

Summary of “2013 Business License Revision” Ordinance

By: Tom Riley, Contract Attorney for the City Attorney

- Section 1** Amends SMC 1.04.010 “Definitions”
Broadens SMC-wide definition of “person” to include limited liability companies (LLC’s). City Attorney’s clarification.
- Section 2** Adds SMC 2.27.025 “Certain city inspectors, etc.”
Authorizes fire, solid waste management, building, housing and licensing inspectors and zoning enforcement and environmental hazard enforcement officers to issue and serve citations within their field of enforcement. Does not give power to arrest - only police can arrest. Does not implement any citation power - it simply grants the authority. Implementation would require Departmental authorization and coordination with the Municipal Court and police department. City Attorney’s suggestion.
- Section 3** Adds SMC 5.04.025 “Chief license officer” defined.
Specifies that the Financial Services Director is the “chief licensing officer.”
- Section 4** Amends SMC 5.04.030 “Gross Receipts” defined.
Revises definition of “gross receipts” to eliminate any deduction for “cost of goods sold and cost of materials used” from the amount of “gross receipts” used to calculate business license fee. Parallels Reno M.C. 4.04.008, Washoe County Code 25.025 and Las Vegas M.C. 6.02.010 in this regard. City Attorney recommendation.
- Section 5** Amends SMC 5.04.040 “Persons” defined.
Broadens SMC Chapter 5 definition of “person” to encompass all “persons” included in SMC-wide 1.04.010, including LLC’s.
- Section 6** Amends SMC 5.08.020 “Business License Required; Exceptions”
Changes section making it a crime to do business without a license into a mandate to obtain a business license. This is a structural change only - the criminal section (Section 12, SMC 5.08.050) is now much stronger.
- Section 7** Amends SMC 5.08.030 “Activities exempt from license requirement.”
Clarifies which activities (e.g., charities) are exempt from obtaining a business license, and uses the IRS 501(c)(3) criteria for exempt activities. Parallels Reno M.C. 4.04.007 and 4.04.008. City Attorney recommendation.
- Section 8** Adds SMC 5.08.033 Creates new tax-exempt activity license.
This no-fee license is aimed at assuring that tax-exempt entities engage in their activities in buildings that have been inspected by city fire and building inspectors.

Residences are excepted. This is a public safety measure. Tax-exempt entities must pay for the city inspections.
BLAST suggestion.

- Section 9** Adds SMC 5.08.035 “Licenses-Location/Transfers, etc.”
Revises current code provisions (see 5.12.040, which is repeated in Sec. 16) pertaining to a single location per license and transferring a license to a new location. City Attorney’s clarification.
- Section 10** Adds SMC 5.08.045 “Cease and Desist Orders”
Allows Chief License Officer to issue “Cease and Desist Orders” to violators - i.e., a warning to cease doing business without a current license. A violation of these orders would help support a criminal case or a suspension or revocation of a business license. They are not legally-enforceable orders. City Attorney and BLAST suggestion.
- Section 11** Adds SMC 5.08.047 “Duties of licensees .”
Lists, in simple terms, the basic duties of licensees. Compiled from other jurisdictions and City Attorney’s suggestion.
- Section 12** Amends SMC 5.08.050 “Illegal Acts”
Enacts a stronger criminal section to specifically make it illegal to continue to do business without a license or with an expired license. Each day of operation constitutes a separate violation. Purpose is to have clear, precise language necessary for criminal prosecutions. City Attorney’s clarification. “Separate Violation” provision from Reno M.C. 4.04.020 and Las Vegas M.C. 6.02.060.
- Section 13** Adds SMC 5.12.005 “Application Process”
Requires an application be filed to obtain a business license. Most contents to be left to discretion of Licensing. City Attorney Clarification. Part Reno M.C. 4.04.060.
- Section 14** Adds SMC 5.12.007 “Approval Process.”
Sets forth the approval process, including the necessity for departmental approval of an application. Regarding applications that are denied, provides for an appeal process. City Attorney’s clarification. Part Reno M.C. 4.04.070.
- Section 15** Amends SMC 5.12.010 “Application - Contents of license.”
Clarifies information to be placed on a business license. City Attorney’s clarification.
- Section 16** Repeals SMC 5.12.040 “License Transferability”
This is reenacted and clarified in Section 9, SMC 5.08.035.

