

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director
Joseph Fiss, Principal Planner 

DATE: November 27, 2012 (CC Meeting of 12/19/2012)

SUBJECT: Consider Providing Staff with Direction on Business Registration Permit Requirements and Consider Resolution Directing the Planning Commission to Study, Hold a Public Hearing, and Provide a Recommendation to the City Council on an Amendment to Section 17.28.020(B) (Home Occupations and Garage Sales) of the Zoning Ordinance

BACKGROUND

The City has received an Administrative Permit application from Susan and Neil Adams to operate a permanent weekly swap meet/flea market with up to 200 vendors in the upper parking lot of Moorpark Community College. Its proposed hours are Saturdays to be open to the public from 8:00 AM to 5:00 PM, with set-up beginning at 6:00 AM. As part of this request, the Moorpark College Foundation has requested that individual vendors not be required to have a Business Registration Permit, instead that a single Business Registration Permit for the entire operation be acceptable for this use (request letter attached). Staff is seeking direction from the City Council regarding the issuance of Business Registration Permits for vendors at swap meets, as well as direction on other issues related to the City's Business Registration provisions in the Moorpark Municipal Code.

DISCUSSION

Section 5.08.010 of the Moorpark Municipal Code (Chapter 5.08 attached) requires a Business Registration Permit for any person *engaged in any business* within the City. A separate business registration permit is required for each branch establishment or location of a business in the City and, all mobile businesses must obtain a valid business registration permit. Mobile businesses are given a Business Registration sticker for their vehicles to let code compliance staff quickly know that the business has a Business Registration Permit.

The primary purpose of Business Registration Permit in Moorpark is to identify and maintain records of those doing business within the City limits. This provides valuable contact information, ensures businesses are allowed under Zoning and other City regulations, and identifies businesses subject to special inspections, such as restaurants and auto repair uses. As of the writing of this report, the City has 5,834 current Business Registration Permits. The Business Registration Fee, \$90.00 for the first year, and \$35.00 for each year after that (going up by \$1.00 each beginning January 1 to cover a new State surcharge for disability access compliance), covers the City costs in processing and maintaining the Business Registration records. Moorpark does not require a business license. A business license is a tax, typically based on gross sales receipts.

There have been a number of areas in implementing the Municipal Code that have been subject to staff interpretation where the code could be clarified. Staff is seeking Council direction on an Ordinance to amend the Business Registration Permit requirements to address the following areas:

Swap Meets and Farmers' Markets – Staff has not required Business Registration Permits from individual vendors for special events that have a Temporary Use Permit, such as Country Days. However, when the use exists on a long term, regular basis, such as the proposed swap meet, where most vendors are expected to return every week, staff believes that a Business Registration Permit would be required of each vendor. One option would be to exempt those who do not need a Board of Equalization Seller's Permit, including "occasional sellers," those who only sell used personal items once or twice a year, and those selling nontaxable items consisting of fresh produce or cold food products to go (e.g. eggs, meat, or cheese) at a farmers' market. It should be noted that Moorpark's Farmers' Market now has an Administrative Permit. Staff has been holding off on enforcing the requirement for Business Registration Permits on the individual vendors pending Council direction. **Recommendation – Exempt individual vendors at one- or two-day special events for which a Temporary Use Permit has been issued, individual vendors at permitted swap meets or farmers' markets that do not need a Board of Equalization Seller's Permit, and sellers of nontaxable food items at farmers' markets. Create a special swap meet and farmers' market Business Registration Permit at \$45 per year that restricts its use to a specific permitted swap meet or farmers' market. Require a regular Business Registration Permit for those that wish to sell in multiple venues in the City.**

Deliveries, Set-Ups, and Assemblies – Delivering items to a home or business has not been considered doing business subject to a Business Registration Permit. However, when a delivery involves additional work, such as assembly, installation, or construction, a Business Registration Permit has been required. The code could be amended to provide clarity on this matter. **Recommendation – Exempt out-of-City businesses that are only making deliveries, assemblies, and installations associated with the purchase of an item, as long as a building permit is not required.**

