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

DEPARTMENT: City Development Department

AGENDA DATE: Introduction: July 31, 2012
Public Hearing: August 7, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Mathew McElroy, City Development Department, 541-4193

DISTRICT(S) AFFECTED: District 8

SUBJECT:
An Ordinance Amending Title 3 (Revenue and Finance), Chapter 3.04 (Property Taxes), Section 3.04.035 (Exemption-Historically Significant Sites) of the El Paso City Code; to allow the tax exemption to remain with the property for the duration of the exemption regardless of ownership transfer.

BACKGROUND / DISCUSSION:

Currently, the Historic Property Tax exemption is eligible for 10 years. This amendment allows for property tax exemption for historic properties in the downtown area to extend to 15 years. This amendment encourages growth to downtown El Paso and furthers the Adaptive Re-Use, "Sustainable City Centers" program.

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

Not applicable

BOARD / COMMISSION ACTION

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

DEPARTMENT HEAD: _____
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

City Development Department
Two Civic Center Plaza – 5th Floor · El Paso, Texas 79901
Phone (915) 541-4622 · Fax (915) 541-4799

ORDINANCE NO._____

AN ORDINANCE AMENDING TITLE 3 (REVENUE AND FINANCE), CHAPTER 3.04 (PROPERTY TAXES), SECTION 3.04.035 (EXEMPTION – HISTORICALLY SIGNIFICANT SITES) OF THE EL PASO CITY CODE; TO ALLOW THE TAX EXEMPTION TO REMAIN WITH THE PROPERTY FOR THE DURATION OF THE EXEMPTION REGARDLESS OF OWNERSHIP TRANSFER.

WHEREAS, the City Council has created a tax exemption for historic properties to encourage their preservation; and

WHEREAS, the Council desires to ensure that the tax exemption remains with the property should ownership change; and

WHEREAS, the Council desires to ensure that, for the Downtown Historic District only, if the value of the improvements is equal to fifty percent or more of the assessed value of the site prior to preservation, the city's portion of the assessed ad valorem taxes shall not be increased for a period of fifteen years, which benefits the City by encouraging growth and enhancement to downtown El Paso, and to further the Adaptive Re-Use, "Sustainable City Centers" program;

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

Section 1. That Title 3 (Revenue and Finance), Chapter 3.04 (Property Taxes) Section 3.04.035 (Exemption – Historically significant sites) is hereby amended to read as follows:

3.04.035 Exemption—Historically significant sites.

A. Definitions.

1. "Assessed value of the site prior to preservation" means the value assessed by the central appraisal district as of the date the appraisal role is certified of the current tax year in which the applicant receives an approved certificate of appropriateness issued by the historic landmark commission or administratively approved by the historic preservation officer.

2. "Applicant" means the property owner(s) requesting a tax exemption pursuant to this section.

3. "Historic landmark commission" also referred to as the "HLC," means the city of El Paso Historic Landmark Commission created under Title 2 of the El Paso City Code.

4. "Historic Preservation Officer" also referred to as "HPO," means the person or persons designated by the city manager for the city of El Paso granted authority and duties as designated under Title 2 of the El Paso City Code.

5. "Historically significant site in need of tax relief to encourage preservation," also referred to as "site," means a structure, together with the land necessary for access and use of the structure in need of restoration or rehabilitation and which is designated as one or more of the following:

a. Listed on the national register of historic places;

b. Located in a national register historic district and certified by the Secretary of Interior as being of historic significance to the district;

c. Designated as a Recorded Texas Historical Landmark or a state archeological landmark by the Texas Historical Commission;

d. Designated as a historic landmark by the city of El Paso as provided in Title 20 of this code;

e. Located in a historic district and designated by council under Section 20.20.040 of this code as a contributing property; or

f. Located in a historic district or an area of potential effect designated by the city of El Paso and the site is shown to be a historically significant site in need of tax relief to encourage its preservation.

6. "Rehabilitation" means the act or process of returning a building, object, site or structure to a state of utility through repair, remodeling or alteration that makes possible an efficient contemporary use while preserving those portions or features of the building, object, site or structure that are significant to its historical, architectural and cultural values.

