ORDINANCE NO. 017488

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.30 (CONSTRUCTION BOARD OF APPEALS), SECTION 2.30.010 (PURPOSE), SECTION 2.30.060 (POWERS) AND SECTION 2.30.070 (APPEALS) OF THE EL PASO CITY CODE BY ADDING APPEALS FROM THE CITY ENGINEER IN CONNECTION WITH PERMITS ISSUED UNDER CHAPTER 18.44 (GRADING) CHAPTER 13.08 (EXCAVATION) AND SECTION 13.04.010 (SIDEWALK AND CURB PERMIT REQUIRED); SPECIFYING APPEAL PROCEDURES AND REPEALING SECTION 2.30.090; THE PENALTY BEING AS PROVIDED IN CHAPTER 1.08 (GENERAL PENALTY) OF THE EL PASO CITY CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 2 (Administration and Personnel), Chapter 2.30 (Construction Board of Appeals), Section 2.30.010 (Purpose) of the El Paso City Code shall be and hereby is amended to read as follows:

Section 2.30.010 Purpose.

The purpose of this chapter is to provide for reasonable due process of law through the appeal of orders, decisions or determinations made by city officials relative to the application and interpretations of the requirements in the codes specified in section 2.30.060A for specific projects, without further appeal to the city council.

Section 2. That Title 2 (Administration and Personnel), Chapter 2.30 (Construction Board of Appeals), Section 2.30.060 (Powers) of the El Paso City Code shall be and hereby is amended to read as follows:

Section 2.30.060 Powers.

A. The construction board of appeals is authorized to hear appeals from decisions issued by:

1. The building official in connection with administrative or enforcement of Chapter 18.02 (Building and Construction Administrative Code), Chapter 18.08 (Building Code), Chapter 18.10 (Residential Code), Chapter 18.12 (Mechanical

CITY CLERK DEPT.
2010 DEC 20 PM 2:23

Code), Chapter 18.16 (Electrical Code), Chapter 18.18 (Outdoor Lighting Code), Chapter 18.20 (Plumbing Code), Chapter 18.24 (Gas Code), Chapter 18.28 (Existing Building Code), and Chapter 18.46 (Landscaping), Chapter 5.32 (Public Swimming Pool Licenses), Chapter 5.90 (Security Alarm Systems) and Chapter 5.108 (Servicing Cesspools, Grease Traps and Septic Tanks) or such chapters that may succeed these chapters.

2. The fire official in connection with administration of Chapter 9.52 (Fire Protection Code);

3. The stormwater administrator in connection with administration or enforcement of Chapter 15.20 (Stormwater Management);

4. The floodplain administrator in connection with the administration of Chapter 18.60 (Flood Damage Prevention).

5. The City Engineer regarding the issuance, denial, revocation or suspension of a permit issued under Chapter 18.44 (Grading), Chapter 13.08 (Excavation) or Section 13.04.010 (Sidewalk and Curb Permit).

B. An application for appeal shall be based on a claim that the intent of an identified code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equivalent method of protection or safety is proposed. The construction board of appeals is authorized to impose reasonable conditions or safeguards as necessary to ensure that the purpose and intent of this code are satisfied. The construction board of appeals consideration of an appeal pursuant to this section shall not be construed as a waiver of any other requirement of the code. The power of the board to interpret, determine applicability and equivalent measures under the code shall not be interpreted to allow the board to modify any fees required to be paid in accordance with the code.

C. The construction board of appeals may:

1. Make recommendations to the building official, the floodplain administrator, the stormwater administrator, and the fire official with respect to changes in the codes listed in Section 2.30.060A.1 through 4;

017438

2. Make recommendations to the building official, the floodplain administrator, the stormwater administrator, and the fire official regarding the appropriateness of materials, methods, or equipment for use in the city; and

3. Recommend standards for safety of life and property, and workmanship for grading, stormwater management, flood prevention, fire prevention and residential and commercial construction in the city.

