

JOHN F. COOK  
MAYOR



JOYCE WILSON  
CITY MANAGER

CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSIE BYRD, DISTRICT 2  
EMMA ACOSTA, DISTRICT 3  
CARL L. ROBINSON, DISTRICT 4  
MICHIEL R. NOE, DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
CORTNEY CARLISLE NILAND, DISTRICT 8

REGULAR COUNCIL MEETING MINUTES  
COUNCIL CHAMBERS  
JANUARY 2, 2013  
8:30 A.M.

The City Council met in regular session at the above place and date. Meeting was called to order at 8:42 a.m. Mayor John F. Cook present and presiding and the following Council Members answered roll call: Ann Morgan Lilly, Susannah M. Byrd, Eddie Holguin, Jr., and Steve Ortega. Late arrival: Carl Robinson at 8:48 a.m. Absent: Emma Acosta, Michiel R. Noe, and Cortney Carlisle Niland requested to be excused. The invocation was given by Chaplain Lisle Davis, followed by the Pledge of Allegiance to the Flag of the United States of America.

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**MAYOR'S PROCLAMATIONS**

**CRIME STOPPERS MONTH**

**CALL TO THE PUBLIC – PUBLIC COMMENT**

**This time is reserved for members of the public who would like to address the City Council on items that are not on the City Council Agenda.**

A sign-up form is available on line at [https://www.elpasotexas.gov/muni\\_clerk/contact\\_public.asp](https://www.elpasotexas.gov/muni_clerk/contact_public.asp) for those who wish to sign up in advance of the meeting date and a sign-up form is available outside the City Council Chambers at the City Clerk table for those who wish to sign up on the day of the meeting.

Requests to speak must be received by 8:30 a.m. on the date of the meeting.

30 Minutes total is allotted for speakers.

Three to five minutes may be allowed for each speaker.

The following members of the public commented:

1. Ms. Wally Cech
2. Ms. Anna Perez
3. Mr. Othon Medina

Mayor Cook and Representatives Holguin, Byrd, and Robinson commented.

The following City staff members commented:

1. Ms. Sylvia Firth, City Attorney, gave legal advice.
2. Ms. Richarda Momsen, Municipal Clerk

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**CONSENT AGENDA**

Motion made by Mayor Pro Tempore Lilly, seconded by Representative Byrd, and unanimously carried to **APPROVE, AS REVISED**, all matters listed under the Consent Agenda unless otherwise noted. (Items

approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk (\*).

AYES: Representatives Lilly, Byrd, Robinson, Holguin, and Ortega

NAYS: None

ABSENT: Representatives Acosta, Noe, and Niland

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**1. APPROVAL OF MINUTES**

\*Motion made, seconded, and unanimously carried to **APPROVE** the Minutes for the Regular City Council Meeting of December 18, 2012.

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**2. REQUEST TO EXCUSE CITY COUNCIL MEMBERS**

\*Motion made, seconded, and unanimously carried to **EXCUSE AS REVISED**, Representatives Emma Acosta, Michiel R. Noe, and Cortney Niland from the Regular Council Meeting of January 2, 2013.

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**3.**

**RESOLUTION**

**WHEREAS**, the City and County of El Paso wish to annex approximately 0.35 acres of real property described in Exhibit "A" and Exhibit "B" which is attached and incorporated for all purposes, and of which the County of El Paso is the owner of approximately of 0.35 acres of such real property; and,

**WHEREAS**, the Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City and the Property Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

**WHEREAS**, the City has determined that if the Property is annexed, such annexation should be subject to certain terms and conditions which will require the Property Owner to assist in bearing the costs for municipal infrastructure costs and costs for providing municipal services to the annexed area; and,

**WHEREAS**, Property Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

**WHEREAS**, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

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

That the City Manager be authorized to sign an Annexation Agreement between the City and County of El Paso, for 0.35 acres of real property located South of the Intersection of Vista Del Sol Drive and Cherrington Street which will specify the terms and conditions in which the property will be annexed should the City annex the property.

That the Director of Planning prepare an annexation service plan in accordance with Section 43.056 of the Local Government Code.

Mr. Carlos Gallinar, Deputy Director for Planning, City Development, presented a PowerPoint presentation (copy on file in City Clerk's office).

Representatives Holguin and Robinson commented.

**1ST MOTION**

\*Motion made, seconded, and unanimously carried to **MOVE TO REGULAR.**

**2ND AND FINAL MOTION**

Motion made by Representative Holguin, seconded by Representative Ortega, and unanimously carried to **APPROVE** the Resolution.

