ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CITY CODE TO REFLECT DEPARTMENTAL REORGANIZATION BY AMENDING TITLE 19 (SUBDIVISIONS), TO AMEND VARIOUS SECTIONS THEREUNDER PERTAINING TO THE DUTIES THAT HAD BEEN ASSIGNED TO THE CITY ENGINEER, AND THE PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT, AND STAFF; THE PENALTY BEING AS PROVIDED IN SECTION 19.42.070 OF THE EL PASO CITY CODE.

WHEREAS, the Planning and Economic Development Department and the Building Permits and Inspections Division are being combined into a new department named the City Development Department; and

WHEREAS, various provisions in the City Code need to be amended to reflect the changes.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 19 (Subdivisions), Section 19.08.010 (Subdivision Improvement Plans) of the El Paso City Code, is amended to change the phrase "city engineer" to "planning official", as used within this section.

Section 2. That Title 19 (Subdivisions), Section 19.10.020 (In General), of the El Paso City Code, is amended to change the phrase "city engineer" to "city engineer or other designee of the city manager", as used within this section.

Section 3. That Title 19 (Subdivisions), Section 19.15.060 (Street standards), of the El Paso City Code, is amended to change the phrase "city engineer" to "city engineer or other designee of the city manager", as used within this section.

Section 4. That Title 19 (Subdivisions), Section 19.16.020 (Plan required), of the El Paso City Code, is amended to change the phrase "city engineer" to "city engineer or other designee of the city manager", as used within this section.

Section 5. That Title 19 (Subdivisions), Section 19.16.030 (Custom lighting), of the El Paso City Code, is amended to change the phrase "city engineer" to "city engineer or other designee of the city manager", as used within this section.

Section 6. That Title 19 (Subdivisions), Section 19.20.030, Subsection B, (Parkland calculation) of the El Paso City Code, is amended to read as follows:

19.20.030, Subsection B, Parkland calculation

B. Types of Parkland that may be dedicated. The following park configurations of land may be proposed by the subdivider to meet the dedication requirements of this chapter. The lands to be dedicated and the type of dedication to be provided shall be based on the affirmative recommendation of the director of parks and recreation and the approval of the city plan commission.

If the parks director does not provide an affirmative recommendation, the developer may appeal the parks director's decision. The parks director shall provide to the developer, in writing, the reasons for the denial. The appeal will require the developer to file with the planning director an appeal within fifteen business days from receiving the parks director's decision. The appeal shall be accompanied by the following:

(a) A thirty-day waiver of the thirty-day statutory requirement for approval of the subdivision plat.

(b) The reasons for the appeal. Upon receipt of the appeal, the planning director shall place the appeal on the next available city plan commission meeting. The city plan commission may overturn the parks director's decision by a super majority, which shall be three fourths of the city plan commission present and voting. In determining whether to overturn the parks director's decision, the city plan commission shall consider any evidence presented by the developer and parks director. In no instance can the city plan commission modify or vary any City Code requirements.

An alternative type of dedication may be recommended by the director of parks and recreation, based on the specific nature of the subject property. Any dedication that is proposed shall meet the requirements of Section 19.20.050, Standards, except as noted in this chapter.

1. Neighborhood parks. Lands for parks that serve a neighborhood shall meet the following requirements:

a. The quantity of the parkland shall be as determined by the density of the residential subdivision submitted pursuant to Section 19.20.030. The developer may satisfy Section 19.20.030 by providing multiple park sites that comply with Section 19.20.050, for a residential subdivision application provided that under no circumstance shall a park site of less than one-fourth acres be approved by the city plan commission except where the commission finds that:

i. The residential subdivision application is submitted as an infill development,

ii. The subdivider demonstrates a derived public benefit based on usability and feasibility of the smaller park site, and

iii. The director of the parks and recreation department makes an affirmative recommendation on the smaller park site, provided that the parks director decision may be appealed to the city plan commission under the provisions of Section 19.20.030 B.

2. Dual Park-Pond. Parks and drainage retention or detention ponds may be placed side by side or combined to provide for larger and more efficient park and open space lands for neighborhoods.