Section 3. That Title 2 (Administration and Personnel), Chapter 2.30 (Construction Board of Appeals), Section 2.30.070 (Appeals) of the El Paso City Code shall be and hereby is amended to read as follows:

Section 2.30.070 Appeals.

A. The owner of a property, building, structure or service system, or duly authorized agent of such, may appeal a decision concerning any matter for which the board of appeals is authorized to hear appeals under Section 2.30.060, whenever any one of the following circumstances exists:

1. When the city official rejects or refuses to approve the design or method of construction proposed to be used in the construction or alteration of a building, structure or service system;

2. When the city official rejects the material proposed to be used in the construction or alteration of a building, structure or service system;

3. When the city official refuses to extend a permit when the applicable provision of the code allows an extension of the permit;

4. When the city official refuses to issue a permit or suspends a permit or revokes a permit; or

5. When the city official refuses to issue a license, suspends a license, or revokes a license.

B. Appeal procedures:

1. The appeal shall be filed in writing with the City Clerk within thirty consecutive days from the date the appellant receives written notice from the city of the decision being appealed. If the thirty consecutive days ends on a legal holiday or a weekend, then the last time to file the appeal with the City Clerk shall be 5:00 p.m. on the next city working day.

017168

2. The appeal shall be signed by the owner of the property that is the subject of the decision being appealed, the applicant for a permit application that was denied or the permittee of a permit that has been suspended, revoked or that was not extended;

3. The established filing fee shall accompany the appeal.

4. The appeal shall specify the action by the city that is being appealed, attach a copy of the decision by the city that is being appealed and specify the reasons why the decision should be reversed.

C. In considering an appeal of a decision of a city official, the construction board of appeals shall have the same authority to decide the issue as the official making the decision being appealed.

D. The construction board of appeals is authorized to hear and grant appeals to utilize structures for a limited period of time that do not comply with the provision of an identified technical code. The procedures for appealing for such temporary exceptions are as follows:

1. An application for appeal shall be signed by the owner of the subject property;

2. Applications shall be accompanied by sufficient documentation confirming the validity of the proposed temporary structures, property lines, setbacks and off-street parking;

3. Application shall be accompanied by a plot plan drawn to scale indicating the location of proposed temporary structures, property lines, setbacks and off-street parking; and

4. Application shall be accompanied by drawings or other documentation describing the construction of the proposed temporary facility.

E. In considering an appeal, other than from Chapter 18.60 (Flood Damage Prevention), the construction board of appeals shall consider the following where appropriate:

1. The sufficiency of technical, architectural, engineering or fire prevention methods presented by the appellant offered in support of the request to interpret, determine applicability and equivalent measures under the applicable code;

2. That special conditions and circumstances exist which are unique to the site, building, structure or service system and are not applicable to others;

3. That the special conditions and circumstances do not result from the action or inaction of the applicant;

4. That granting the appeal requested does not confer on the applicant any special privilege that has been previously denied by the board to other similarly situated sites, building structures or service systems;

5. That the appeal will make possible the reasonable use of the site, building, structure or service system; and

6. That granting an appeal will be in harmony with the general intent and purpose of the identified code and will not be detrimental to the public health, safety and welfare.

F. In granting an appeal, the construction board of appeals may prescribe a reasonable time limit within which the action for which the appeal is required shall be commenced or completed or both. In addition, the construction board of appeals may prescribe reasonable conditions and safeguards in conformity with the intent of the code.

G. In reviewing an appeal under Chapter 18.60 (Flood Damage Prevention), the construction board of appeals shall follow the procedures as identified in Chapter 18.60.180.

Section 4. That Title 2 (Administration and Personnel), Chapter 2.30 (Construction Board of Appeals), Section 2.30.090 (Fees) of the El Paso City Code shall be and hereby is repealed.

Section 5. Except as expressly herein amended, Title 2 (Administration and Personnel), Chapter 2.30 (Construction Board of Appeals) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED THIS 18th **DAY OF** January, **2011.**

THE CITY OF EL PASO:

John F. Cook

John F. Cook, Mayor

CITY CLERK DEPT.
2010 DEC 20 PM 2:23

017438

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer