

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 18 (BUILDING AND CONSTRUCTION), TO ADD CHAPTER 18.40 (VACANT BUILDINGS), OF THE EL PASO CITY CODE, TO PROVIDE REQUIREMENTS, PROCEDURES AND FEES FOR THE REGISTRATION AND INSPECTION OF VACANT BUILDINGS IN THE CITY; TO DEFINE TERMS; TO PROVIDE DEFENSES, AN APPEAL PROCESS, AND INSURANCE REQUIREMENTS; TO PROVIDE FOR THE REVOCATION OF A CERTIFICATE OF OCCUPANCY; TO REQUIRE EMERGENCY INFORMATION SIGNAGE ON VACANT BUILDINGS; TO PROVIDE A SEVERABILITY CLAUSE; AND TO CREATE A PENALTY, THE PENALTY BEING AS PROVIDED IN SECTION 18.40.130 (PENALTY) OF THE EL PASO CITY CODE.

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

Section 1. That Title 18 (Building and Construction) of the El Paso City Code, be amended to add Chapter 18.40, Vacant Buildings, to read as follows.

Section 2. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.010 (Purpose of Chapter), be added to read as follows:

18.40.010 Purpose of Chapter

A. The purpose of this chapter is to establish a program for identifying and registering vacant buildings; to determine and establish the responsibilities of owners of vacant buildings and structures; to ensure that vacant buildings are maintained in compliance with applicable city code and to encourage their rehabilitation and/or demolition in efforts to minimize wider community deleterious effects.

B. The city council finds, determines and declares that buildings which remain vacant and unoccupied for any appreciable period of time become a harborage for rodents, an invitation for illegal occupancy and for illegal activities, as well as a fire hazard, and that unkempt grounds surrounding the property invites dumping and rubbish thereon, that such buildings become dilapidated, contribute to commercial and residential blight, depress market values of surrounding property, require additional government services, endanger the public safety and health, and generally remain detrimental to the public good. It is the finding of the City Council that buildings that remain vacant with access points boarded over are unsightly, unsafe and have a significant and negative effect on their surroundings.

C. In order to protect the health, safety, morals, and welfare of the citizens of the City of El Paso, to preserve and enhance livability, preserve property values of surrounding buildings, and to ensure that buildings are promptly rehabilitated and/or demolished as appropriate, it is the

policy of the city to address vacant building rehabilitation or demolition in accordance with due process requirements.

Section 3. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.020 (Definitions), be added to read as follows:

18.40.020 Definitions

Unless otherwise expressly stated, the following terms shall for the purpose of this article, have the meanings indicated in this section.

A. “Owner” means a person in whom is vested the ownership or title of real property, including, but not limited to:

1. The holder of fee simple title;
2. The holder of a life estate,
3. The holder of a leasehold estate that includes the vacant portions of the building;
4. The buyer in a contract for deed;
5. A mortgagee, receiver, executor, or trustee in control of real property; and
6. The named grantee in the last recorded deed.

B. “Vacant” means any building, structure, or portion thereof, which during the relevant occupancy period, has less than 50% of the total area of the building (excluding stairwells, elevator shafts, and mechanical rooms) being legally occupied, or is not being used for occupancy that was authorized. The relevant occupancy period for determining “vacant”: is a continuous period of one hundred eighty (180) days or more if such building or structure is designated for commercial use; or for a continuous period of three hundred sixty five (365) days or more if such building or structure is designated for residential use having less than four units.

C. “Certificate of Registration” means a certificate of registration issued by the permit official under this chapter to the owner of a vacant building, which may include owner obligations to undertake certain identified improvements to the vacant building during the registration term.

D. “Registrant” means a person issued a certificate of registration for a vacant building under this chapter.

Section 4. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.030 (Vacant Building Registration), be added to read as follows:

18.40.030 Vacant Building Registration

A. A person commits an offense if the person owns a vacant building without a valid certificate of registration or exemption issued pursuant to this chapter.

B. The owner or the owner’s authorized agent shall submit an application to the permit official to register a building or apply for an exemption not later than thirty (30) days after the

building becomes a vacant building. One or more of the owners may designate an individual to execute the application on behalf of the owner(s).