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**4A. BOARD APPOINTMENT**

\*Motion made, seconded, and unanimously carried to **APPOINT** Luis A. Salazar to the Community Development Steering Committee by Representative Susie Byrd, District 2.

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**4B. BOARD APPOINTMENT**

\*Motion made, seconded, and unanimously carried to **APPOINT** Joe Lopez to the El Paso Bond Overview Advisory Committee (BOAC) by Representative Michiel R. Noe, District 5.

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**4C. BOARD APPOINTMENT**

\*Motion made, seconded, and unanimously carried to **APPOINT** Rebecca Friesenhahn to the El Paso Bond Overview Advisory Committee (BOAC) by Representative Susie Byrd, District 2.

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**5A. – 5D. INTRODUCTIONS**

Motion made by Mayor Pro Tempore Lilly, seconded by Representative Byrd, and unanimously carried that the following Ordinance, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing:

**5A.** An Ordinance amending Title 5 (Business License and Permit Regulations) of the El Paso City Code by adding Chapter 5.17 (Credit Access Businesses) in order to set forth Registration Requirements and Credit Extension Guidelines, the penalty being provided in Section 5.17.030 (Violations; Penalty) of the El Paso City Code.

**PUBLIC HEARING WILL BE HELD ON JANUARY 8, 2013 FOR ITEM 5A**

**5B.** An Ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.88 (Schedules), Section 12.88.190 (No Stopping or Standing at Any Time), of the El Paso City Code, to delete Paragraph A.3., thereby allowing stopping and standing on the west side of Luna Street, the penalty being as provided in Section 12.84.010 of the El Paso City Code.

**PUBLIC HEARING WILL BE HELD ON JANUARY 15, 2013 FOR ITEM 5B**

**5C.** An Ordinance changing the zoning of Blocks 88, 89, 116, 117, 118, 119, 123, 124, 125, a Portion of Block 154 and vacated Portions of El Paso Street, Los Angeles Street, Randolph Drive, Hague Road, Blacker Avenue, and Blanchard Avenue, Alexander Addition, City of El Paso, El Paso County, Texas from A-O/sc (Apartment-Office/Special contract) to C-2/sc (Commercial/Special contract). The penalty is as provided for in Chapter 20.24 of the El Paso City Code. Subject Property: 2001 N. Oregon. Property Owner: Tenet Hospitals Limited dba Providence Memorial Hospital. PZRZ12-00034

5D. An Ordinance changing the zoning of the following real property known as: Parcel 1: Portion of Lot 1, Block 11, Lomas Del Rey, Second Replat, City of El Paso, El Paso County, Texas, from R-3 (Residential) to C-1 (Commercial); and, Parcel 2: Portion of Lot 1, Block 11, Lomas Del Rey, Second Replat, City of El Paso, El Paso County, Texas, from R-3 (Residential) to C-1 (Commercial); and imposing conditions. The penalty is as provided for in Chapter 20.24 of the El Paso City Code. Subject Property: 109 Argonaut. Property Owner: OSRO Holdings LLC, A Texas Limited Liability Company. PZRZ12-00033

**PUBLIC HEARING WILL BE HELD ON JANUARY 29, 2013 FOR ITEMS 5C – 5D**

**6. ENGINEERING AND CONSTRUCTION MANAGEMENT**

Motion made by Representative Byrd, seconded by Representative Ortega, and carried to **AUTHORIZE** the City Engineer to issue a Purchase Order in the amount of \$648,841.22 to Basic IDIQ, Inc., a Texas Corporation, for the El Paso Times Building Second Floor Partial Remodel. This request is made pursuant to Texas Government Code Section 2267.403 which requires that individual purchase orders in excess of \$500,000, issued pursuant to a previously approved Job Order Contract, be separately approved.

AYES: Representatives Lilly, Byrd, and Ortega  
NAYS: Representatives Robinson and Holguin  
ABSENT: Representatives Acosta, Noe, and Niland

Department: Engineering and Construction Management  
Individual Purchase Order Amount: \$648,841.22  
Individual Purchase Order Project: El Paso Times Building Second Floor Partial Remodel  
Account No: 190-9998-4730-580270-PCP13CTYHALL2  
Funding Sources: City Hall Relocation  
Reference No: Contract 2013-092

Mr. John Neal, Special Projects, presented a PowerPoint presentation (copy on file in City Clerk's office).

Mayor Cook and Representatives Lilly, Holguin, Ortega, and Byrd commented.

Ms. Joyce Wilson, City Manager, commented.

Mr. Othon Medina, citizen, commented.

