

# 5.14 - Open Air Markets

## Chapter 5.14 - OPEN AIR MARKETS

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**5.14.010 Short title.** This chapter shall be known and cited as "Open Air Markets." (Ord. 802-91 , 1991)

**5.14.020 Definitions.** The following, when used in this article, shall have the meaning ascribed to it in this section, except where the context clearly indicates a different meaning:

- A. Open air market shall mean a business operation or bazaar consisting of more than one independent vendor who is allocated space and does business on the premises and is not in charge of the premises, and where goods and/or services are offered for sale or exchange at retail to the general public, either indoors or outside, or both, including but not limited to antiques, curios, new and used merchandise, equipment, appliances and other goods and wares, (excluding yard sales, auctions, pawn brokers and retail business establishments, and the like) where sales are made to the general public by the individual vendor who leases space where such sales are made.
- B. Public hearing shall mean a hearing conducted by the city council pursuant to this article after due notice of such hearing is given by publication for at least one time in a newspaper of general circulation in the city and by posting in a conspicuous location on the premises a notice of such hearing, and by giving such notice to the applicant for such license either personally or by mailing such notice by certified mail, return receipt requested, to the post office address given in the application for the license, at least ten days but not more than 30 days prior to the date of hearing. In computing the requisite number of days for notice, the date of posting, publication, mailing or personal delivery shall not be counted, but the immediately succeeding date shall be counted to and including the actual date of hearing.
- C. Space shall mean an area designated by the Licensee of the open air market where individual vendors lease such area for the purpose of selling to customers patronizing the open air market. Licensing of vendor space shall be based on the computation that a single space is not greater but may be less than three hundred and sixty (360) square feet in size. (Ord. 802-91, 1991)

**5.14.030 Disturbance on premises.** Any person licensed pursuant to this article shall immediately report to the police department of the city any unlawful or disorderly act, conduct or disturbance committed on the premises licensed pursuant to this article. (Ord. 802-91, 1991)

### **5.14.040 Unlawful transactions.**

- A. It shall be unlawful of any Licensee under this article to permit the conduct of business as a vendor by any of the following persons on the licensed premises:
  - 1. Any person responsible for the allocated space who is under 18 years of age;
  - 2. Any person known to the licensee to be a thief or dealer in stolen merchandise without first notifying a member

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of the police department.

B. Unless notification is given by the licensee to a member of the police department, it shall be unlawful for any Licensee under this article to knowingly sell or exchange or permit the sale or exchange of any item or article with an altered serial or identifying number or with no such number if the item or article was originally manufactured with such a number. (Ord. 802-91, 1991)

**5.14.050 License required.** No person shall operate an open air market as defined herein within the city without a license issued by the city in accord with the provisions of this article. (Ord. 802-91, 1991)

**5.14.060 Application.** Every person required to be licensed by this article for an open air market operation shall make application to the city clerk in writing who shall refer the application to the city manager for review prior to submitting the application to the city council. The application shall be submitted by the owner or lessee of the premises and not by each vendor who is doing business as part of the open air market operation. The application shall contain the following:

A. The full name, present address and telephone number of the applicant, and if a corporation, partnership or association, the names and residence addresses of all owners, officers, directors and operators of the open air market.

B. The address and legal description of the premises.

C. Evidence that all zoning requirements, conditions and development standards have been met as may be required by ordinances of the city of Evans. (Ord. 802-91, 1991)

**5.14.070 Bond.** Before any license required by this chapter shall be issued to the applicant, the applicant shall file with the city clerk a bond in favor of the city in the sum of \$1,000.00 executed by the applicant as principal and at least one surety upon whom service of process may be made in the State of Colorado. The bond shall be conditioned upon the applicant fully complying with all provisions of the ordinances of the city and of the statutes of the State regulating and concerning the applicant's business and upon payment of all judgments and costs rendered against the applicant for any violation of the ordinances of the city or the statutes of the State. The bond must be approved by the city clerk as to form and as to the responsibility of the surety thereon prior to the issuance of the license. (Ord. 802-91, 1991)

**5.14.080 License fee.** As a prerequisite to the issuance or renewal of a license under this article, the licensee shall pay a license fee. Such fee is established by city council by resolution. (Ord. 1124-98 '1, 1998; Ord. 802-91, 1991)

**5.14.090 Issuance of license.**

A. After review by the city staff, the city clerk shall place all applications for new licenses provided for in this article before the city council for public hearing.

B. Upon receipt of an application for renewal of any license issued pursuant to this article, the city clerk shall forward the application to the city manager for consideration. The city manager shall obtain review of the application from the city staff and shall make inquiry as to whether the applicant for renewal of the license has violated any of the provisions of this article or any laws of the City, the State or the Federal government and shall report thereon, in writing, to the city council. The city manager shall then place the application for renewal before the city council for consideration at a duly convened council meeting. The city council may renew the license with or without a public hearing, and may deny or add conditions to the license after a public hearing.

C. Any license or renewal of license approved by the city council may have reasonable conditions attached to the issuance of the license where such conditions are deemed necessary for the public health, safety and welfare. Any renewal of an existing license approved by the city manager shall contain the conditions previously attached thereto by the city council and any consideration must be referred to the city council for consideration after public hearing.

D. Included as a condition in any license issued pursuant to this chapter is the requirement that the Licensee shall comply with all laws of the City, State and Federal governments in the conduct of the business licensed pursuant to this article.