C. The registration application shall be submitted on forms provided by the permit official. The registration application shall include the following information supplied by the applicant:

1. The address and description of the premises;
2. The building height, number of stories contained therein, area in square feet of each story, whether each story is above or below ground level, and year built;
3. The date on which the vacant building was last legally occupied, a description of the last or current use of the vacant building, and a description of any hazardous materials, uses, or conditions that currently exist or previously existing in the vacant building.
4. The names, addresses and telephone numbers of the owner or owners and authorized agents;
5. The name and address of any third party who the owner has entered into a contract or agreement with for property management;
6. The names and addressees of all known lien holders, tenants, and all other parties with an ownership or possessory interest in the building;
7. A telephone number where a responsible party can be reached at all times during business and non-business hours;
8. The period of time the building is expected to remain vacant;
9. If the owner plans to return the building to 50% or more occupancy, the estimated date for returning the building to such occupancy;
10. If the owner plans to demolish the building, the date the building is scheduled for demolition;
11. If the owner proposes to rehabilitate or renovate the building, the date the building rehabilitation or renovation is scheduled to commence and be completed in accordance with all applicable codes;
12. If the owner proposes to retain the building, the measures that will be taken to try to reduce any adverse impact on the property values of adjacent property from the retention of the vacant building;
13. The plan for regular maintenance of the building during the period of vacancy with owner certification that the building is compliant with all applicable codes;
14. The measures the owner will employ to secure the building in accordance with all applicable zoning, property maintenance, historic preservation and building codes;
15. The measures the owner will employ to monitor and inspect the property and schedule for periodic inspection;
16. Proof of insurance required by Section 18.40.070 under this chapter;
17. The name of the addressee and the mailing address to which all notices or other communication required under this chapter may be delivered, including communication regarding registration and vacant building status;
18. The initial information required by Section 18.40.120 for emergency response information;
19. As applicable, the locations of emergency response signage required by Section 18.40.120;

20. If the owner was previously been issued a certificate of registration for the vacant building, proof of compliance with any owner obligations in the prior certificate of registration or if the obligations were not met, documentation demonstrating significant progress in addressing the identified owner obligations; and
21. Any other reasonably related additional information required by the permit official.

D. A separate registration application is required for each vacant building, regardless of any separate occupied buildings that may also be located at the same street address. If more than one vacant building is located at the same street address, a separate certificate of registration is required for each vacant building. In addition, only one registration application is required for a single vacant building that has more than one street address.

E. The permit official shall, within one hundred eighty (180) days, take one of the following actions regarding the filing of a completed application for which all required established fees have been paid:

1. Issue a certificate of registration if the permit official determines that:
 - a. The applicant has complied with all requirements for issuance of the certificate of registration;
 - b. The applicant has not made a false statement as to a material matter in an application for a certificate of registration; and
 - c. The applicant or owner has no outstanding fees charged under this chapter.

2. Deny the certificate of registration as provided under subsection F.

3. Inform the applicant that the certificate of registration cannot be issued within the time period under this section and advise the applicant as to the date on which the permit official shall make the required determination, which shall be the earliest date practicable.

The failure of the permit official to take action as required under this subsection shall not result in an automatic registration of a vacant building under this chapter.

F. In issuing a certificate of registration, the permit official will enumerate in the certificate of registration any owner obligations to undertake certain property improvements to the vacant building, which will be based on the owner's intended use, rehabilitation, demolition, or maintenance of the vacant building, and the schedule for such undertaking in accordance with all applicable codes or as identified in the owner's application submitted pursuant to subsection C, if the latter accomplishes an earlier completion of improvements.

G. If the permit official determines, upon initial review or inspection that the application does not address the requirements of this chapter, the permit official shall notify the owner and allow reasonable time for the revision of the application. If, upon final review of the completed application, the permit official determines that the requirements of Subsections C. and E have not been met, the permit official shall deny a certificate of registration to the owner.

1. If the permit official determines that the owner should be denied a certificate of registration, the permit official shall deliver written notice to the owner that the application is denied and include in the notice the reason for denial.
2. The owner may appeal the determination of the permit official by following the procedure provided in Section 18.40.060.

H. The permit official shall give notice of issuance, denial or revocation of a certification of registration for a vacant building to lien holders, tenants, and other parties, as identified in the application.

I. Except as otherwise provided herein, the certificate of registration for a vacant building shall terminate the earlier of:

1. One year after date of issuance;
2. The date the vacant building changes ownership, as determined by the permit official;
3. The date the vacant building becomes occupied, as determined by the permit official;
or
4. The date the vacant building is demolished, as determined by the permit official.

J. Requests for termination of a certificate of registration shall be in writing to the permit official and accompanied by documentation in support of the request. The failure of the permit official to terminate the certificate of registration as provided herein within 30 days after the date that the written request was made shall constitute a denial of the request for the termination and the owner may appeal such action by following the procedure provided in Section 18.40.060.