- Section 17** Repeals SMC 5.12.050 “Unexpired licenses.”
This section is repealed because it conflicts with the new, fixed expiration date of business licenses (180 days after anniversary date) in Sections 24, 25 and 26 of the ordinance. City Attorney recommendation.
- Section 18** Amends SMC 5.12.060 “Application - Effect of statement or affidavit.”
Language pertaining to inspection of business records is deleted, because it is covered in much greater detail in Sections 19 and 30 of the ordinance.
- Section 19** Adds SMC 5.12.063 “Duty to keep records - power to audit.”
Requires common business records to be maintained for the purposes of audits to verify that a business is correctly reporting its gross receipts, the basis for the business license fee. Part Washoe County Code 25.030; Las Vegas M.C. 6.02.210.§
- Section 20** Amends SMC 5.12.070 “Misrepresentation”
Clarifies and broadens penalties for misrepresentation on an application or in a report. City Attorneys clarification.
- Section 21** Amends SMC 5.12.080 “Posting licenses”
Minor clarification to issue a defined word (“location”). City Attorney’s clarification.
- Note:** Sections 22, 23, 24, 25 and 26, which change the penalties and expiration date of business licenses, have a delayed implementation date - they don’t take effect until July 1, 2013. This is to allow the Licensing Division time to notify licensees of the changes.
- Section 22** Amends SMC 5.12.100 “Licensing and processing fees; permit and code enforcement fees.”
This is the basic business license fee section. The ordinance DOES NOT raise the business license fees. It DOES increase penalties for late renewals of business licenses (see notes to § 23).

We are also adding provisions that require city inspection fees, permit fees and fees for code enforcement to be paid to Finance prior to the issuance or renewal of a business license. Essentially, this is a shift in the manner of collection. Under the current ineffective system, the inspecting or enforcing agency attempts to collect the fees for the inspections and permits separately from the business license. The ordinance provides that those fees will be reported to Finance and collected at the time of initial issuance or renewal of a business license. If not timely paid, those fees would become delinquent and added to the delinquent business license fee for purposes of calculating the “late” penalty. A license cannot be renewed unless the full amount of fees and penalties are paid. BLAST proposal.

Also, there is a new \$250 penalty for conducting business without first obtaining a license. It would be collected when the person applies for a license (if they don't apply, a criminal prosecution could be brought).

Part Las Vegas M.C. 6.02.250; part BLAST and City Attorney's proposal.

Section 23 Amends 5.12.105 "Delinquent Fees-Penalty"

Currently there is a 30-day grace period after the anniversary date of a license to pay a business license renewal. If not paid at the end of the 30-day grace period, a 25% penalty is assessed and added to the delinquent license fee. If still not paid 60 days after the anniversary date, a 50% penalty is assessed. However, no further penalties are imposed if the licensee fails to pay after the 60 day period. This rewards a delinquent licensee who fails to renew a license after the 60 day period - there is no financial incentive to pay after this 60 day period has lapsed.

To provide an incentive to pay after the 60 day delinquency period, the ordinance proposes additional 25% penalties at the end of 90 days (i.e., 75%), 120 days (i.e., 100%) and 150 days (125%). It also states that a license fully expires 180 days after its anniversary date (see next two sections of the ordinance). City Attorney's recommended proposal.

Section 24 Adds SMC 5.12.07 "License expires 180 days after anniversary date if not renewed; New license required after old license expires."

Currently there is no SMC provision stating that a business license ever expires. This has created an "implied" expiration date (i.e., the anniversary date) where none actually exists, and renewals of licenses that have "impliedly expired" have been allowed because the SMC provides for such renewals. However, it is illogical and contradictory to allow an expired license (which no longer exists) to be "renewed." To remedy this paradoxical situation, the ordinance provides for renewals after the anniversary date (with steep penalties for late renewals) and ultimately "fixes" a license expiration date of 180 days after its anniversary date. After that date, the licensee would be required to obtain a new license. City Attorney's suggested proposal.

Section 25 Adds SMC 5.12.108 "Expired license penalty."

If a licensee fails to renew a license within 180 days after the anniversary date and the license expires, the licensee must obtain a new license (see preceding section). However, a licensee that failed to renew the "now-expired" license would, under current law, escape the penalty imposed on the expired license (125% of the delinquent license fee) when he or she applied for a new license.

