

Ordinance

amending Chapter 1 of the Corpus Christi Code of Ordinances by adding Section 1-14 to establish Guidelines for License Applicants with Criminal Convictions; and providing an effective date, for severance, and for publication

Whereas, Texas Occupational Code §53.025 requires a licensing authority to issue guidelines relating to the practice of the licensing authority.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS, THAT:

SECTION 1. Chapter 1 of the Corpus Christ Code of Ordinances is revised to add Section 1-14 to read as follows:

Sec 1-14. - Guidelines for License Applicants with Criminal Convictions

(a) Applicability

These guidelines apply to any license, permit, certificate, registration, or other authorization (license) granted by the City that may be denied for prior criminal convictions. The vast majority of criminal convictions reviewed by the City will fit within the categories of crimes described below. However, these guidelines are not intended to be an exclusive listing, i.e. they do not prohibit the City from considering crimes not listed herein. After due consideration of the circumstances of the criminal act and the general factors listed above, the City may find that a conviction not described herein renders a person unfit to hold a license.

In addition to the specific crimes listed below, multiple violations of any criminal statute should always be reviewed, for any license type. Multiple violations may reflect a pattern of behavior that renders the applicant unfit for the license.

(b)General Criminal Convictions

(1) A license may be denied to any person ever convicted for any of the following offenses:

(A) Tex. Penal Code §15.03, (Criminal Solicitation) if the offense is punishable as a felony of the first degree;

(B) Tex. Penal Code §19.02, Penal Code (Murder);

(C) Tex. Penal Code §19.03, Penal Code (Capital Murder);

(D) Tex. Penal Code § 20.04, Penal Code (Aggravated Kidnapping);

(E) Tex. Penal Code § 20A.02, Penal Code (Trafficking of Persons);

(F) Tex. Penal Code § 21.11(a)(1), Penal Code (Indecency with a Child);

(G) Tex. Penal Code § 22.011, Penal Code (Sexual Assault);

(H) Tex. Penal Code § 22.021, Penal Code (Aggravated Sexual Assault);

(I) Tex. Penal Code § 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(1) the offense is punishable as a felony of the first degree; and

(2) the victim of the offense is a child;

(J) Tex. Penal Code § 29.03, Penal Code (Aggravated Robbery);

(K) Tex. Penal Code § 30.02, Penal Code (Burglary), if:

(1) the offense is punishable under Subsection (d) of that section; and

(2) the actor committed the offense with the intent to commit a felony under Tex. Penal Code § 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(L) Tex. Penal Code § 43.05, Penal Code (Compelling Prostitution);

(M) Tex. Penal Code § 43.25, Penal Code (Sexual Performance by a Child);

(N) Chapter 481, Health and Safety Code, for which punishment is increased under:

(1) Section 481.140 of that code (Use of Child in Commission of Offense);
or

(2) Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.

(O) Tex. Penal Code § 21.02, Penal Code (Continuous sexual abuse of young child or children); or

(P) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed above.

(2). Upon a determination that the person may pose a continued threat to public safety or employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct, a person will be considered to have been convicted of an offense for purposes of this section regardless

of whether the proceedings were dismissed and the person was discharged pursuant to deferred adjudication for the following offenses:

- (A) Tex. Penal Code § 21.02 (Continuous sexual abuse of young child or children)
- (B) Tex. Penal Code § 21.11 (a)(1) (Indecency with a Child);
- (C) Tex. Penal Code § 22.011 (Sexual Assault);
- (D) Tex. Penal Code § 22.021 (Aggravated Sexual Assault);
- (E) Tex. Penal Code § 25.02 (Prohibited sexual conduct),
- (F) Tex. Penal Code § 43.05, Penal Code (Compelling Prostitution);
- (G) Tex. Penal Code § 43.25, Penal Code (Sexual Performance by a Child);
- (H) Tex. Penal Code § 43.26 (Possession or promotion of child pornography);
- (I) Tex. Penal Code § 43.02 (Prostitution), if the offense is punishable under Subsection (c)(3) of that section;
- (J) Tex. Penal Code § 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;
- (K) Tex. Penal Code § 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);
- (L) Tex. Penal Code § 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), if, as applicable:
 - (i) the judgment in the case contains an affirmative finding under Tex. Code of Criminal Procedure, Article 42.015; or
 - (ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;
- (M) the second violation of Tex. Penal Code § 21.08 (Indecent exposure);
- (N) a violation of Tex. Penal Code § 33.021 (Online solicitation of a minor);

(O) a violation of Tex. Penal Code § 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons);

(P) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), (G), (J), (H), (I), (J), (K), (L), (N), or (O); or

(Q) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure.

(3) A license may be denied to any person ever convicted for an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license.

(c) Job Specific Criminal Convictions.

These guidelines apply to the specific licenses granted by the City listed below. These guidelines reflect the most common or well-known categories of crimes and/or and their relation to specific license types.

(1) AUTO WRECKER PERMIT, TAXICAB DRIVER, VEHICLE FOR HIRE DRIVER, TAXICAB CERTIFICATE, LIMOUSINE OR SIGHTSEEING SERVICE PERMIT, AMBULANCE SERVICE, AND MOBILE FOOD VENDOR

(A) Crimes involving fraud or deceptive business practices

Reasons: (1) Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to services.

(B) Crimes involving prohibited sexual conduct or involving children as victims

Reasons: (1) Licensees have direct contact with members of the general public often in settings with no one else present. (2) A person with a predisposition for crimes involving prohibited sexual conduct or involving children as victims would have the opportunity to engage in further similar conduct.

(C) Crimes against the person such as homicide, kidnapping and assault

Reasons: (1) Licensees have direct contact with members of the general public often in settings with no one else present. These situations have potential for unobserved or confrontational behavior. (2) A person with a predisposition for a violent response would pose a risk to the public.

(D) Crimes involving the receipt, sale or other distribution of illegal goods or substances, including stolen property, illegal weapons, drugs, drug paraphernalia, and the like

Reasons: (1) Licensees' mobility allows them the opportunity to receive, sell or otherwise distribute illegal goods or substances. (2) A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

(E) Crimes against property such as theft or burglary

Reasons: (1) Licensees have access to customer's contents. (2) A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

(F) Crimes involving racketeering, organized crime, or criminal influence

Reasons: (1) Persons with the predisposition and experience in committing crimes depriving others of money or property through a criminal enterprise would have the opportunity to engage in further similar conduct.

(G) Crimes involving intoxication and operating a motor vehicle, including driving while intoxicated, intoxication assault, and intoxication manslaughter

Reasons: (1) Persons who show a history of operating a motor vehicle while not having the normal use of their mental or physical faculties due to alcohol or drugs, especially when others are killed or injured as a result, would have the opportunity to engage in further behavior when operating a motor vehicle.

(2) SEXUALLY ORIENTED BUSINESSES

(A) Crimes involving prohibited sexual conduct or involving children as victims

Reasons: (1) Licensees have the means and the opportunity to engage in prohibited sexual conduct. (2) A person with a predisposition for crimes involving prohibited sexual conduct or involving children as victims would have the opportunity to engage in further similar conduct.

(B) Crimes involving prostitution

Reasons: (1) Licensees have the means and the opportunity to engage in prostitution. (2) A person with a predisposition for crimes involving prohibited sexual conduct or involving children as victims would have the opportunity to engage in further similar conduct.

(C) Crimes involving obscenity, sale, distribution, or display of harmful material to a minor, or possession or promotion of child pornography

Reasons: (1) A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

(D) Crimes involving the receipt, sale or other distribution of illegal goods or substances, including stolen property, illegal weapons, drugs, drug paraphernalia, and the like

Reasons: (1) Licensees have the means and the opportunity to receive, sell or otherwise distribute illegal goods or substances. (2) A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

(E) Crimes involving racketeering, organized crime, or criminal influence

Reasons: (1) Persons with the predisposition and experience in committing crimes depriving others of money or property through a criminal enterprise would have the opportunity to engage in further similar conduct.

