

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Environmental Services

AGENDA DATE: **For Introduction, April 10, 2012, Public Hearing April 17, 2012**

CONTACT PERSON/PHONE: **Ellen A. Smyth 915-621-6719**

DISTRICT(S) AFFECTED: **All**

SUBJECT: An Ordinance amending Title 2 (Administration and Personnel), of the El Paso City Code, by amending Chapter 2.38 (Building and Standards Commission) in its entirety regarding the creation and authority of the Building and Standards Commission; and establishing the process for the conduct of administrative hearings and appeals of vacant building registration denials or revocations by the Commission; the penalty is as provided in Section 2.38.080 of the El Paso City Code.

BACKGROUND / DISCUSSION: This ordinance relates to the provisions in the City Code regarding actions available to the City regarding the abatement of unsafe structures. This ordinance is brought forward in conjunction with other Code amendments to revise the Code provisions so as to be in conformity with current law in the State of Texas, particularly with regard to the hearing and appeal process. New provisions are being added to enable the Building and Standards Commission to determine sign removal cases under Title 20 and to hear appeals from the revocation or denial of a vacant building registration.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

The council has an existing ordinance that regulates the administrative process for the holding of administrative hearings and appeals. This is a clarification of the process.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:

(Example: if RCA is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), OF THE EL PASO CITY CODE, BY AMENDING CHAPTER 2.38 (BUILDING AND STANDARDS COMMISSION) IN ITS ENTIRETY REGARDING THE CREATION AND AUTHORITY OF THE BUILDING AND STANDARDS COMMISSION; AND ESTABLISHING THE PROCESS FOR THE CONDUCT OF ADMINISTRATIVE HEARINGS AND APPEALS OF VACANT BUILDING REGISTRATION DENIALS OR REVOCATIONS BY THE COMMISSION; THE PENALTY IS AS PROVIDED IN SECTION 2.38.080 OF THE EL PASO CITY CODE.

WHEREAS, the City Council has established a Building and Standards Commission for the purpose of providing procedures and powers for the Building and Standards Commission to allow for the securing of dangerous structures that exist within the City of El Paso and to provide for the process for determining that a structure is dangerous and should be secured and to provide notice to the owner of the property; and

WHEREAS, the City Council desires to update and clarify the provisions in Chapter 2.38 of the Code relating to dangerous building and secured structure hearings pursuant to applicable law, and to add new provisions relating to the Commission's duties concerning the removal of signs pursuant to Section 20.18.130 of the Code, and the hearing of appeals of the denial or revocation of a vacant building registration.

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

Section 1. That Chapter 2.38 (Building and Standards Commission) of the El Paso City Code is amended in its entirety to read as follows:

2.38.010 - Purpose.

The purpose of this chapter is to provide procedures and powers for the building and standards commission pursuant to Texas Local Government Code Chapter 54, Subchapter C and Chapter 214, Subchapter A.

2.38.015 Definitions.

- A. "Commission" means the Building and Standards Commission.
- B. "Dangerous Structure" means a structure that is:

1. dilapidated, substandard or unfit for human habitation and a hazard to the public health, safety and welfare;
2. regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or
3. boarded up, fenced, or otherwise secured in any manner if:
 - a. the building constitutes a danger to the public even though secured from entry; or
 - b. the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described in subsection B 2.

C. "Diligent Effort" means that the duty to identify a natural person or legal entity is satisfied when any of the following records have been searched:

1. El Paso County real property records;
2. El Paso County Appraisal District records;
3. Texas Secretary of State records;
4. El Paso County assumed name records;
5. City of El Paso tax records; or
6. City of El Paso utility records.

D. "Director" means the Director of the Environmental Services Department or his designee.

E. "Interested Party" means a natural person or legal entity having any legal ownership interest in the real property or sign subject to a hearing under this chapter, including, mortgagee, lienholder or other party with legal right of possession, but does not include any person or legal entity with mineral or easement rights.

F. "Minimum Standards for the Continued Use and Occupancy of Structures" means those adopted and codified in Chapter 18.50 of the El Paso City Code.

G. "Notification" means the duty to notify an interested party has been satisfied when the notice, order or other documentation has been personally served or mailed, by certified mail, return receipt requested, or first class mail using signature confirmation services. The validity of notification, order or other documentation shall not be affected if it is returned by the United States Postal Service as "refused" or "unclaimed," and it shall be deemed as delivered.

2.38.020 - Appointment.

A. The commission shall consist of eighteen regular members and nine alternate members. The city council shall appoint all regular and alternate members. Each city council representative and the mayor shall nominate at least two regular members and one alternate member to the commission. Priority for consideration of each nominee in each category shall be based on the date and time the nomination is received by the city clerk for posting on the city council agenda. Vacancies shall be filled by city council appointment in the same manner as the initial appointments were made.

B. Members and alternate members must be residents of the City of El Paso. Appointments shall be made consistent with the City Charter and this chapter. All members and alternate members shall serve until their successors are appointed and qualified.

C. Alternate members must meet the same requirements and qualifications as regular

commission members, except that an alternate member has voting privileges only when sitting for an absent member.

D. The director, the building official, the fire chief, and the chief of police or their designees shall serve in an advisory capacity to the members of the commission.

2.38.030 - Membership and Terms.

A. The commission shall consist of:

1. Two registered architects with experience in the construction of buildings and residential structures;
2. Two mortgage loan bankers or brokers;
3. Two state-licensed homebuilders and/or general contractors with experience in the construction of residential and/or commercial projects;
4. Two licensed real estate brokers;
5. Two persons who are engaged in social or welfare work;
6. Two structural engineers with experience in the construction of commercial buildings;
7. One certified public accountant;
8. One certified real estate appraiser; and
9. Four members chosen on the basis of their interest in community affairs and their impartiality, fairness, and judicial temperament.

B. The appointment of all members and alternate members will be for a two year term, which term shall commence on February 15 of odd numbered years. Members previously appointed to a term ending on February 15, 2013 shall remain on the commission in accordance with the requirements of this chapter until the ending date of that term.

C. Alternates may be of any category allowed for regular members of the commission. Alternate members shall sit in the absence of regular members. The first alternate to be selected to replace a regular member shall be the alternate nominated by the same council representative, or the mayor, that nominated the absent regular member. If both the regular member and alternate member nominated by that council representative are absent, any other alternate member may be selected. When sitting in the absence of a regular member, an alternate member shall have all rights and authority of the regular member.

D. A commission member may be removed by city council for cause on a written charge. A public hearing on said removal must be held by city council if requested by the affected commission member.

2.38.040 - Procedures of the commission.

A. The commission may adopt bylaws that are consistent with this chapter and that are approved by the city attorney. The bylaws shall be submitted to the city clerk and be available to the public upon request. Meetings of the commission will be held at the call of

the chair, or in the chair's absence the vice-chair, or an acting chair designated by the chair, or as the commission may determine. All meetings of the commission are open to the public. The chair, acting chair, or vice-chair may administer oaths and compel the attendance of witnesses.

B. The director or a designee of the city manager shall act as secretary to the commission. The secretary does not have a vote and shall not be counted in determining a quorum. The secretary shall cause the minutes of each meeting to be kept and filed with the city clerk. The secretary shall keep all evidence admitted or a description of the evidence in accordance with the duly adopted bylaws.

2.38.050 - Hearing panels.

A. The chair shall divide the commission into two hearing panels for the purpose of performing the duties of the commission. The two panels will be composed of nine members. Five members constitute a quorum. Decisions of a hearing panel are made by a concurring majority vote of the members present.

B. For the purpose of fulfilling attendance requirements, the chair is only required to attend the regular meetings of one of the hearing panels.

C. Each hearing panel shall select a panel chair and a vice-chair.

D. Cases are assigned to a panel on a rotating basis.

E. Each hearing panel has the same authority as the full commission.

F. A decision by a hearing panel constitutes a decision of the commission.

G. A commission member must comply with Chapter 2.92 of the El Paso City Code and Chapter 171 of the Texas Local Government Code. In the event a member recuses himself from hearing a case, the panel shall proceed if a quorum is present without counting the recused member.

H. A commission member shall not, outside of a hearing held by the commission, discuss the merits of a case with any individual concerning any issue that is being heard by the commission.

2.38.060 Hearing procedures.

A. The director will assign a staff member to represent the city at each hearing. The city bears the burden of proving its case by presenting evidence and testimony. The city is entitled to cross-examine any witness and provide rebuttal testimony.

B. Each interested party may represent themselves or may appoint a representative. Each interested party may have only one representative address the commission. Each interested party or his representative is entitled to cross-examine witnesses and present rebuttal evidence and testimony.

1. Dangerous structure hearings. If a party is advocating for repair, then that party bears the burden of proof to demonstrate the scope of any work that may be required to comply with Chapter 18.50 and the time it will take to reasonably perform the work.

2. Sign removal hearings. If a party is advocating that the sign was lawful when it was erected, then that party bears the burden of proof.

C. After a hearing the decision of the commission is final as to administrative remedies unless a rehearing is granted in compliance with section 2.38.100.

D. Within 30 days after being notified of a final order, as determined by this section or section 2.38.100, an interested party of a dangerous structure hearing may file in state district court a verified petition setting forth that the commission's decision is illegal, in whole or in part, and specifying the grounds of the illegality. All appeals to the district court from dangerous structure hearings will be de novo.

E. Sign removal hearings in which a party is advocating the sign was lawful when erected may be appealed pursuant to Local Government Code, Section 216.014.

2.38.070 – Powers and Orders.

A. The commission may hear the following cases:

1. Dangerous Structure Hearings. A hearing in which the director seeks to have a structure deemed dangerous and is seeking an order requiring the owner to take any of the following: vacation of the structure and relocation of occupants, a reduction of the occupancy load, or the securing, repair, removal or demolition of the structure.

2. Secured Structure Hearings. A hearing requested after the building official has secured a structure pursuant to the procedures set forth in Chapter 18.42.

3. Appeal Hearing. A request by an owner of a vacant building who has had a vacant building registration denied or revoked under Chapter 18.40.

4. Sign Removal Hearings. If an unpermitted or dangerous sign located in whole or in part on private property remains after the owner has been provided notice under section 20.18.130 of this code to remove the sign, then the building official may refer the case to the Commission pursuant to section 20.18.130 B.

B. Orders.

1. Dangerous Building Hearings. Upon determining that the structure is dangerous the Commission may:

a. Order the owner of the structure to reduce the occupancy load, cause the structure to be vacated and the occupants to be relocated, and/or cause the structure to be secured, repaired, removed or demolished;

b. Issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police, to enforce and carry out the lawful orders or directives of the commission;

c. Order the accruing of a civil penalty not to exceed \$1,000 per day, or \$10 per day for a homestead, for violations of orders issued under this chapter, after the owner has actual notice of the order and takes acts in violation or fails to take actions to comply with the order; and

d. Order the city to reduce the occupancy load, cause the structure to be vacated and the occupants to be relocated, and/or cause the structure to be secured,

removed or demolished, after the owner has failed to comply with commission orders within the allotted time.

2. Secured Structure Hearings.

- a. To affirm the action taken by the building official;
- b. To affirm the reasonableness of the expenses assessed against the real property;
- c. To deem the building was not in violation of Chapter 18.50;
- d. To deem that the building was occupied by persons with the right of possession.

3. Vacant Building Registration Denial or Revocation Appeals.

- a. To affirm the decision of the building official; or
- b. To grant or reinstate a vacant building registration.

4. Sign Removal.

- a. Order the building official to cause the sign to be removed. The city shall store the sign for no more than 10 days, after which time the city may dispose of the sign and assess the actual storage fees on the owner of the sign; or
- b. Order that the sign is not in violation of the El Paso City Code.

C. Dangerous Building orders shall include the following, as applicable:

1. A statement as to whether the structure was found to be dangerous and if it can be made safe;
2. A clear and concise statement of the action the owner is required to take to comply with the order;
3. A definite period of time, in compliance with Local Government Code 214.001(h)(i)(j) and (k), in which the owners shall comply with the order;
4. A statement that failure to comply may result in the city taking the ordered action and seeking reimbursement from the owner and that the debt, if not satisfied, will become a lien against the real property;
5. A clear and concise statement setting forth the penalties issued by the commission for acting contrary to the order;
6. A statement that the interested parties have a right to appeal to the district court within thirty days of receiving of the order and that failure to do so shall result in the findings becoming final;
7. A statement that any civil penalty or assessment imposed will accrue interest at a rate of ten percent a year from the date of the assessment until paid in full.
8. That the notice will be filed in the El Paso County real property records and any person acquiring interest in property after an order has been recorded is subject to the requirements of the order.

2.38.080 - Failure to comply with commission order.

A. In addition to any civil penalties in the order, a person commits a misdemeanor offense if he fails to comply with a commission order that has become final under section 2.38.100.

B. It is a defense to prosecution under subsection A of this section that the commission order has been appealed to the State District Court and the case is pending or the commission order was not upheld on appeal.

C. After the time provided in the order has expired and the commission's order has not been appealed, then the city may take the ordered action after complying with the following:

1. The director shall cause the structure's condition to be assessed, so as to determine whether its condition remains substantially the same or has worsened from its condition at the time of the order, and shall document evidence of its condition in his file before providing notice.
2. Providing notice as described in section 2.38.090 D.
3. Within the 24 hours before the city commences any work, the director shall again cause the cause the structure's condition to be assessed, and document evidence of its condition for his file.

D. In the event that, pursuant to an assessment under this section, the director determines that the condition of the property is not substantially the same or worsened and appears to have been substantially and purposefully improved, the director will either request a rehearing and serve notice to the interested party to appear before the commission to show cause why the city should not cause the structure to be vacated, secured, removed or demolished, or take action to enforce the provisions of this code and the order of the commission by pursuing all civil and criminal actions, and civil and injunctive remedies available to the city under state law, or by any other remedy or combinations of remedies available at law or equity, including in any court action, the collection of attorney's fees and costs, and maximum interest on liens and judgments as allowed by law.

2.38.090 Notice.

A. A diligent effort, as defined in section 2.38.015, must be made to identify the owner of any real property or sign that is the subject of a hearing under this chapter.

B. Notification of hearing or rehearing must be provided to all interested parties at least ten (10) days before the hearing and the notice must include:

1. The date, time, and place of the hearing;
2. An identification, which is not required to be a legal description, of the structure and the property on which it is located;
3. A description of the alleged violations of the El Paso City Code;
4. If a dangerous structure hearing, a statement that if any interested party wishes to advocate for repair, they bear the burden of demonstrating that repair is a reasonable option and must submit at or before the hearing proof of the scope of any work that may be required to bring the building into minimum compliance with Chapter 18.50 and the time it will take to reasonably perform the work;
5. A citation to this chapter;
6. If a dangerous structure hearing, that the notice is being filed in the El Paso County Real Property Records and that the notice binds any party that becomes an interested party subsequent to the day the notice is recorded.

C. Notification of Commission Order. Within ten (10) days of an issued order the director or designee of the city manager shall provide notification to each identified interested party and shall file a copy of the order with the city clerk.

D. Notice Required: City to Perform Work.

1. The director or the designee of the city manager shall cause notification to the owners and prominently post the notice at the property five (5) days prior to the date the city intends to complete the work. The notice must include:

- a. An identification, which is not required to be a legal description, of the structure and the property on which it is located;
- b. An identification of the commission order affecting the property and the actual order or an outline of findings;
- c. A statement that the commission order has not been complied with; and
- d. The date and time the city will begin performance of the work or assessment of the civil penalty in accordance with the commission order.