7. "Restoration" means the act or process of accurately recovering the form and details of a building, object, site or structure and its setting as it appeared at a particular period of time by means of the removal of later work or by the repair or replacement of missing earlier work.

8. "Reviewing authority" means the City development director or designee for the properties for which this ordinance is applicable that are within the boundaries of an area designated by the city council as an area of potential effect and which are not designated as a historic landmark pursuant to chapter 20.20 of this code other than the area of potential effect designated as the Union Plaza area, and means the historic preservation officer for the area of potential effect designated as the Union Plaza area and all other properties for which this ordinance is applicable.

B. Application Process.

1. Applicants requesting a tax exemption pursuant to this section shall submit an application on the prescribed form to the reviewing authority, prior to starting any restoration or rehabilitation work on the site in which an exemption request is made, in order to allow the reviewing authority to obtain the appropriate information to make a determination as to whether the site for which the tax exemption is requested meets all applicable criteria for said exemption.

The owner of a property located in an area of potential effect, may, prior to the submission of a complete application, request input and guidance from the HPO regarding the potential qualification of the property to be designated as a historically significant site. The provision of such input and guidance shall in no way bind or obligate the City or the HPO to find, upon the completion and submission of an application, that a property is in fact historically significant, but is meant only to offer guidance to a potential applicant with a property in an area of potential effect, where some but not all properties may qualify as being historically significant.

2. An application shall be signed and sworn to by an applicant and shall include the following:

a. Legal description of the property, including the description of the site if less than the entire property, proposed for tax exemption;

b. Affidavit describing the historic significance of the site in need of tax relief;

c. Final complete set of plans for the site's restoration or rehabilitation including the proposed restoration or rehabilitation for the exterior and interior of the site. All proposed plans must address restoration or rehabilitation of both the exterior and the interior unless the applicant provides an inspection report that shows that the interior fully complies with all applicable code requirements and is not in need of restoration or rehabilitation, in which case the plans need only address the exterior of the site;

d. Detailed estimate of costs for the restoration or rehabilitation project work;

e. Proposed construction schedule for the project, not to exceed three years, that includes the projected construction start and completion dates of the restoration or rehabilitation;

f. Written authorization to allow city officials to enter and inspect the site at reasonable times to determine that the site in question is in substantial need of restoration or rehabilitation, and to allow city officials to enter and inspect the site during and upon completion of construction, and if the exemption is approved, to allow entry by city officials to inspect the site during the entire time period for which the tax exemption is granted;

g. Detailed statement of the proposed use for the site;

h. Copy of the approved certificate of appropriateness issued by the HLC or the HPO when appropriate, or administratively approved by the HPO when authorized by chapter 20.20 of this code;

i. Information that demonstrates how the site demonstrates historic integrity and meets the requirements of subsection A. 5. of this section, unless the site only meets the criterion in subsection A. 5. f., in which case the site must meet one of the criteria set

forth in Section 20.20.050 of this code, and such building or buildings located on the site must be fifty years old or older;

j. A clear identification of what portion of the property should be eligible for tax relief, including the land necessary for access, if the total property owned by the applicant is greater than the dimensions of the site;

k. Photographs and drawings of the site before rehabilitation, including all protected facades and any other area where rehabilitation will be performed; and

l. Provide any additional information to the reviewing authority that the applicant deems relevant or useful.

3. Each application shall contain sufficient documentation confirming or supporting the information submitted therein. Upon receipt of a completed application, the reviewing authority shall be responsible for processing and administering all requirements of this section.

4. Applications for the tax relief pursuant to this section for sites in areas of potential effect shall not be accepted after August 31, 2018.

C. Determination of Eligibility Process.

1. The application shall be reviewed by the reviewing authority for completeness and shall not be processed until any missing information is supplied by the applicant and the fee has been received. The reviewing authority shall notify the applicant of any information missing from the application.