**7A. CITY DEVELOPMENT**

Motion made by Representative Ortega, seconded by Representative Holguin, and unanimously carried to **POSTPONE** one week the public hearing on an Ordinance granting Special Permit No. PZST12-00014, to allow for infill development with reduced rear yard setbacks on the property described as being the East 90 feet of Lots 7 - 12 and the West 45 feet of the South 10 feet of Lot 7, Block 93, East El Paso Addition, City of El Paso, El Paso County, Texas, pursuant to Section 20.10.280 Infill Development of the El Paso City Code. The penalty being as provided for in Chapter 20.24 of the El Paso City Code. Subject Property: 3204 Montana Avenue. Property Owner: Enrique and Norma Garcia, PZST12-00014

Mr. Carlos Gallinar, Deputy Director for Planning, City Development, presented a PowerPoint presentation (copy on file in City Clerk's office).

Mayor Cook and Representative Ortega commented.

Mr. Enrique Garcia, applicant, commented.

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ITEMS TAKEN TOGETHER

7B.

**ORDINANCE 17922**

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 13 (STREETS, SIDEWALKS AND PUBLIC PLACES) CHAPTER 13.04 (STREET AND SIDEWALK CONSTRUCTION AND MAINTENANCE), SECTION 13.04.070 (INSTALLATION OF SIDEWALK ON PROPERTY ON WHICH BUILDING PERMIT ISSUED) OF THE EL PASO CITY CODE TO AMEND THE REQUIREMENTS FOR INSTALLATION OF SIDEWALKS. THE PENALTY BEING AS PROVIDED IN SECTION 13.08.140 OF THE EL PASO CITY CODE.**

7C.

**ORDINANCE 17923**

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 19 (SUBDIVISIONS), CHAPTER 19.21 (SIDEWALKS), SECTION 19.21.010 (PURPOSE AND APPLICABILITY) OF THE CITY OF EL PASO CITY CODE TO AMEND THE REQUIREMENTS FOR INSTALLATION OF SIDEWALKS. THE PENALTY BEING AS PROVIDED IN CHAPTER 19.42 OF THE CITY OF EL PASO CITY CODE.**

Mr. Carlos Gallinar, Deputy Director for Planning, City Development, presented a PowerPoint presentation (copy on file in City Clerk's office).

Representative Byrd commented.

Motion duly made by Representative Byrd, seconded by Mayor Pro Tempore Lilly, that the Ordinances be **ADOPTED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinances which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Robinson, Holguin, and Ortega

NAYS: None

ABSENT: Representatives Acosta, Noe, and Niland

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinances, the same be and the same are hereby **ADOPTED**.

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8.

**RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS REQUESTING THE MEMBERS OF THE 83rd LEGISLATIVE SESSION OF THE STATE OF TEXAS SUPPORT LEGISLATION THAT INCREASES FUNDING FOR THE TEXAS RECREATION & PARKS ACCOUNT AND LARGE COUNTY AND MUNICIPALITY RECREATION AND PARKS ACCOUNT LOCAL PARK GRANT PROGRAMS, AND THE TEXAS STATE PARK SYSTEM**

**WHEREAS**, the Texas Parks & Wildlife Department (“TPWD”) administers the Texas Recreation & Parks Account Local Park Grant Program (“TRPA”) and the Large County and Municipality Recreation and Parks Account (Urban Account) and manages 94 State parks and historical sites in Texas;

**WHEREAS**, TPWD has a separate accounts in their general revenue fund referred to as the TRPA and Urban Account for the purpose of providing matching grants to political subdivisions for parks and recreation projects, and for outreach grants to introduce new populations to outdoor experiences;

**WHEREAS**, the matching grants provided by the TPWD are utilized for the planning, acquisition, and development of local park, recreation and open space areas to be owned and maintained by political subdivisions;

**WHEREAS**, funds granted to political subdivisions under the TRPA and Urban Account guidelines have funded 1629 projects of the 3,470 submitted over 30 years delivering over \$800 million to the local Texas economy;

**WHEREAS**, political subdivisions throughout the State of Texas depend on grants from TPWD through the TRPA to stimulate the acquisition and development of parks and recreational areas for the benefit and enjoyment of their citizenry;

**WHEREAS**, the TRPA, Urban Account, and State parks are funded from sales tax on sporting goods and that the development of new parks stimulates the purchase of sporting goods;

**WHEREAS**, the maintenance and improvements of State park and historic sites and the addition of new parks is a priority to Texans due to the State’s expanding population and extensive tourism industry;

**WHEREAS**, the development of parks encourages and promotes public health, economic development, job creation, education; corporate relocations, an improved quality of life, and juvenile crime prevention;