E. Publication Requirements.

1. Notice of a dangerous structure hearing or rehearing must be published in a newspaper of general circulation and must include the same information listed in section 2.38.090 B 1-6.

2. Within ten (10) days of the issuance of a dangerous structure order, the order or an order in an abbreviated form must be published in a newspaper of general circulation. If an abbreviated order is published it must include the street address or legal description of the property, the date the hearing was conducted, a brief statement indicating the result of the hearing and instructions stating where a complete copy of the order may be obtained.

F. Recording Requirements.

1. Notice of a dangerous structure hearing or rehearing shall be filed in the El Paso County real property records and that notice binds any party that becomes an interested party subsequent to the day the notice is recorded.

2. Upon receipt of the order, the City Clerk shall cause a notice of a dangerous structure order shall be filed in the El Paso County real property records and that notice subjects any subsequent interested party to the requirements of the order. The provisions of this subsection must be included in each order.

2.38.085. Request for Continuance.

An interested party may request to have a hearing rescheduled by submitting the request in writing to the commission. A hearing or rehearing may only be rescheduled if the requesting party did not receive notice ten (10) days before the hearing or other reason that is not for the purpose of delay.

2.38.090 Request for Modification of a Commission Order.

An owner of property that is subject to a commission order may request a modification of the order by submitting a request to the commission in writing. The owner must demonstrate that the requested modification is not simply for delay. Any modification of an order that extends

the time in which the owner has to complete the work must comply with Local Government Code 214.001(h)(i)(j) and (k).

2.38.100 – Request for Rehearing

- A. The commission may grant one rehearing. The rehearing may not be conducted prior to issuance of a notice. A rehearing must be assigned to the same hearing panel that originally heard the case, unless the chair finds that exigent, compelling or exceptional circumstances exist that require the case to be reheard by the other panel.
- B. The director or designee of the city manager may at any time request a rehearing on any case as he determines is appropriate. The commission may grant or deny the request.
- C. The established rehearing fee must accompany a request for a rehearing, unless the director or designee of the city manager requests said rehearing. A person may make written affirmation of an inability to pay the fee, and the hearing panel shall waive the fee if it finds that payment will cause a financial hardship to the person requesting the rehearing.
- D. A decision of the commission on the rehearing is final as to administrative remedies and may be appealed only to State District Court in accordance with section 2.38.060 D.

2.38.110 Liens.

- A. If the city incurs expenses to fulfill an order under this chapter the city may assess the expense and any ordered civil penalties against the owner and the real property. If the owner fails to satisfy the debt the city can place a lien against the real property the building was located on, unless it is a homestead.
- B. The notice must contain the name and address of the owner if that information can be determined with diligent effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the municipality, the balance due and that it accrues interest at a rate of ten (10) percent a year from the assessment until paid in full.
- C. The lien arises and attaches to the property at the time the notice of the lien is recorded in the El Paso real property records.
- D. The lien will be superior to all judicial liens and inferior only to bona fide mortgage liens recorded prior to the filing of the notice of dangerous structure hearing.
- E. The lien is extinguished when the amount is paid in full.
- F. The city may also seek to reduce the civil penalty to judgment.

Section 2. Except as amended herein, Title 2 (Administration and Personnel) shall remain in full force and effect.

ADOPTED this _____ day of April 2012.

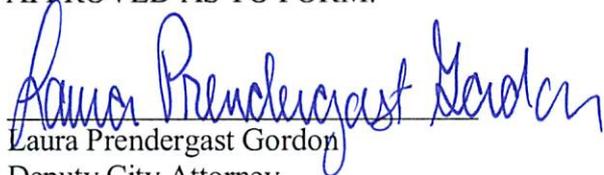
CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Laura Prendergast Gordon
Deputy City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth, P.E., Director
Environmental Services Department