Conceptual cross-sections for park-pond areas are included in the subdivision standards. These conceptual drawings are intended to serve as a guideline to the designer, and modifications that meet or exceed the intent of this chapter are encouraged. All park-pond designs shall be approved by the director of parks and recreation and the city engineer or city floodplain administrator.

a. Park-Ponds Requirements. For purposes of this subsection, the ponding area proposed for use as a park-pond shall require an affirmative approval for park usage by the director of the parks and recreation department, subject to the provisions below being met. Where acceptable, the pond portion of the park may count towards the required parkland dedication amount at ratio of one acre of park-pond for every one acre of required parkland dedication, subject to the following requirements being met.

i. To be considered as a park-pond, the proposed facility must be located no further than one-half mile from all residences that it is intended to serve. The street frontage for the park-pond shall be continuous along one complete side of the park or thirty-five percent of the park perimeter whichever is greater.

ii. Flat perimeter areas on the rim of the ponding basin shall be provided. These shall be a minimum of ten feet in width from the edge of the pond slope to the nearest property line to allow for a trail, landscaping and pond maintenance requirements. If abutting a seven-foot sidewalk or trail the flat perimeter area shall be a minimum of five feet. Wider and variable width areas are preferred to create a more parklike appearance.

iii. A park-pond shall have a flat contiguous park area adjacent to the detention/retention basin that is not subject to periodic inundation (ten-year storm frequency). This area shall be a minimum of one-half acre in size or larger, including the area of the one closest adjacent perimeter flat zone. This area shall meet the minimum improvements requirements set forth in Section 19.20.050 B as may be found to be warranted and applicable to a park-pond by the director of parks and recreation. For park-ponds where the pond portion is over two and one-half acres in size, the size of the upper area shall be at least twenty percent of the area of the pond. This area shall be shaped to accommodate the placement of permanent park structures such as play features, multi-purpose courts and shade pavilions.

iv. Side slopes in park-ponds shall not exceed a maximum three to one horizontal to vertical slope. Flatter side slopes are recommended.

v. If a two tier park-pond is designed, then the lower tier flat area shall not be less than twenty percent of the upper tier flat area.

vi. The maximum depth of the pond portion of a park-pond shall not exceed ten feet for a two tier park-pond and six feet for a one tier park-pond.

vii. Perimeter areas around the pond shall be planted to create an attractive buffer zone around the park-pond. Plant materials and required irrigation system(s) must be installed and operational at the time the city accepts the

facility. All irrigation and planting shall meet the park facilities standards referenced in Section 19.20.050.

viii. Signs shall be provided to inform the public of the dual park-pond purpose and to notify them of the potential safety hazard from stormwater detention/retention.

ix. Percolation tests at the bottom of the park-pond basin shall be performed according to ASTM 5126. Stormwater shall percolate within seventy-two hours or as may be approved by the city engineer <u>or other designee of the city manager</u>.

x. A fully accessible route that meets Americans with Disabilities Act (ADA) standards to the lower park area in the basin of the pond shall be provided.

xi. Grading, irrigation and turf in accordance with Section 19.20.050 B 3 d.

xii. Credit may be provided for that portion of the park-pond that exceeds the amount of parkland required to be deeded to the city pursuant to this title if the credit to be derived is within the same park zone and upon the affirmative recommendation of the director of parks and recreation.

b. Other Ponds Not Serving as Park Ponds. Shall meet minimum placement, setback and landscaping requirements as established by the City of El Paso Stormwater Drainage Manual.

3. Linear Park Corridors and Trail Development. Trail corridors may be dedicated and constructed by the subdivider, and may serve as credit against required parkland, subject to the following conditions being met:

a. Where adjacent to private property lines on either side of the corridor, the trail corridor shall be a minimum of thirty feet in width;

b. Where the trail corridor is adjacent to a permanently preserved corridor such as a drainage channel or natural open space, the additional trail corridor width may be reduced to fifteen feet. A minimum of ten feet from the nearest edge of the trail adjacent to a private property line shall be maintained except where separated from such private property by a wall;

c. If the trail corridor is located adjacent to a street right-of-way, the trail corridor shall be a minimum of fifteen feet in width as measured from the adjacent back of curb. The additional portion of the corridor that is outside of the street right-of-way and that is a minimum of five feet in width shall be credited as lands meeting the parkland dedication requirements of Section 19.20.030.

d. Trails shall be a minimum of eight feet in width. Narrower trails will not count as credit towards parkland requirements. Trail surface material shall follow the requirements of the City of El Paso Park Development Standards. The City of El Paso may elect to contribute to the cost of the trail if a width wider than eight feet is deemed appropriate for that specific location;

e. Public access points to the corridor shall be provided at regular intervals. The linear areas adjacent to the corridor shall have open space, street ROW, or other opportunities for immediate and safe ingress/egress along at least seventy-five percent of the corridor length on one side or the other;

f. A zone that is a minimum of five feet wide along each side of the trail shall be improved with a natural non-irrigated landscape treatment, following guidelines contained in the parks facility standards referenced in Section 19.20.050.