K. A certificate of registration issued under this chapter is transferable to a new owner during the first six months following issuance of the certificate of registration and upon an owner's written request to the permit official for a transfer of the certificate of registration, provided that:

1. The owner has complied with the provisions of this chapter or other city ordinance or state or federal law applicable to the vacant building;
2. Payment of the administrative established fee established for transfer of the certificate of registration; and
3. The new owner's acceptance of the application information for the certificate of registration to be transferred.

The failure of the permit official to transfer the certificate of registration as provided herein within 30 days after the date that the written request was made shall constitute a denial of the request for the transfer and the owner may appeal such action by following the procedure provided in Section 18.40.060.

L. An owner or applicant shall notify the permit official in writing within 30 days after any material change in the information contained in the application for a certificate of registration for a vacant building, including any changes in ownership of the property or intended use, rehabilitation, demolition, or routine maintenance of the vacant building.

M. If the permit official has reason to believe that a building has been vacant for at least 180 days and it is unregistered, the permit official shall evaluate the building and make a determination as to whether the building is a vacant building within the meaning of this chapter. If the permit official finds the building is a vacant building:

1. The permit official shall give written notice of such determination to the owner of the subject building. The notice of determination shall identify the building; street address or legal description of the property; state the factual basis for the determination; classify the building as a vacant building; and the obligations of an owner to register the building as set forth in this chapter.
2. The notice under this section must comply with the requirements of Texas Local Government Code Section 54.005.
3. The permit official satisfies the requirements of this section to make a diligent effort, to use his best efforts, or to make a reasonable effort to determine the identity and address of an owner if the permit official searches the following records:
 - a. Real property records of El Paso County, El Paso, Texas;
 - b. El Paso Central Appraisal District records;
 - c. Records of the secretary of state;
 - d. Assumed names records of the El Paso County, El Paso, Texas;
 - e. Tax records of the City; and
 - f. Utility records of the City.
4. When the permit official mails a notice in accordance with this section to an owner and the United States Postal Service returns the notice as “refused” or “unclaimed,” the validity of the notice is not affected, and the notice is considered delivered.
5. An owner may appeal the determination of the permit official that the building should be classified as a vacant building under this chapter by following the procedure provided in Section 18.40.060.

Section 6. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.040 (Exemptions), be added to read as follows:

18.40.040 Exemptions

A. An owner or the owner’s authorized agent may apply for an exemption to the registration requirement or the vacant building plan requirement under the following circumstances. The applicant requesting an exemption under this section shall submit an application to the permit official on forms provided and shall pay the administrative established fee.

The permit official shall issue the exemption provided herein upon a finding that the applicant has complied with all requirements for issuance of the exemption and the applicant has not made a false statement as to a material matter in the application. The failure of the permit official to issue an exemption provided herein within 30 days after the date that the application was made shall constitute a denial of the application for an exemption and the owner or the owner’s authorized agent may appeal such action by following the procedure provided in Section 18.40.060.

B. A vacant building which has suffered fire damage or damage caused by extreme weather conditions may be exempted from the registration requirement under this chapter for a period of ninety (90) days after the date of the fire or extreme weather event.

The exemption request shall include the following information supplied by the applicant:

1. An address and description of the premises;
2. Detailed information regarding the date the damage was suffered and the extent of the damage if the request for an exemption is being submitted on this basis;
3. The names and addresses of the owner or owners; and
4. A statement of intent to repair and reoccupy the building in an expedient manner, or the intent to demolish the building.

C. Tax foreclosed vacant buildings that are held by the City of El Paso, as trustee for other taxing entities, are exempt from the registration requirements under this chapter.

Section 7. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.050 (Revocation of Registration), be added to read as follows:

18.40.050 Revocation of Registration

A. The permit official shall revoke a certificate of registration for a vacant building if the permit official determines that:

1. The owner failed to comply with any provision of this chapter or any other city ordinance or state or federal law applicable to the building;
2. The owner or applicant intentionally made a false statement as to a material matter in the application or in a hearing concerning the certificate of registration; or
3. The owner or applicant failed to pay a fee required by this chapter at the time it was due.

B. Before revoking a certificate of registration, the permit official shall deliver written notice to the person designated on the application form to receive notices under this chapter that the certificate of registration is being considered for revocation. The notice must include the reason for the proposed revocation, action the owner must take to prevent the revocation, and a statement that the owner has 10 days after the date of delivery to comply with the notice.