E. A temporary license may be issued on a previously licensed property for a maximum of sixty (60) days to and until a hearing may be held to approve a permanent license, so long as the previously issued license has not been revoked or suspended, or has expired for a period of more than one year. Each application for a temporary permit shall be accompanied by the appropriate application fee and shall be required upon the issuance of a temporary permit. Such fee is established by city council by resolution. (Ord. 1124-98, 1998; Ord. 926-94, 1994; Ord. 802-91, 1991)

**5.14.100 Conditions for license approval.** The city council shall consider the following conditions before

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approving an open air license:

- A. Zoning requirements, conditions and development standards as they apply to the open air market.
- B. All other city ordinances as they may relate to traffic, public health, safety and welfare.
- C. Times of operation. The city council shall approve the times of operation based upon the nature of the open air market operation and its effect on the public health, safety and welfare. The open air market operator shall list the dates of operation (including holidays) and times of operation during the term of the license. (Ord. 802-91, 1991)

**5.14.110 Term of License.** Each license issued pursuant to this Chapter shall be for a period of one calendar year, commencing on the date of City Council approval of either a new license or a renewal, unless suspended or revoked by the City Council as provided in this article. (Ord. 926-94, 1994; Ord. 802-91, 1991)

**5.14.120 Suspension, revocation or refusal to renew.** Before suspending, revoking or refusing to renew any license issued pursuant to this article, the Licensee shall be notified in writing and shall be afforded an opportunity to be heard regarding any grounds for suspending, revoking or refusing to renew such license. The written notice of such hearing shall be served no less than five days prior to the date of hearing, either personally or by mailing the same by certified mail, return receipt requested, and first class mail postage prepaid, to the post office address given in the application for the license. (Ord. 802-91, 1991)

**5.14.130 Open air market daily or annual vendors license required.**

A. Each person, entity or organization who rents or otherwise occupies an individual space from an open air market licensee for the purpose of offering goods for sale or exchange at retail to the general public from said rented space within any licensed open air market shall obtain an "Open Air Market Daily Vendors License" or "Open Air Market Annual Vendors License" at the time of the rental of space from the Licensee. The fee for vendor licenses is established by city council by resolution. No other city of Evans business license shall be used for selling purposes within an open air market.

B. The "Open Air Market Daily Vendors License" required shall entitle the holder of said daily vendors license to offer goods or services for sale within the licensed open air market in the city of Evans and only upon the day of issuance of said daily vendors license. The "Open Air Market Annual Vendors License" which may be purchased in lieu of the daily vendors licenses shall entitle the holder of said annual vendors license to offer goods or services for sale within the licensed open air market in the city of Evans and only on days approved during the calendar year for which said annual vendors license is issued. Any person, entity or organization who/which offers for sale, or sells to, any other person any good(s) or service(s) without first having obtained an "Open Air Market Daily Vendors License" or "Open Air Market Annual Vendors License" is in violation of this chapter.

C. The purpose of the "Open Air Market Daily Vendors License" or "Open Air Market Annual Vendors License" is for the privilege of doing business within the city of Evans, and to raise revenues thereby in order to offset the costs of protecting the public health, safety and welfare from the impacts thereon created by the presence of each individual Open Air Market Daily or Annual Vendors Licensee's customers and business within the city of Evans. (Ord. 808-91, 1991; Ord. 802-91, 1991)

**5.14.140 Issuance of license.**

A. For the purpose of this chapter, the open air market licensee is hereby designated as the agent of the city of Evans for the sole and limited purpose of:

1. Distributing each Open Air Market Daily or Annual Vendors License required hereby to each person, entity or organization paying therefore, prior to, or at the time of, renting space to said person, entity or organization within the licensed open air market;
  2. Collecting the Open Air Market Daily Vendors License fee and the Open Air Market Annual Vendors License fee from the individual vendor;
  3. Holding in trust and remitting all fees so collected to the city on a weekly basis, as agreed upon by prior stipulation with the director of finance;
  4. Providing accurate daily records of the total number of Open Air Market Daily or Annual Vendors Licenses issued, and the name and address of each person, entity or organization to whom said license is issued, and delivering said reports to the city clerk at the time of remittance of the collected fees;
  5. An Open Air Market Annual Vendors License may be issued in lieu of said daily vendors license to those vendors who retain space(s) for a more permanent time than daily.
- B. The city clerk shall cause to be prepared and delivered to the open air market licensee an adequate supply of Open Air Market Daily or Annual Vendors Licenses to allow said licensee to comply with the requirements of this section.
- C. Tax exempt or non-profit entities which have been issued a daily vendors license may petition the city council for

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a refund of the fee paid to acquire said license. All other open air market vendors licenses shall be considered non-refundable.

D. It shall be a violation of the Evans Municipal Code:

1. For any person to duplicate any daily or annual vendors license form without the prior written authorization of the city clerk;
2. To transfer any daily or annual vendors license, once purchased as authorized in this section, to another person, with or without the transfer of consideration of any sort;
3. For any person to fail to collect, and to thereafter remit to the city, the fees required to be collected and remitted hereunder. (Ord. 802-91, 1991)

### **5.14.150 Collection of sales taxes.**

A. Every person, entity or organization issued a Open Air Market Daily or Annual Vendors License shall be obligated to collect state and local taxes on every sale made by the person, entity or organization. Sales taxes shall be collected at the time of the taxable transaction, and shall be remitted as provided in Chapter 3.04 of the Evans Municipal Code.

B. It shall be a violation of the Evans Municipal Code for any person, entity or organization to fail to charge, collect or remit state and local sales taxes as specified herein. (Ord. 802-91, 1991)

**5.14.160 Violation--Penalty.** Any person who violates any of the provisions of this chapter is guilty of a violation of this chapter and shall be punished as provided in Section 1.16.010. (Ord. 842-92, 1992; Ord. 802-91, 1991)

## Code Documents



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