**WHEREAS**, funds are needed for major repairs at state parks and for the acquisition and development of parks and facilities; and

**WHEREAS**, it is the desire of this City Council that a copy of this resolution with appropriate names affixed be presented to the Governor of Texas and the leadership of the 83rd Texas Legislature.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

1. That members of the 83rd Legislature of Texas seek passage of legislation maximizing the use of revenue from the sporting goods sales tax to increase funding for parks and recreation programs for both Local and State parks and that all TRPA and Urban Account funded park projects be subject to the established TPWD competitive scoring system; and
2. That members of the 83rd Legislature of Texas restore funding to the TRPA and Urban accounts in the amount of at least \$15.5 million per year.

Mayor Cook and Robinson commented.

The following City staff members commented:

1. Ms. Joyce Wilson, City Manager
2. Ms. Sylvia Firth, City Attorney, gave legal advice.

Motion made by Representative Ortega, seconded by Representative Robinson, and unanimously carried to **APPROVE** the Resolution.

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9.

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City of El Paso Guidelines & Criteria for Tax Abatement Assistance attached hereto as Exhibit "A" be adopted as the City of El Paso tax abatement policy.

EXHIBIT "A"  
City of El Paso Guidelines and Criteria  
For  
Tax Abatement Assistance  
November 2012

#### I. AUTHORIZATION

The City of El Paso is authorized to provide tax abatement benefits in accordance with the State of Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the "Act"). Said Act requires the establishment of these Guidelines and Criteria for the governing of tax abatement agreements between the City of El Paso and eligible entities. The Act furthermore permits the designation of "reinvestment zones" in accordance with specific criteria.

#### II. GENERAL PURPOSE AND INTENT

The purpose and intent of these Guidelines and Criteria is to set forth the parameters under which the City of El Paso will generally operate a tax abatement program in accordance with the Act. The Tax Abatement Program is intended to be an economic development tool to assist and encourage certain types of real and personal property investment within qualified reinvestment zones. Such investment is expected to result in the creation, retention and expansion of new full-time jobs while strengthening the tax base of the City of El Paso.

All applications for tax abatement benefits will be considered on a case-by-case basis, and the decision to approve or deny tax abatement shall be at the discretion of the City Council. Nothing herein shall imply or suggest that the City of El Paso is under any obligation to provide tax abatement to any applicant.

#### III. REINVESTMENT ZONES

Reinvestment zones are designated from time to time through Texas State Procedures and/or by action of the City Council in accordance with the criteria as set forth in the Act and as applicable to the City of El Paso. In order for a geographic area to be designated as a reinvestment zone, an area must:

- A. Be designated as an "Enterprise Zone" pursuant to Chapter 2303 of the Texas Government Code, as amended, and/or
- B. Through City Council action be found to:
  1. Substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:
    - a. A substantial number of substandard, slum, deteriorated, or deteriorating structures;
    - b. The predominance of defective or inadequate sidewalks or streets;
    - c. Faulty size, adequacy, accessibility, or usefulness of lots;
    - d. Unsanitary or unsafe conditions;

- e. The deterioration of site or other improvements;
  - f. Tax or special assessment delinquency exceeding the fair value of the land;
  - g. Defective or unusual conditions of title;
  - h. Conditions that endanger life or property by fire or other cause; or
  - i. Any combination of these factors;
2. Be predominantly open and, because of obsolete platting, deterioration of structure or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;
  3. Be in a federally assisted new community located in a home-rule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality;
  4. Be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);
  5. Encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or
  6. Be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.

Designation of Zone: A resolution designating a reinvestment zone for tax abatement under the Act may not be adopted by the City until a public hearing has been held at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing shall be provided to each taxing entity and to the public in the manner required by the Act.

#### IV. ELIGIBILITY CRITERIA

In order to be eligible for tax abatement incentives, a proposed project must meet all of the general and qualifying criteria in the City's Incentive Policy and;

1. Be located within a reinvestment zone.
2. Provide "Added Value" to a property in an amount of at least \$2.5 million unless the subject property's taxes are to be abated pursuant to the City's Infill Development Incentive Policy in which case the minimum property value is established by the provisions in that policy.

#### V. DEFINITIONS

- A. Abatement: means the temporary, full or partial exemption from ad valorem taxes of certain added value to real and personal property in a reinvestment zone designated for economic development purposes pursuant to the Act.
- B. Added Value: means the increase in the assessed value of an eligible property as a result of "expansion" or "modernization" of an existing facility or construction of a "new facility." It does not mean or include "deferred maintenance."
- C. Agreement: means a contractual agreement between a property owner and/or lessee and the City of El Paso for the purposes of tax abatement.