C. If after 10 days after the date the notice is delivered, the required action stated in the notice has not been taken or completed, the permit official shall revoke the certificate of registration and deliver written notice of the revocation to the person designated on the application form to receive notices under this chapter. The notice must include the reason for the revocation and the date the permit official orders the revocation.

D. The owner or applicant may appeal the action of the permit official under this section by following the procedure provided in Section 18.40.060.

Section 8. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.060 (Appeal Process), be added to read as follows:

18.40.060 Appeal Process.

An owner, applicant or other person who has, in this chapter, been granted a right of appeal from any decision or action, may appeal such decision or action to the Building and Standards Commission as provided herein.

- A. The appeal shall be filed in writing with the permit official within thirty days after the date of issuance of the notice of decision or action.
- B. A public hearing shall be scheduled within forty-five days of the filing of such notice of appeal, and notice of the date, time and place shall be provided in writing at least 10 days prior to the hearing to the appellant and to the person designated on the application form to receive notices under this chapter, if different.
- C. The Building and Standards Commission shall hear all evidence presented and may uphold or overturn the decision or action of the permit official based on the application of the applicable provisions and requirements of this chapter.
- D. The decision of the Building and Standards Commission shall be final.

Section 9. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.070 (Insurance Requirements), be added to read as follows:

18.40.070 Insurance Requirements

A. Prior to the issuance of a certificate of registration for any vacant building designated for commercial uses, the owner shall procure and keep in full force and effect at all times during the registration term, commercial general liability and property insurance coverage, with minimum combined bodily injury (including death) and property damage limits of not less than \$1,000,000 for each occurrence and \$2,000,000 annual aggregate.

Section 10. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.080 (Additional Administrative Procedures), be added to read as follows:

18.40.080 Additional Administrative Procedures

- A. Authorization for Investigation
 - 1. The permit official may investigate any building for purposes relating to this chapter and for compliance with applicable city codes if:
 - a. the owner fails to register the vacant building or obtain an exemption within 30 days following a final determination by the permit official that the owner’s building is a vacant building subject to the provisions of this chapter;

- b. the application for a certificate of registration has been denied and the right to appeal has expired; or
- c. the owner fails to comply with the intended use, rehabilitation, demolition, or maintenance of the vacant building as stated in the application submitted pursuant to this chapter within 30 days after having received a written notice by the permit official of the violation, deficiency or failure to comply.

B. Loss of Certificate of Occupancy

If the permit official determines upon investigation that the building or structure itself or a portion thereof is in violation of an applicable city code, the permit official may take action to suspend or revoke a certificate of occupancy as is authorized under such code.

Section 11. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.090 (Registration and commercial property inspection fees), be added to read as follows:

18.40.090 Registration and commercial property inspection fees

A. The established fee for a certificate of registration shall be charged and collected at the time of application submittal. The established registration fee shall be for the administrative costs for registering and processing the vacant building owner registration form, and inspecting the vacant building and premises for compliance with the requirements of this Chapter.

B. The established registration fee shall be paid on annual basis.

Section 12. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.100 (Delivery of Notices), be added to read as follows:

18.40.100 Delivery of Notices

A. Any written notice that the permit official is required to give an owner under this chapter is deemed to be delivered:

- 1. On the date the notice is hand delivered to the applicant; or
- 2. Three days after the date the notice is placed in the United State mails with proper postage and properly addressed to the owner at the address provided in the most recent registration application.

Section 13. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.110 (Inspections and Enforcement), be added to read as follows:

18.40.110 Inspections and Enforcement

A. The permit official is authorized to administer this chapter and all enforcement officials are authorized to enforce the provisions of this chapter.

B. For all purposes relating to vacant building applications and registrations, the permit official is authorized at a reasonable time to inspect the premises that are the subject of the application or registration, to include but not be limited to, conducting an inspection in order to determine whether the owner's intended use, rehabilitation, demolition, or maintenance of the vacant building meets the requirements of the City Code for demolition, rehabilitation or maintenance of the status of vacancy, as appropriate.

C. For all purposes relating to enforcement under this chapter, an enforcement official is authorized at a reasonable time to inspect:

1. The exterior of a vacant building or other building that appears to the enforcement official to be unoccupied in whole or in part;
2. The interior of a vacant building or other building that appears to the enforcement official to be unoccupied in whole or in part, if permission of the owner, operator, or other person in control is given, or a search warrant or writ of entry is obtained.