g. Trails may be built on power line or other utility corridors, but in cases with corridor lands whose ownership is not fully transferable to the City of El Paso, only the lands under built trails and those improved areas meeting the requirements of this subsection will count towards the parkland dedication requirements of this chapter. In such cases, the easement holder or right-of-way owner must provide legal acceptance allowing the trail to be built with free public access provided in perpetuity;

h. Trail standards in this title and in the DSC may be modified by the city plan commission based upon the recommendation of the director of parks and recreation;

i. Trail corridor lighting shall not be required where earthen trails are provided nor where corridors are located in public right-of-way and street lighting is provided. Otherwise lighting may be required by the director of parks and recreation or designee in accordance with the parks facilities standards, the DSC and the provisions of the Dark Skies section of Title 18.

4. Open space lands and Arroyos - types of land that are noted as areas that should be preserved in the El Paso Open Space Master Plan, such as natural Arroyos, may be used to meet the land dedication requirements of this chapter:

a. For purposes of this subsection, the area open space to be used in applying the reduction shall be the acreage that is deemed acceptable for preservation by the director of the parks and recreation department and approved by the city plan commission;

b. Open space lands will not be required to meet the minimum development standards of Section 19.20.050.

c. One acre of open space dedication will count as one-half of an acre of required parkland dedication;

d. Other open space lands, such as Arroyos, that exceed the parkland requirements of this chapter, may be accepted by the City of El Paso. The City of El Paso will assume maintenance of these areas.

Section 6. That Title 19 (Subdivisions), Section 19.26.040, Subsection B, (Alternative subdivision improvement design), of the El Paso City Code, is amended to read as follows:

19.26.040, Subsection B, Alternative subdivision improvement design.

B. Application. An application for the alternative subdivision improvement design procedure shall be submitted at the time of preliminary plat application, along with a subdivision improvement plan showing the proposed changes. Subdivision improvement plans in accordance with this title with the proposed alternative subdivision improvement design clearly designated shall be provided in order for the ~~engineering~~ designated staff to make an evaluation of the proposal. Engineering or other studies should be provided to establish that the proposal meets the intent of this title and provides the same level or greater of protection, service or adequacy of the original requirement. The alternative subdivision improvement design will be reviewed under the provisions outlined in Chapter

19.03, Preliminary Plats, of Section 19.08.010, subdivision improvement plans, as amended, as well as provisions outlined in this chapter. All applications shall be submitted on a form supplied by the ~~city engineer~~ planning official with the required information as stated on the application form and meeting the administrative submission requirements available in the office of the ~~city engineer~~ planning official.

Section 7. That Title 19 (Subdivisions), Section 19.31.030 (City Development Director), of the El Paso City Code, be re-titled and amended to read as follows:

19.31.030 City ~~Engineer~~ Development Director.

A. Responsible Official. The ~~city engineer~~ director of the city development department or his designee ("director") is the responsible official for the following types of applications and relief petitions (except as provided):

1. Application for approval of construction and engineering plans, and all related construction management tasks, including without limitation, approval of contracts for public improvements;
2. Application for a site preparation permit;
3. Appeal of a decision on any application for which the ~~city engineer~~ director is the responsible official;
4. Alternative subdivision designs, exception or waiver petition for any application for which the ~~city engineer~~ director is the responsible official;
5. Vested rights petition for any decision where the ~~city engineer~~ director is the responsible official for the application for which the vested rights petition is submitted; and
6. Petition for relief from a dedication or construction requirement in accordance with Chapter 19.46 and other provisions of this title.

B. Initial Decision-Maker. The ~~city engineer~~ director is the initial decision-maker for the following types of applications and relief petitions, subject to appeal as provided in this title:

1. Application for approval of construction plans, and all related construction management tasks, including without limitation approval of a contract for public improvements;
2. Application for a site preparation permit; and
3. Vested rights petition for any decision for which the ~~city engineer~~ director is the initial decision-maker.