2. Upon receipt of a completed application, the reviewing authority shall within thirty days approve or disapprove the eligibility of the site for tax relief pursuant to this section. The reviewing authority shall determine whether all requirements of this section have been fulfilled and make the following determinations:

a. The reviewing authority shall verify that all required showings under subsection B of this section have been made and that satisfactory proof has been submitted;

b. The reviewing authority shall verify that the cost estimates for the restoration or rehabilitation work meets or exceeds twenty percent of the assessed value of the site prior to preservation; and

c. The reviewing authority shall determine and declare what portions of the property constitute the site that will benefit from the tax exemption allowed by this chapter.

3. If the reviewing authority determines that all of the application requirements have been fulfilled, that the cost estimate meets or exceeds twenty percent of the assessed value of the site prior to preservation, the reviewing authority shall designate the declared site as a historically

significant site in need of tax relief to encourage its preservation, and approve the eligibility of the site for tax relief pursuant to this section.

4. The reviewing authority shall inform the applicant in writing whether the application has been approved and designation made, or disapproved; and if disapproved, the reviewing authority shall detail the reason(s) for disapproval.

5. If the reviewing authority disapproves the application, an applicant may appeal the reviewing authority's decision as follows.

a. If the property is within the boundaries of an area designated by the city council as an area of potential effect and the property is not designated as a historic landmark pursuant to chapter 20.20 of this code, the applicant may appeal to the city council by filing a written appeal with the city clerk within fifteen days after the disapproval by the reviewing authority. Following a public hearing to be held within thirty days of the filing of a notice of appeal, the city council may uphold or overturn the decision of the reviewing authority and determine that all of the application requirements have been fulfilled and that the cost estimate meets or exceeds twenty percent of the assessed value of the site prior to preservation, and designate the site as a historically significant site in need of tax relief to encourage its preservation and declare the eligibility of the property for tax relief pursuant to this section. The decision of the city council shall be final.

b. For all other properties affected by this ordinance, the applicant may appeal to the HLC by filing a written appeal with the reviewing authority within fifteen days after the disapproval by the reviewing authority. Following a public hearing to be held within thirty days of the filing of such notice of appeal, the HLC shall hear all evidence presented and may uphold or overturn the decision of the reviewing authority and if the HLC finds that the application meets the provisions in this section, issue a determination that all of the application requirements have been fulfilled, designate the site as a historically significant site in need of tax relief to encourage its preservation, and declare the eligibility of the property for tax relief pursuant to this section. The decision of the HLC shall be final.

D. Historic Structure Preservation Tax Exemption.

1. If an applicant's site is granted the tax exemption allowed in Section 11.24 of the Texas Tax Code, the city's portion of the assessed ad valorem taxes shall be based on the assessed value of the site prior to preservation, and shall not increase based on the following formula, which shall constitute the amount and time period of the tax exemption:

a. If the value of the improvements is equal to fifty percent or more of the assessed value of the site prior to preservation, the city's portion of the assessed ad valorem taxes shall not be increased for a period of ten years.

b. If the value of the improvements is equal to between forty percent and 49.99% of the assessed value of the site prior to preservation, the city's portion of the assessed ad valorem taxes shall not be increased for a period of eight years.

c. If the value of the improvements is equal to between thirty percent and 39.99% of the assessed value of the site prior to preservation, the city's portion of the assessed ad valorem taxes shall not be increased for a period of six years.

d. If the value of the improvements is equal to between twenty percent and 29.99% of the assessed value of the site prior to preservation, the city's portion of the assessed ad valorem taxes shall not be increased for a period of four years.

e. If the value of the improvements, for contributing properties located within the Downtown Historic District only, is equal to fifty percent or more of the assessed value of the site prior to preservation, the historic structure preservation tax exemption shall be for a period of fifteen years.

2. The exemption shall begin on the first day of the first tax year after verification of completion pursuant to the requirements of this section.

3. A subsequent owner may claim the tax exemption granted by City Council for the duration previously granted. A subsequent owner must submit an application for claiming a tax exemption for the remainder of the initial exemption granted within 180 days of taking ownership of the tax exempt property. A subsequent owner must abide by the procedures set forth in subsection F.2. of this section.