Design and Construction – Professional design work and analysis, including architecture and engineering, has not required a Business Registration Permit unless the professional office is physically in Moorpark. With respect to construction, each contractor and subcontractor is required to obtain a Business Registration Permit. The code could be amended to provide clarity on this matter as to whether design and engineering work conducted for property in Moorpark requires a Business Registration Permit. **Recommendation – Exempt design and engineering businesses that do not do site work (i.e. testing, overseeing construction) in Moorpark.**

Property Rentals – Landlords were required to obtain a Business Registration Permit when the City's Rental Inspection Ordinance was in effect. Since this ordinance has been deleted from the Municipal Code, staff has not required Business Registration Permits from landlords. One option would be to require a Business Registration Permit when the number of rental units exceeds a certain threshold. **Exempt residential landlords that rent four or fewer units on any one site and ten or fewer units citywide.**

Real Estate Agents – Real Estate Agents representing property sellers are often independent agents that work out of a real estate office. If that office has a Business Registration with the City, staff has not required a Business Registration from the independent agent. Staff has not required Business Registration Permits from agents representing buyers of property in Moorpark. Business Registration Permits are generally checked at the time an agent comes in to purchase open house directional sign permits. **Recommendation – Codify existing practice as described above.**

Vendor Permits – Out of City companies that have had door-to-door sales staff work in Moorpark have required a Business Registration for the company and a vendor permit for the sales staff, whether or not they were actually employed by the company they represent, or independent contractors. Local residents who work out of their home and sell door-to-door have also been required to obtain a Home Occupation Permit. **Recommendation – Codify existing practice as described above.**

Home Occupation Permits – Currently, Chapter 17.28 of the Zoning Ordinance sets a five-year time period for Home Occupation Permits. These are issued in conjunction with Business Registration Permits which have an annual renewal. It has been difficult for staff to track the expiration of the Home Occupation Permits and include reminders at the appropriate time with the Business Registration renewal notice. Since Home Occupation Permits are subject to revocation at any time if the terms of the permit are violated, staff recommends that the zoning provisions on Home Occupation Permits be revisited for the Planning Commission and City Council to consider provisions that the Home Occupation Permits do not expire for the original permittee as long as they are in compliance with the Municipal Code. In accordance with Section 17.44.050 of the Municipal Code, a resolution of City Council is needed to initiate a Zoning Ordinance Amendment. **Recommendation – Adopt attached resolution initiating Zoning Ordinance Amendment to make Home Occupation Permits valid for original**

permittee at the originally approved address without expiration as long as they are in compliance with Municipal Code.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

1. Direct staff to draft amendments to Chapter 5.08 of the Moorpark Municipal Code as Recommended for City Council consideration.
2. Adopt Resolution No. 2012-_____

Attachments:

1. Request Letter from Moorpark College Foundation
2. Chapter 5.08 of the Moorpark Municipal Code (Business Registration Permit)
3. Draft Resolution No. 2012-_____



Moorpark College Foundation

where opportunities begin

November 9, 2012

To: Moorpark City Council

One of the primary missions of the Moorpark College Foundation is to generate scholarship dollars to students in completing their college work. Each year, the Foundation awards some \$200,000 to local students, to prepare for transfer and for entry into the workplace. Students from Moorpark make up a sizeable number of these award recipients.

The current economic climate has made the job of the Foundation more difficult over the past few years. We are, however, undeterred because the future of our community depends on the availability of talent, and the vitality of our cities depends on a strong workforce.

The Foundation has begun a number of new venues for fundraising, including the annual *Holiday Lights at Moorpark College* event and an annual fund drive. One of our dilemmas has always been more steady source of funds for scholarships. Our sister colleges, Ventura College and Oxnard College, have hosted Community Markets at their campuses for a number of years, allowing the colleges to glean close to \$1,000,000 million annually to support students in their community.