To prevent the licensee from escaping the penalties for failing to timely renew a prior license, the penalties levied against the "expired" license should be payable as part

of the new license fee. The ordinance would require such a payment. An exception to the “expired license penalty” is made if the business actually closes and 24 or more months lapses before the owner applies for a new license. Part Las Vegas M.C. 6.02.250; part City Attorney’s proposal.

Section 26 Adds SMC 5.12.109 “Expired license penalty-Appeals: Good cause standard.” There may be instances when applying the expired license penalty against a licensee who is trying to get a new license would be inequitable. For example, if a bookkeeper criminally embezzles most of the assets of a business and leaves the owner unable to pay the cost of renewing the business license (which then expires), the remaining owner could be forced to close the business.

This new section allows an appeal of the 125% expired license penalty to be made to the city manager or his designee. City Attorney’s proposal.

Section 27 Amends 5.16.010 “Denial of License” (broadened to include refusal to renew) Broadens grounds to deny or refuse to renew a business license. One seemingly “new” provision (in para. A(8), which requires denial/nonrenewal if any fees owed to the City are not paid, parallels existing SMC 5.08.080. It is included in this section to incorporate all grounds for denial/nonrenewal in one section. An administrative appeal to the City Manager (rather than the City Council which is currently allowed) from a denial/nonrenewal is provided. If an administrative appeal is unsuccessful, the applicant can appeal to court. Part Reno M.C. 4.04.160 (appeal procedures), part City Attorney clarification.

Section 28 Amends 5.16.020 “Suspension, Revocation of License” This section is revised to state the grounds for suspension or revocation of most general business licensees. Specific exceptions are noted for those licenses having separate provisions for grounds for suspension or revocation and separate appeal procedures (e.g., alcoholic beverages). A new administrative appeal to the city manager is authorized. No further appeal to the City Council is allowed, but a licensee can appeal to the Courts. Part Reno M.C. 4.04.160 (appeal procedures), part City Attorney clarification.

Section 29 Adds SMC 5.16.025 “Summary Suspension of License” This provision allows the chief of police or fire chief to summarily suspend business licenses under limited circumstances. It derives from Las Vegas M.C., 6.02.363; City Attorney recommendation.

Section 30 Adds SMC 5.16.027. “Unlawful to fail to keep and maintain adequate records and provide them upon demand - Unlawful to underreport gross revenues.” The title of this section describes its substance. Post Las Vegas M.C. 6.02.210.

Section 31 Amends 5.16.040 “Notice”
City Attorney clarifications regarding providing notices to business owners or licensees.

Section 32 and 33

Amends 5.16.040 “Appeals to work permit review board.”
Appeals from the Work Permit Review Board, which are currently taken before the City Council, are to be made directly appealable to a court.

Sections 34, 35, 36, 38, 39, 40, 41, 42, 44, 45, 47, 48, 49 and 51.

These chapters pertain to specific types of business licenses, not to “general” business licenses. Each of these chapters is amended to include the grounds for suspension or revocation of a general business license (see Section 28, SMC 5.16.020), as well as violations of the specific chapter, as a basis for suspension or revocation proceedings applicable to the specific type of license. City Attorney clarification. Miscellaneous revisions to these chapters are listed below.

Section 37 Amends 5.56.080 “Violation - Penalty”
Regarding “Going out-of-business sales”, clarifies that criminal charges should be pursued for violations, not license revocations or suspension.

Section 43 Amends SMC 5.62.060 “Babysitting agencies.”
Regarding babysitting agencies, changes the decision-making body (for determining who is qualified for a license) from the City Council to the chief licensing officer and the chief of police. City Attorney clarification.

Section 46 Amends 5.66.110 “License - Suspension or Revocation”
Regarding “Escort Services,” clarifies that hearings to suspend or revoke a license are held by the city manager. City Attorney clarification.

Section 50 Amends 5.77.110 “Permit Revocation”
Adds suspension of an outdoor service permit as a possible action that may be undertaken by the City Council on such a permit. These powers remain within the City Council due to the controversial nature of such permits.

Sections 52, 53, 54, 55 and 56

Amend various provisions pertaining to the collection of fees for inspections, permits, and code enforcement by city departments; providing for the reporting of such fees to the Finance Department and collection of such fees as part of the business license fee.