(F) Crimes involving lewd, immoral, indecent conduct

Reasons: (1) Licensee allowing a willful and wanton disregard for these guidelines could establish a pattern of conduct for employees and patrons to continue upon leaving the establishment. (2) Licensee has the means and opportunity to engage in behavior that is offensive to public decency. (3) Licensee has a responsibility to comply with state and municipal health and sanitary law or ordinances.

(3) PEDDLERS, VENDERS, ITINERANT MERCHANTS, COMMERCIAL SOLICITORS AND DANCE HALL PERMITS

(A) Crimes involving fraud or deceptive business practices

Reasons: (1) Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to services.

(B) Crimes involving prohibited sexual conduct or involving children as victims

Reasons: (1) Licensees have direct contact with members of the general public often in settings with no one else present. (2) A person with a predisposition for crimes involving prohibited sexual conduct or involving children as victims would have the opportunity to engage in further similar conduct.

(C) Crimes against the person such as homicide, kidnapping and assault

Reasons: (1) Licensees have direct contact with members of the general public often in settings with no one else present. These situations have potential for unobserved or confrontational behavior. (2) A person with a predisposition for a violent response would pose a risk to the public.

(D) Crimes involving the receipt, sale or other distribution of illegal goods or substances, including stolen property, illegal weapons, drugs, drug paraphernalia, and the like

Reasons: (1) Licensees' mobility allows them the opportunity to receive, sell or otherwise distribute illegal goods or substances. (2) A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

(E) Crimes against property such as theft or burglary

Reasons: (1) Peddlers can obtain specific information regarding residences' access and presences. (2) A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

(F) Crimes involving racketeering, organized crime, or criminal influence

Reasons: (1) Persons with the predisposition and experience in committing crimes depriving others of money or property through a criminal enterprise would have the opportunity to engage in further similar conduct.

(d) Factors for Consideration

(1) In determining whether a criminal conviction should be grounds to deny a license the following factors are considered in all cases:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the agency will also consider the following:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(F) other evidence of the person's fitness, including letters of recommendation from: (1) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (2) the sheriff or chief of police in the community where the person resides; and (3) any other person in contact with the convicted person; and

(G) proof that the applicant has: (1) maintained a record of steady employment; (2) supported the applicant's dependents; (3) maintained a record of good conduct; and (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(e) Notice

Any person whose license is denied, suspended or revoked for a prior conviction of a crime will be provided written notice of:

- (1) the reason for the suspension, revocation, denial, or disqualification;
- (2) the review procedure provided by Tex. Occ. Code § 53.052; and
- (3) the earliest date the person may appeal the action of the licensing authority.

SECTION 2. This ordinance takes effect after official publication.

SECTION 3. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

SECTION 4. Publication shall be made one time in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

That the foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 2017, by the following vote:

Joe McComb	_____	Ben Molina	_____
Rudy Garza	_____	Lucy Rubio	_____
Paulette Guajardo	_____	Greg Smith	_____
Michael Hunter	_____	Carolyn Vaughn	_____
Debbie Lindsey-Opel	_____		

That the foregoing ordinance was read for the second time and passed finally on this the _____ day of _____, 2017, by the following vote:

Joe McComb	_____	Ben Molina	_____
Rudy Garza	_____	Lucy Rubio	_____
Paulette Guajardo	_____	Greg Smith	_____
Michael Hunter	_____	Carolyn Vaughn	_____
Debbie Lindsey-Opel	_____		

PASSED AND APPROVED on this the _____ day of _____, 2017.

ATTEST:

Rebecca Huerta
City Secretary

Joe McComb
Mayor