Section 14. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.120 (Emergency Response Information and Signage), be added to read as follows:

18.40.120 Emergency Response Information, Signage, and Installation of Fire Suppression Systems

A. An owner of a vacant building shall provide the permit official with the name, street address, mailing address, and telephone number of a person or persons who can be contacted 24 hours a day, seven days a week, in the event of an emergency condition in or on the premises of the vacant building. An emergency condition includes any fire, natural disaster, collapse hazard, burst pipe, serious police incident, or other condition that requires an immediate response to prevent harm to property or the public.

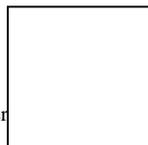
B. The owner of the vacant building shall notify the permit official within five days after any change in the emergency response information.

C. The owner of the vacant building, or an authorized agent, must arrive at the premises within one hour after a contract person named under this section is notified by the city or emergency response personnel that an emergency condition has occurred on the premises.

D. Upon issuance of a certificate of registration for any vacant building designated for commercial uses or for residential use having four or more units, the owner shall install placards approved by the Fire Chief or designee, which apply the following marking system to alert city or emergency response personnel to potential hazards:

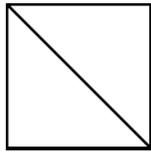
1. Any vacant building determined by the Fire Chief or designee to be especially unsafe in case of fire, under the Section 110, Chapter 9.52, International Fire Code, as amended, shall be identified and marked as provided herein.
2. The design of the placards shall use the following symbols:

a.



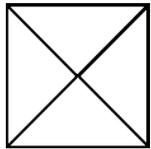
This symbol shall mean that the structure had normal structural conditions at the time of marking.

b.



This symbol shall mean that structural or interior hazards exist and interior fire-fighting or rescue operations should be conducted with extreme caution.

c.



This symbol shall mean that structural or interior hazards exist to a degree that consideration should be given to limit fire-fighting to exterior operations only, with entry only occurring for known life hazards.

d. Vacant marker hazard identification symbols: The following symbols shall be used to designate known hazards on the vacant building marker. They shall be placed directly above the symbol.

- (1) R/O - Roof open
- (2) S/M- Stairs, steps and landing missing
- (3) F/E- Avoid fire escapes
- (4) H/F- Holes in floor

e. The use of these symbols shall be informational only and shall not in any way limit the discretion of the on-scene incident commander.

2. Placards shall be applied on the front of the vacant building and be visible from the street. Additional placards shall be applied to the side of each entrance to the building and on penthouses.
3. Placards shall be 24 inches by 24 inches (610 mm by 610 mm) minimum in size with a red background, white reflective stripes and a white reflective border. The stripes and border shall have a 2-inch (51 mm) minimum stroke.
4. Placards shall bear the date of their application to the building and the date of the most recent inspection.

5. Prior to receiving a placard, all buildings shall be inspected thoroughly by the Fire Chief or designee.
6. Any subsequent amendments to Chapter 9.52 of the City Code shall govern and control over the provisions of this section.

D. The owner of a vacant building that has a certificate of occupancy which is designated as an assembly (A), business (B), educational (E), institutional (I), hazard (H), factory (F), mercantile (M) building, or utility (U) shall install a fire suppression system that conforms to the standards set forth in the currently adopted International Fire Code and maintain that system in good working order.

Section 15. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.130 (Penalty), be added to read as follows:

18.40.130 Penalty

- A. A person who violates a provision of this chapter, or who fails to perform an act required of the person by this chapter, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted or continued.
- B. An offense under this chapter is punishable by a fine not to exceed \$2,000.
- C. The penalty provided herein is in addition to any other enforcement remedies that the City may have under city ordinances and state law. Nothing in this chapter shall preclude the City from taking administrative or civil action as may be permitted by law.

Section 16. That Chapter 18.40 (Vacant Buildings) of the El Paso City Code, Section 18.40.140 (Severability), be added to read as follows:

18.40.140 Severability

In the event that this ordinance or any provisions of it shall be deemed by a court to be in conflict with a provision of general law, or if adherence to or enforcement of any section of this ordinance shall be restrained by a court, the remaining provisions of this local law shall not be affected.

Section 19. Except as expressly herein amended, Title 18 (Building and Construction) of the El Paso City Code shall remain in full force and effect.

Section 20. **This ordinance shall take effect on March 1, 2011.**

(Signatures follow on next page)

ADOPTED this _____ day of _____, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Marie Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Otto Drozd
Fire Chief

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy City Manager
Development & Infrastructure