- D. Base Year Value: means the assessed value of eligible property as of the January 1<sup>st</sup> preceding the execution of an agreement plus the agreed upon value of eligible property improvements made after January 1<sup>st</sup> but before the execution of the agreement.
- E. Deferred Maintenance: means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- F. Economic Impact: is derived from the evaluation of the number of jobs created, wages paid, employee benefit package, and capital investment.
- G. Economic Life: means the number of years a property improvement is expected to be in service in a facility.
- H. Expansion: means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.
- I. Facility: means property improvements completed or in the process of construction which together comprise an integral whole.
- J. Modernization: means the replacement and upgrading of existing facilities, which increases the productive input or output, updates the technology, or substantially lowers the unit cost of the operation, and extends the economic life of the facilities. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or completion of deferred maintenance.
- K. New Facility: means a property previously undeveloped, which is placed into service, by means other than, or in conjunction with, an expansion or modernization.
- L. Owner: means the owner of a facility subject to tax abatement. If the facility is constructed on a leased property, the owner shall be the party which owns the property subject to tax abatement. The other party to the lease shall join in the execution of the agreement but shall not be obligated to assure performance of the party receiving the tax abatement.

## VI. ABATEMENT AUTHORIZED

- A. Creation of New Value: A tax abatement may only be granted for the additional value of eligible property improvements made subject to and listed in a tax abatement agreement between the City of El Paso and the property owner and lessee (if required), subject to such limitations as said jurisdiction may require. The economic life of the improvements must exceed the term of the tax abatement agreement.
- B. Eligible Property: A tax abatement may be extended to the value of the improvements to real property, including buildings, structures, fixed machinery and equipment, and site improvements, plus that office space and related fixed improvements necessary for the operation and administration of the Facility.
- C. Ineligible Property: The following types of property shall be fully taxable and ineligible for a tax abatement: land; inventories; supplies; tools; furnishings and other forms of movable personal property; vehicles; vessels; aircraft; deferred maintenance investments; improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; improvements to real property which have an economic life of less than fifteen (15) years; property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas; unless any of the above types of property are specifically authorized by the City Council.

- D. Completion of Construction: The completion of construction shall be deemed to occur upon the earliest of one of the following events:
1. when a certificate of occupancy is issued for the project,
  2. when commercial production of a product or provision of a service is achieved at the Facility,
  3. when the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument, or
  4. two (2) years after the date of the Agreement.

The above determination, of the completion of construction, shall be made by the City of El Paso in its sole and absolute discretion, based upon the above criteria and such other factors as deemed relevant. The determination of the completion of construction shall be conclusive, and any judicial review of such determination shall be governed by the substantial evidence rule.

## VII. APPLICATION

- A. Written Application: Any present lessee, tenant or owner of taxable property may request tax abatement by filing the City's Comprehensive Incentives Application with the City of El Paso, City Development Department. A non-refundable filing fee of \$750.00 is required at the time of filing; except an Applicant filing for tax abatement pursuant to the City's Infill Development Incentive Policy will not be charged a filing fee.
- B. Contents of Application: The application shall consist of a completed application form accompanied by a general description of the new improvements to be undertaken; a descriptive list of the improvements for which a tax abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description (metes and bounds); and a time schedule for undertaking and completing of the proposed improvements. In the case of a modernization or expansion project, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information, as the City deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.
- C. Feasibility: After receipt of an application for a tax abatement, the City shall consider the feasibility and the impact of the proposed project. The study of feasibility shall include, but not be limited to, an estimate of the economic effect of the abatement of taxes and the benefit to the City of El Paso and the property to be covered by such abatement. All projects must demonstrate financial feasibility to the satisfaction of the City of El Paso.

## VIII. FINDINGS AND RESERVATION OF RIGHTS

- A. Required Findings: In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet their Guidelines and Criteria.
- B. Reservation of Rights: Nothing herein shall be construed to limit the authority of the City to examine each application for tax abatement before it on a case-by-case basis and determine in its sole and absolute discretion whether or not the proposed project should be granted a tax abatement and whether or not it complies with these Guidelines and Criteria, is feasible, and whether or not the proposed abatement of taxes will inure to the long-term benefit of such taxing entity.