Section 8. That Title 19 (Subdivisions), Section 19.42.010 (Enforcement Activities), of the El Paso City Code, is amended to read as follows:

Section 19.42.010 Enforcement Activities

The ~~city engineer,~~ the building official, employees of the code enforcement division, and other enforcing officers as defined or designated by the city manager, constitute authorized officials under this title, and are authorized to issue municipal court citations for violations

of this article and to bring to the attention of the city attorney, and any other appropriate authority, any violations or lack of compliance with these regulations. Any department, agency, employee or authorized official of the city having information regarding an alleged violation to this title, shall report that information to as directed by the city manager or his designee to assist in the enforcement of these requirements.

Section 9. That Title 19 (Subdivisions), section 19.42.040 (Stop Work Orders), of the El Paso City Code, is amended to read as follows

Section 19.42.040 Stop Work Orders

A. Whenever any development or construction activity is being done contrary to any term, condition or requirements of an approved application and/or this title, the planning official, or the ~~city engineer~~ director of the city development department or other designee of the city manager may order the work stopped by notice in writing, served on the property owner or authorized agent. Notice shall be given before the order shall be effective, except when the order states that it is effective immediately as being necessary to protect and preserve the public health, safety, or general welfare. Any person thereafter shall cease and desist from further development or construction material to the alleged noncompliance, until corrected by compliance and authorized by person issuing the stop work order to proceed with the work. This prohibition shall extend throughout any appeal period.
B. The owner or authorized agent may appeal the stop work order by giving written notice to the planning official and submitting a competed form as may be required by the city. The city plan commission shall meet to consider the appeal within fifteen calendar days after the date the completed application for appeal is received by the secretary of the commission.
C. The city plan commission shall reach a decision without unreasonable or unnecessary delay. A copy of the decision shall be delivered by certified mail or personal delivery to the applicant. The decision of the city plan commission shall be final, but as may be provided by law, be adjudicated in a court of competent jurisdiction.
D. The director of the city development department or other designee of the city manager ~~city engineer or his designee~~ may require the placement of temporary erosion control, drainage protection or other measures by the owner or appellant in order to protect the site and the community resources during the appeal period or any subsequent litigation.
E. The application for each appeal must be signed and be accompanied by payment of a nonrefundable application fee in the amount established by appropriate resolution of the city council.

Section 10. That Title 19 (Subdivisions), Section 19.46.040 (Processing of Appeals and Decision), of the El Paso City Code, is amended read as follows:

Section 19.46.040 Processing of Appeals and Decision.

A. Responsible Official. The ~~city engineer~~ director of the city development department or other designee of the city manager ("director") is the responsible official for processing a proportionality appeal.
B. Evaluation, Recommendation. The ~~city engineer~~ director shall evaluate the appeal and supporting study and shall make a recommendation to the city plan commission and city council based upon the information contained in the study, any comments received from El Paso County, and the ~~city~~ engineer's analysis.
C. Decision-Maker. The city council shall decide the appeal.
D. Hearing. The city council shall conduct a hearing in accordance with Chapter 19.39 of this title within sixty business days after the study supporting the petition is submitted to the ~~subdivision improvement plan engineer~~director.
E. Burden of Proof. The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.
F. Decision. The city council shall consider the petition for relief from a dedication, fee or construction requirement based upon the following criteria:

1. The city council shall determine whether the application of the standard or condition requiring dedication of an interest in land for public improvements or construction of capital improvements is roughly proportional to the nature and extent of the impacts created by the proposed development on such city's water, wastewater, stormwater, parks, or roadway system, and reasonably benefits the development.
2. In making such determination, the council shall consider the evidence submitted by the applicant, any testimony submitted by the applicant, the ~~subdivision improvement plan~~ engineer's analysis ~~report~~ and director's recommendation and, where the property is located within the city's extraterritorial jurisdiction, any recommendations from El Paso County.

G. Action. Based on the criteria in subsection E above, the city council shall, within thirty days following the hearing, take one of the following actions:

1. Deny the petition for relief, and impose the standard or condition in accordance with the initial decision; or
2. Grant the petition for relief, and waive any dedication or construction requirement to the extent necessary to achieve proportionality; or

H. Notification of Decision on Petition. The petitioner shall be notified of the decision on the petition for relief in the manner provided in Chapter 19.38 of the subdivision ordinance, within ten business days of the decision.
I. Effect. The relief granted on the petition shall remain in effect for the period the plat or related approved development application is in effect, and shall expire upon expiration of the plat or related application.

Section 11. This ordinance shall take effect on June 11, 2012.

Section 12. Except as herein amended, Title 19 of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS _____ day of _____ 2012.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Deborah G. Hamlyn
Deputy City Manager