Over the last year, the Moorpark College Foundation has attempted to bring a similar event to the College – an antique fair that would come to the College each weekend in order to build a sustainable source of funding for scholarships. This would benefit students, and perhaps, more to the point, the students in the City of Moorpark.

The vendor we have identified, Ms. Sue Adams, has successfully run a similar event on Wednesdays in Ventura. We project that we will be able to increase our scholarships by \$30,000 annual. This will mean 30 one-thousand-dollar scholarships for our students. It is a sum that will change many lives, year after year.

We have had several very helpful meetings with Mr. Dave Bobardt, and have learned the details involved with starting an event like this. The logistics and sensitivity of our neighbors have been addressed and resolved. One item remains, and I am asking for your help, as City Council members, and with the critical perspective that the scholarships will benefit citizens of Moorpark.

A major roadblock is the City Business Registration application and fees that is currently required. There will be roughly 150 vendors that, under the current rules, would have to apply and pay this fee. The participants in the Antique Fair are small scale vendors, and cannot afford to pay these fees. They will barely break even in their enterprise.

We propose that Ms. Sue Adams pay the City Business Registration fee and complete all necessary applications the City requires. This is her primary business, and we find it fair for the

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burden to be shouldered in this manner. However, we are asking that the fee for the individual vendors be waived.

We believe that the waiving of the individual fees ultimately benefits the city. Every dollar the Foundation makes from this event will go to scholarships, to students in our community, to your constituents in the City of Moorpark. The requirement of the individual vendor fees will, in essence, stop the project from going forward.

The Moorpark College Foundation is a strong believer in volunteerism; we are all volunteers to make sure our community's future is reassured through education. We ask the City Council to join us in that spirit. We do not ask for a handout, but we do ask for a hand – a helping hand in granting us an individual vendor fee waiver, so we can work to support our scholarships and our students.

Thank you,

A handwritten signature in black ink, appearing to read 'Elad Goren', written in a cursive style.

Elad Goren

Chair, Moorpark College Foundation

Chapter 5.08 BUSINESS REGISTRATION PERMIT

Note

*Prior ordinance history: Ord. 108.

5.08.010 Registration permit required.

Any person engaged in any business within the city must obtain a valid business registration permit issued pursuant to the provisions of this chapter. A separate business registration permit is required for each branch establishment or location of a business in the city. All mobile businesses must obtain a valid business registration permit. Issuance of a business registration permit does not authorize or legalize any business or business activity which violates any federal, state or local statute, ordinance, rule or regulation. (Ord. 366 § 1 Exh. A, 2007)

5.08.020 Exempt organizations, activities, persons.

A. Nothing in this chapter shall be deemed or construed to apply to any person, business or activity exempt by virtue of the Constitution, statutes or laws of the United States or the state from the requirement to obtain a permit or pay for a permit or an application, renewal, amendment or duplicate permit fee.

B. In addition, the following organizations, activities and persons are exempt from certain provisions of this chapter, as follows:

1. Nonprofit Organizations. An institution or organization that is exempt from the payment of federal income taxes under Subchapter F, commencing with Section 501, of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended from time to time, or that is exempt from the payment of state income taxes under California Revenue and Taxation Code, Chapter 4, commencing with Section 23701, of Part 11 of Division 2, as amended from time to time. Exemption shall apply upon presentation of proof of nonprofit status.

2. Benefit, Charitable and Nonprofit Activities. Any entertainment, dance, concert, exhibition or lecture from which the gross receipts are to be donated to a nonprofit institution or organization described in subsection 1 of this section, to the state, the county, the city or to any school or house of worship, is exempt from the requirements imposed by this chapter to obtain a permit and pay permit taxes, provided that profit, other than wages paid to employees of such institutions or organizations, is not derived from such activity, either directly or indirectly, by any person. The exemption set out in this subsection shall not apply to persons employed to promote benefit, charitable and nonprofit activities.

3. Independent City Contractors. Certain independent contractors hired by the city. Any person hired by the city as an independent contractor to provide babysitting services; to perform artistic demonstrations or give other performances; to provide classes in art, dance, crafts, cooking, sports, music, fitness, or dog obedience; to give lectures, readings, gallery talks or workshops; or to officiate sporting events at city-owned locations, programs or performances at the High Street Art Center are exempt from the requirements imposed by this chapter to pay permit fees if those persons work in the city is exclusively for the city.

C. No person other than the permittee shall use any permit issued pursuant to this chapter.

D. No person shall purchase or transfer any permit issued pursuant to this chapter. (Ord. 366 § 1 Exh. A, 2007)

5.08.030 Definitions.

As used in this chapter, the following words are defined:

“Applicant” means the person desiring to engage in the business or such person’s duly authorized representative.

“Business” means professions, trades or occupations of all and every kind of calling which are engaged in for the purpose of earning, in whole or in part, a profit or livelihood, whether or not a profit or livelihood is actually earned, and whether paid for in money, goods, labor or otherwise including, but not limited to professions, trades or occupations which do not have a fixed location within the city.

“Person” means an individual, corporation, whether foreign or domestic, joint venture, association, partnership, estate or trust, or any combination thereof, acting as a unit and engaged in any business in the city other than as an employee. (Ord. 366 § 1 Exh. A, 2007)

5.08.040 Permit application.

A. A business registration permit application must be filed with the community development director or his or her designee or such other person authorized by the city manager upon a form provided by the city. The permit application shall not be deemed filed unless the form has been filled out completely and accurately by the applicant and accompanied by the filing fee established by city council resolution.

B. The application shall include, but not be limited to the following:

1. Business name, business dba (doing business as), if any, business address and business telephone number and mailing address of the person who will engage in the business;
2. Name, title, business address and telephone number and mailing address of the applicant. If such person is a corporation, the name and address of each director and the name and address of each officer who is duly authorized to accept service of legal process;
3. Nature or type of business;
4. Such other and further information as the community development director or his or her designee may deem necessary. (Ord. 366 § 1 Exh. A, 2007)

5.08.050 Permit form and content.

A. The business registration permit shall be prepared and issued upon approval by the city manager or his or her designee after a zoning clearance in accordance with Section 17.44.030 has been issued. The permit shall be deemed null and void if the permit application contained false or misleading information.

B. Each permit shall state upon the face thereof the following:

1. Business name or person’s name to which the permit is issued;
2. Business type;
3. Business location;
4. Permit issuance date;
5. Permit expiration date;
6. Permit control number, unique to each permit;
7. Official city seal; and
8. Other information as the city manager or his or her designee deems necessary. (Ord. 366 § 1 Exh. A, 2007)

5.08.060 Additional requirements prior to permit issuance.

Prior to the issuance of a business registration permit the following businesses are subject to the additional requirements indicated below.

Business	Required Action
Adult Business Performer Permit	Compliance with Chapter 5.18. Table 17.20.060(A)(1), Sections 17.24.040(N) and 17.28.050
Bingo	Compliance with Chapter 5.24
Businesses Operated in a Home	Home Occupation Permit approval in accordance with Section 17.28.020 and payment of five (5) years of business registration fee
Hotels and Motels	Compliance with Chapter 5.44
Massage Establishments and Massage Technicians	Compliance with Chapter 5.48
Pawnshops and Pawnbrokers	Compliance with Chapter 5.32
Peddlers, Vendors and other Mobile Businesses	Compliance with Chapter 5.64
Secondhand Dealers, Internet Secondhand Sales or Thrift Shops	Compliance with Chapter 5.32
Temporary Uses	Approval of a Temporary Use Permit in accordance with Section 17.44.040(A)

(Ord. 366 § 1 Exh. A, 2007)

5.08.070 Amendment and duplicate permit.

A. Any addition or deletion of the name, telephone number or address of any business owner or change of the address at which a business is conducted is an amendment. A permit or application may be amended at the request of a permittee as long as the ownership of that business has not been transferred to a new owner or the business has not been terminated. The applicant shall pay the permit amendment fee at the time of requesting the amendment.

B. If a permittee files a sworn statement that a permit has been lost or destroyed, and pays the duplicate permit fee as established by city council resolution, the city may issue a duplicate permit. (Ord. 366 § 1 Exh. A, 2007)

5.08.080 Information not confidential.

A. Nothing in this chapter shall be construed to prevent:

1. The disclosure of information to, or the examination of records and equipment by, a city official, employee or agent for the sole purpose of administering or enforcing any provisions of this chapter imposed hereunder;

2. The disclosure of information to, or the examination of records by, federal or state officials, or the officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law upon subpoena;

3. The disclosure of the names and addresses of permittees and the general type or nature of their business, excluding the street addresses of residences other than those which are the place of businesses;
4. The disclosure to the city council, in a public meeting or otherwise, of facts concerning a matter to be acted on by the city council;
5. The disclosure of general statistics regarding business conducted in the city;
6. The disclosure of information and examination of records of any permittee who is a litigant in a lawsuit to which the city is a party and in which such information or records are relevant to the issues in the lawsuit; and
7. The disclosure to the extent otherwise required by law. (Ord. 366 § 1 Exh. A, 2007)

5.08.090 Posting and carrying permit.

A. Any permittee conducting business at a fixed place of business in the city must post the permit in a conspicuous public location at the place of business.

B. Any permittee conducting business, but not operating at a fixed place of business in the city, must keep the permit on his or her person at all times while conducting the business. (Ord. 366 § 1 Exh. A, 2007)

5.08.100 Delinquency and penalties.

A. If a person fails to pay the permit fee when due, the city shall add a penalty fee as established by city council resolution. This penalty shall be assessed on the first day of each month after the due date of the permit, up to a maximum of fifty percent (50%) of the amount of the permit fee due.

B. A permit shall not be issued for a business that at the time of application has a municipal code violation. (Ord. 366 § 1 Exh. A, 2007)

5.08.110 Permit term and renewal.

Business registration permits shall be issued quarterly and shall be valid for one (1) year from the date of issuance. Permits issued in other than the quarterly month, i.e., January, April, July and October, shall have the permit fee prorated for the remaining portion of the twelve (12) months. Permits shall be renewed annually by filing the renewal permit application thirty (30) calendar days prior to the expiration of the permit. Business registration permits for home occupations will be issued annually. A permittee shall not be entitled to a refund of any portion of the permit fee paid by reason of cessation of the business prior to the expiration of the permit period. (Ord. 366 § 1 Exh. A, 2007)

5.08.120 Violation and penalty.

Any person who violates any provision of, or fails to comply with any requirement of, this chapter is guilty of a misdemeanor/infraction and, upon conviction thereof, is subject to the penalties set forth in Chapter 1.16 of this code. (Ord. 366 § 1 Exh. A, 2007)

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, DIRECTING THE PLANNING COMMISSION TO STUDY, HOLD A PUBLIC HEARING, AND PROVIDE A RECOMMENDATION TO THE CITY COUNCIL ON AN AMENDMENT TO SECTION 17.28.020(B) (HOME OCCUPATIONS AND GARAGE SALES) OF THE ZONING ORDINANCE

WHEREAS, Section 17.44.050 of the Municipal Code provides that the City Council may initiate proceedings to consider amendments to the Zoning Ordinance by the adoption of a resolution of intent; and

WHEREAS, the City Council wishes to initiate proceedings to consider a Zoning Ordinance Amendment that would amend Section 17.28.020(B) (Home Occupations and Garage Sales).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. INITIATION OF PROCEEDINGS: The City Council hereby authorizes the initiation of proceedings to consider a Zoning Ordinance Amendment that would amend Section 17.28.020(B) (Home Occupations and Garage Sales).

SECTION 2. DIRECTION TO PLANNING COMMISSION: The Planning Commission is hereby directed to study, hold a public hearing, and provide a recommendation to the City Council on this matter.

SECTION 3. CITY CLERK CERTIFICATION AND FILING: The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 19th day of December, 2012.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

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