## IX. AGREEMENT

- A. Contents of Tax Abatement Agreement: The tax abatement agreement with the owner of the facility shall include but not limited to:

1. The estimated value to be subject to abatement and the base year value;
  2. The percentage of value to be abated each year;
  3. The commencement date and termination date of abatement;
  4. A provision that the term of the agreement shall extend until eighteen (18) months after the expiration of the period of tax abatement;
  5. The proposed use of the facility, nature of construction, time schedule, map, property description, and improvements list as provided in the application as required;
  6. The contractual obligations in the event of default, delinquent taxes, recapture, administration and assignment as provided in these Guidelines and Criteria or other provisions that may be required for uniformity or by state law; and
  7. The amount of added value and/or required number of permanent jobs. The number of jobs is not required for applications filed pursuant to the City's Infill Development Incentive Policy.
- B. Time of Execution: After the applicant provides all necessary information and documentation, and upon receiving preliminary approval, the tax abatement agreement is normally executed within sixty (60) days.

#### X. RECAPTURE

- A. Failure to Commence Operation or Failure to Complete Improvements During Term of Agreement: In the event that the facility is not completed and does not begin operation with the minimum number of permanent jobs by the January 1<sup>st</sup> following the completion of construction, no tax abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the owner of such a facility fails to begin operation with the minimum number of permanent jobs by the next January 1<sup>st</sup>, then the tax abatement agreement shall terminate and all abated taxes during the period of construction shall be recaptured and paid within sixty (60) days of such termination. The following shall apply to tax abatement agreements executed pursuant the City's Infill Development Incentive Policy in lieu of the foregoing: In the event the improvements are not completed by January 1<sup>st</sup> of the year following contract execution, no tax abatement shall be given for that tax year and the full amount of taxes assessed against the property shall be due and payable for that tax year; the applicant shall be eligible for tax abatement until such time as the improvements specified in the contract have been completed.
- B. Discontinuance of Operations During Term of Agreement: In the event the facility is completed and begins operation with the required minimum number of permanent jobs, but subsequently discontinues operations and the minimum number of permanent jobs is not maintained on any January 1<sup>st</sup> during the term of the agreement after the completion of construction, for any reason except on a temporary basis due to fire, explosion or other casualty or accident or natural disaster, the agreement may be terminated by the City of El Paso and all property taxes previously abated by virtue of the agreement shall be recaptured and paid within sixty (60) days from the date of termination.
- C. Delinquent Taxes: In the event that the owner allows any ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, the tax abatement agreement shall terminate and so shall the abatement of the taxes for the tax year of the delinquency. The total taxes assessed without abatement for that tax year, shall be paid within sixty (60) days from the date of the termination.
- D. Notice of Default: Should the City of El Paso determine that the owner is in default, according to the terms and conditions of its agreement, it shall notify the owner in writing at the address

stated in the agreement that, if such default is not cured within sixty (60) days from the date of such notice (the "Cure Period"), then the agreement may be terminated and the taxes abated by virtue of the agreement will be recaptured and paid as provided herein.

- E. Actual Capital Investment: Should the City of El Paso determine that the total level of capital investment in the eligible property is lower than provided in the agreement, the City, at its sole discretion, reserves the right to adjust the tax abatement percentage to reflect the actual capital investment as determined.

## XI. ADMINISTRATION

- A. Annual Assessment: The El Paso Central Appraisal District shall annually determine an assessment of the real and personal property subject to an agreement. Each year, the owner shall furnish the appraisal district with such information as may be necessary for the abatement. Once value has been established, the Appraisal District shall notify the affected jurisdictions, which levy taxes, of the amount of the assessment and the abatement.
- B. Access to Facility: The agreement shall stipulate that employees and/or designated representatives of the City of El Paso will have access to the facility during the term of the agreement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the owner and in accordance with its safety standards.
- C. Annual Evaluation: Upon completion of construction, the City of El Paso, individually or in conjunction with other taxing entities, shall annually evaluate each facility receiving a tax abatement to ensure compliance with the agreement and report possible violations of the agreement.
- D. Quarterly/Annual Reports: The company shall report to the City of El Paso, on a quarterly basis, its employment level, distributed by wage brackets, the addition or deletion of capital assets in excess of \$25,000, and any other pertinent information that would affect the ability of the local operation to maintain its status as a going concern. The foregoing job reporting requirement shall not apply to tax abatement agreements executed pursuant to the City's Infill Development Incentive Policy. The reports shall be prepared on a quarterly basis and shall be submitted to the City of El Paso, City Development Department, no later than thirty (30) days following the end of each calendar quarter. In addition, on an annual basis, the owner shall certify its compliance with each applicable term of the agreement. Such annual report shall be prepared on a calendar year basis and shall be submitted to the City of El Paso, City Development Department, no later than ninety (90) days following the end of each such calendar year. It will be the responsibility of the owner to provide the reports as requested; the City is not obligated to request said reports and will not certify the owner's eligibility to receive any tax abatement without the reports. Failure to provide these required reports in a timely manner shall constitute grounds for termination of the agreement.
- E. "Buy Local" Provision: Each recipient of property tax abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency.
- F. Right to Modify or Cancel: Notwithstanding anything herein or in any agreement to the contrary, the governing body of the City of El Paso may cancel or modify the agreement if the owner fails to comply with the agreement.

- G. Transfer or Assignment: A tax abatement agreement may be assigned to a new owner but only after written consent has been obtained from the City of El Paso.

## XII. TAX ABATEMENT DETERMINATION

Nothing herein shall imply or suggest that the City of El Paso is under any obligation or duty to provide tax abatement to any applicant, and reserves the right to make exceptions, approve, and deny based on concerns including, however not limited to environmental and quality of life issues and/or compatibility with the economic goals and objectives of the City.

However, neither a reinvestment zone nor tax abatement agreement may be authorized if it is determined that:

- A. There would be an adverse impact on the provision of government service or tax base;
- B. The applicant has insufficient financial capacity to undertake and complete the project;
- C. Planned or potential use of the property would constitute a hazard to public safety or health;
- D. Violation of other codes or laws exists;
- E. Any construction has commenced with regard to a proposed project prior to the execution of a City Council authorized Tax Abatement Agreement, except in the event that any previously authorized City Council Tax Abatement Agreement is determined to be invalid and the applicant has received no benefit pursuant to the invalid agreement.

## XIII. CONFIDENTIALITY

Information that is provided to a taxing unit in connection with an application or request for tax abatement under these Guidelines and Criteria shall be kept confidential and not be subjected to public disclosure until the tax abatement agreement is executed, except as required by law or by an order of a court. This shall include all information, whether transmitted orally or in writing which is of such a nature that it is not a matter of public record or public knowledge, that is received, created or discussed in connection with an application or request to include but not be limited to information that describes the identity of a business, its specific processes or business activities to be conducted, the location of potential real estate acquisition of a business, the number of or work skills sought from the labor market, or the equipment or property be located on the property for which tax abatement is sought. Nevertheless, the City shall not be liable for any disclosures of the application. The City may, nevertheless, take disciplinary or other appropriate action against the officer or city employee who made an authorized disclosure of information that is confidential under these Guidelines and Criteria.

Written information shall be released pursuant to a request under the Public Information Act, Chapter 552 of the Texas Government Code, as amended, by the officer for public information or his or her designee in accordance with the standards established under that act for confidentiality and closed records.

All financial, proprietary and trade secret information received by the City for purposes of processing a tax abatement application or monitoring compliance by a company with the terms and conditions of a tax abatement agreement shall remain at all times confidential unless the disclosure is required by law or by an order of a court.

## XIV. EXPIRATION OF GUIDELINES AND CRITERIA

These Guidelines and Criteria shall apply upon adoption by resolution of City Council and shall remain in effect with applicable amendments from time to time, until September 30, 2014. During this period, these Guidelines and Criteria may be amended or repealed only by a vote of three-fourths of the members of the City Council of the City of El Paso. No extension of these Guidelines and Criteria is authorized except by amendment consistent with Chapter 312 of the Texas Tax Code. No reinvestment zone and/or tax

abatement agreement may be authorized in reliance upon these Guidelines and Criteria beyond September<sup>0</sup>30, 2014.

Mr. Marty Howell, Director of Economic Development and Sustainability, presented a PowerPoint presentation (copy on file in City Clerk's office).

Mayor Cook and Representatives Robinson and Byrd commented.

Ms. Sylvia Firth, City Attorney, gave legal advice.

Motion made by Representative Ortega, seconded by Representative Byrd, and carried to **APPROVE** the Resolution.

AYES: Representatives Lilly, Byrd, Robinson, and Ortega

NAYS: Representative Holguin

ABSENT: Representatives Acosta, Noe, and Niland

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**10A. MAYOR AND COUNCIL**

Update on the Ports of Entry Task Force.

Mayor Cook presented a PowerPoint presentation (copy on file in City Clerk's office).

Representatives Byrd, Lilly, and Ortega commented.

Ms. Joyce Wilson, City Manager, commented.

**NO ACTION** was taken on this item.

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**10B. MAYOR AND COUNCIL**

Motion made by Representative Byrd, seconded by Representative Ortega, and unanimously carried to **DIRECT** City staff to work with school district and neighborhood associations to remove the No Parking signs on Luna Street.

