review of the business license ordinance to allow for a one-day permit and the ability to suspend a business license upon violation of City, State or Federal laws.

One Day Business License - The City's Municipal Code specifies that a business license is required for any person conducting business within City limits. When out of town vendors come into the City to sell at an event, they are required to obtain a business license for \$60. The license is good for one year, although most of these vendors will only use the license for one or two days. These vendors typically report sales tax receipts in their own jurisdiction and San Clemente does not benefit from any sales taxes generated from the vendor's sales.

However, the events that attract these out of city vendors do contribute to the City's local charities and non-profit organizations. The fundraising events, such as the annual Car Show, Ocean Festival, Fiesta and Woman's Club Antique Show, charge the vendors for booth space to sell their wares and this is a good source of revenue to the local organizations. The cost of the booth space, plus a \$60 City business license can deter some vendors from participating at local events. Staff recommends modifying the Municipal Code to define an "itinerant vendor" as a person "conducting business in the City for no more than three consecutive days." The business license tax is proposed at on a flat rate basis at \$10 per day. This is the same flat rate tax as an "artist exhibit", a similar flat rate tax category. There is a one-time fee of \$10 to cover the cost of processing the license, so a one day permit would cost \$20; a two day permit would cost \$30 and a three day permit would cost \$40. Although the City currently does not have any three day events, this revision would allow vendors to participate in a three day event in the future.

Pre-Hearing Suspension – The Code currently allows the City's License Collector to suspend a license only for violations of Health and Building Codes, for up to five days, upon the recommendation of the City Building Inspector or Health Officer. The license could be further suspended or revoked after an administrative hearing is conducted. The Code does not currently allow for the suspension of the license upon violations of any resolution or ordinance of the City or any state or federal law. Staff recommends modifying the Code to allow the License Collector to suspend a business license for these violations if the business has the potential to significantly impact the public's health, safety or welfare. Unless

waived by the licensee, a hearing would be conducted within ten days of the license suspension. The Hearing Officer would have the ability further suspend or revoke the business license after a hearing is conducted.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council adopt an Ordinance of the City Council of the City of San Clemente, California, amending Chapters 5.04 and 5.08 relating to business licenses and regulations.

Fiscal Impact:

None.

Attachments:

Ordinance No. _____

Notification:

San Clemente Chamber of Commerce
San Clemente Downtown Business Association
San Clemente Ocean Festival
San Clemente Women's Club

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING
CHAPTERS 5.04 AND 5.08 RELATING TO BUSINESS
LICENSES AND REGULATIONS

WHEREAS, the California Legislature is empowered by the California Constitution to authorize local governments to impose taxes for local purposes; and

WHEREAS, Government Code section 37101 specifically empowers cities to license, for revenue and regulation, every kind of lawful business transacted in the city; and

WHEREAS, the City Council of the City of San Clemente (“City Council”) previously added Chapters 5.04 and 5.08 to the City of San Clemente Municipal Code (“Municipal Code”) to permit the City to license lawful business transacted in the City; and

WHEREAS, the City Council desires to amend and revise existing portions of Chapters 5.04 and 5.08 of the Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE
HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 5.04.010 “Definitions.” is hereby amended with the following definition that is to be placed into the Municipal Code in the proper alphabetical order:

The term “Itinerant vendor” is hereby amended to read as follows: “‘Itinerant vendor’ means any person or individual, whether as principal or agent, who engages in a temporary or transient business in the City, selling goods, wares or merchandise, with the intention of conducting such business in the City for a period of not more than three consecutive (3) days, and who, for the purpose of carrying on such business, hires, leases or occupies any room, doorway, vacant lot, building or structure, for the exhibition or sale of goods, wares or merchandise, and the person so engaged shall not be relieved from the requirements of this chapter by reason of associated temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer.”

SECTION 2. Subsection (A) of Section 5.04.100, “Suspension and revocation of license,” is hereby amended to read in its entirety as follows:

- “A. Violation – Pre-Hearing Suspension. When a violation of any resolution or ordinance of the City or any law of the state, or applicable federal law occurs which in the opinion of the License Collector has the potential to significantly impact the public health, safety or welfare, the licensee’s business license may be

suspended by the License Collector until a hearing can be conducted. Unless waived by the licensee, a hearing shall be held pursuant to Section 1.20.080 of this code within ten (10) business days of the suspension. ”

SECTION 3. Subsection (B) of Section 5.04.100, “Suspension and revocation of license,” is hereby amended to read in its entirety as follows:

“B. Other Revocation or Suspension of license. Upon an initial determination by the License Collector that any License is being used in contravention of this Code, any resolution or ordinance of the City or any law of the state, or any applicable federal law, the License Collector shall fix a date for a hearing thereon, and shall cause written notice of the time and place of such hearing to be served on the person to whom such License has been issued, or any one of such persons in the event such License has been issued to more than one (1) person or the manager or agent of such person. Service of this notice shall be accomplished by either serving such person personally, or by depositing it in the United States Post Office at San Clemente, California, postage prepaid, certified or registered mail addressed to such person as it appears on the License.

Except as provided below, the hearing shall be held pursuant to Section 1.20.080 of this Code. If, upon such hearing, the hearing officer finds that such License is being used in contravention of this Code, or any resolution or ordinance of the City, any law of the state, or any applicable Federal Law, or that the premises wherein any business described in this article is conducted, are not in good and sanitary condition, or have become dangerous to or adversely affect the public health, safety, welfare, morals or peace; or that the business of the person to whom such License was issued has been conducted in a disorderly or improper manner; or any person conducting such business in of an unfit character to conduct the same; or that the purpose for which the License has been issued is being abused to the detriment of the public; or that the License is being used for a purpose different from that for which it was issued, it may order such License suspended or revoked. Any person having his License suspended shall not engage in such business until all such objectionable conditions are fully remedied to the satisfaction of the Hearing Officer. The application of any person for a License, after having had a License revoked pursuant to the provisions of this section, shall not be considered for approval for one (1) year after the effective date the business stopped operating pursuant to the order of revocation, and must be reviewed by the City Council prior to issuance.

(Prior code § 8-16)”

SECTION 4. Subsection (A) of Section 5.08.040, “License taxes on flat rate basis” is hereby amended with the following license tax that is to be placed into the Municipal Code in the proper alphabetical order:

"A. Itinerant vendor (per vendor per day) \$10.00

SECTION 5. If any portion of this ordinance, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this ordinance to the extent it can be given effect, of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this ordinance are severable.

SECTION 6. This ordinance is exempt from compliance with the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

SECTION 7. The City Clerk shall certify that the passage of this ordinance and this ordinance shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this _____ day of _____, 2012.

ATTEST:

CITY CLERK of the City of San Clemente
California

MAYOR of the City of San Clemente,
California

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STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, 2012, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the _____ day of _____, 2012, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

City Attorney

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