AYES: Representatives Lilly, Byrd, Robinson, Holguin, and Ortega

NAYS: None

ABSENT: Representatives Acosta, Noe, and Niland

Representative Byrd presented a PowerPoint presentation (copy on file in City Clerk's office).

Mayor Cook commented.

Ms. Joyce Wilson, City Manager, commented.

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Motion made by Representative Robinson, seconded by Representative Byrd, and unanimously carried that the City Council retire into **EXECUTIVE SESSION** at 10:21 a.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.076 to discuss any of the following:

Section 551.071

Section 551.072

CONSULTATION WITH ATTORNEY

DELIBERATION REGARDING REAL PROPERTY

Section 551.073 DELIBERATION REGARDING PROSPECTIVE GIFTS  
 Section 551.074 PERSONNEL MATTERS  
 Section 551.076 DELIBERATION REGARDING SECURITY DEVICES  
 Section 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

Discussion and action on the Executive Session items listed on the Agenda.

ABSENT: Representatives Acosta, Noe, and Niland

Motion made by Mayor Pro Tempore Lilly, seconded by Representative Holguin, carried to adjourn the Executive Session at 11:02 a.m.. and **RECONVENE** the meeting of the City Council, during which time motions were made.

ABSENT: Representatives Acosta, Noe, and Niland

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**EX1.** City of El Paso vs. El Paso Entertainment, Inc., et al., Cause No. EP-07-CV-380-KC, in the United States District Court for the Western District of Texas. (551.071)

\*Motion made, seconded, and unanimously carried to **POSTPONE** one week the item on City of El Paso vs. El Paso Entertainment, Inc., et al., Cause No. EP-07-CV-380-KC, in the United States District Court for the Western District of Texas.

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**EX2.** Carmen Guevara vs. City of El Paso, et. al.; Cause No. 2007-1845 (551.071)

Motion made Mayor Pro Tempore Lilly, seconded by Representative Byrd, and unanimously carried that the City Attorney’s Office be authorized to settlement authority to negotiate and sign all settlement documents in the lawsuit styled Carmen Guevara vs. The City of El Paso, et. al.; Cause No. 2007-1845.

AYES: Representatives Lilly, Byrd, Robinson, Holguin, and Ortega  
 NAYS: None  
 ABSENT: Representatives Acosta, Noe, and Niland

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**EX3.** Discussion and action regarding issues related to matters involving the demolition of City Hall, the construction of the new ballpark stadium, the initiative petitions and related litigation. (551.071)

Motion made Mayor Pro Tempore Lilly, seconded by Representative Byrd, and carried that the City of El Paso retain outside counsel with regard to issues related to matters involving the demolition of City Hall, the construction of the new ballpark stadium, the initiative petitions, Texas Public Information Act requests and related litigation and that the City Attorney is authorized to take any and all action necessary, both affirmative and defensive, in connection with this issue through outside counsel. This Motion is intended to grant broad authority to the City Attorney or outside counsel to take whatever action necessary to address these matters, including but not limited to, the initiation of and response to, litigation, complaints and any other administrative or judicial proceedings or process, in consultation with the City Manager.

AYES: Representatives Lilly, Byrd, and Ortega  
 NAYS: Representatives Robinson and Holguin  
 ABSENT: Representatives Acosta, Noe, and Niland

Mayor Cook and Representative Holguin commented.

The following City staff members commented:

1. Ms. Joyce Wilson, City Manager
2. Ms. Sylvia Firth, City Manager, gave legal advice.

Mr. Othon Medina, citizen, commented.

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**EX4.** Discussion and action regarding Transportation Financing Issues. (551.071)

Motion made Mayor Pro Tempore Lilly, seconded by Representative Ortega, and carried that the City of El Paso retain outside counsel with regard to Transportation Financing Issues and that the City Attorney is authorized to take any and all action necessary, both affirmative and defensive, in connection with this issue through outside counsel. This Motion is intended to grant broad authority to the City Attorney or outside counsel to take whatever action necessary to address these matters, including but not limited to, the initiation of and response to, litigation, complaints and any other administrative or judicial proceedings or process, in consultation with the City Manager.

AYES: Representatives Lilly, Byrd, Holguin and Ortega  
NAYS: None  
ABSTAIN: Representative Robinson  
ABSENT: Representatives Acosta, Noe, and Niland

Mayor Cook commented.

Mr. Othon Medina, citizen, commented.

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Motion made by Representative Robinson, seconded by Representative Byrd, and unanimously carried to **ADJOURN** this meeting at 11:17 a.m.

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**APPROVED AS TO CONTENT:**

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Richarda Duffy Momsen, City Clerk