4. The restoration or rehabilitation project may be completed in phases in accordance with the construction schedule approved by the reviewing authority as part of the application for tax exemption. The tax exemption shall not be approved by the city council until all phases of the project are completed in accordance with the approved certificate of appropriateness. A project may be phased over a maximum of a three-year period, and no extensions of time shall be authorized.

E. Verification Process.

1. Upon completion of the restoration or rehabilitation project at the site pursuant to an approved certificate of appropriateness and the application for tax exemption, the applicant shall submit a sworn statement of completion of the project to the reviewing authority verifying completion of the work. The applicant's statement shall state the date of completion and shall include a copy of all receipts for labor, materials, and design services documenting the value of the improvements completed.

2. No later than thirty days from receipt of an applicant's statement of completion, the reviewing authority shall investigate the site and verify that the improvements to the site have been completed in accordance with the approved certificate of appropriateness. The structure

shall comply with the applicable zoning regulations for its use and location; and shall comply with Title 18 of the El Paso City Code.

3. The reviewing authority shall examine the documentation submitted by the applicant pursuant to subsection E 1 of this section and determine which, if any, percentile range described in subsection D 1 has been met. Such determination shall be made on the actual value of the improvements, regardless of whether the actual value exceeds or is less than the value of the improvements stated in the plan submitted with the approved application.

4. If the reviewing authority determines that the project is not complete or the work performed is not in accordance with the approved certificate of appropriateness, or the value of the improvements as completed does not meet the twenty percent threshold described in subsection D. 1. of this section, then the reviewing authority shall notify the applicant by letter that the verification cannot be made. The reviewing authority shall schedule a hearing within thirty days to allow the applicant to present evidence and argument that all applicable requirements of this section have been met. The reviewing authority shall make a final determination within ten days after the conclusion of the hearing.

5. If the reviewing authority verifies and determines that all applicable requirements of this section have been met, the reviewing authority shall present the application, verification, and other relevant documentation to the city council. The city council shall take appropriate action for the granting of the tax exemption for the site.

6. If the reviewing authority makes a final determination that all applicable requirements of this section have not been met, the reviewing authority shall give written notice to the applicant that the verification cannot be made and that the application will not be presented to the city council for the granting of the tax exemption. The applicant may appeal such a final determination by the reviewing authority to the city council by filing a written appeal with the city clerk within fifteen days after the issuance of the determination. Following a public hearing to be held within forty-five days of the filing of such notice of appeal, the city council shall review and determine whether all of applicable requirements of this section have been fulfilled and if such requirements have been fulfilled, take appropriate action for the granting of the tax exemption for the site. The decision of the city council shall be final.

7. If an applicant does not timely complete the project as prescribed in the schedule attached to the approved application, then the application shall be deemed expired and a new application shall be required; provided however, if the applicant has completed enough of the improvements included in the project such that the value of the completed improvements is equal to twenty percent more of the assessed value prior to preservation, the applicant may request a modification to the certificate of appropriateness so as to only include the completed improvements and submit the sworn statement of completion of the project to the reviewing authority verifying completion of the work. Such a request shall be processed under this section in the same manner as an original application and statement of completion.

F. Historic Structure Preservation Tax Exemption.

1. If the city council grants a tax exemption, the reviewing authority shall notify the central appraisal district in writing of the issuance of the exemption, and the letter shall state the applicable tax year when the exemption shall begin, and based on the value of the site prior to preservation, the amount of the exemption, and the time period for such exemption. Thereafter, the central appraisal district shall provide the site with the designated historic tax exemption for the city of El Paso's portion of taxes owed.

2. Once a site qualifies for a tax exemption per this section, the applicant shall maintain the site and the improvements throughout the time period granted for the exemption in accordance with the certificate of appropriateness and in the same or better condition as when originally verified as complete by the reviewing authority. The reviewing authority shall inspect the site on an annual basis to ensure compliance with this section for the duration of the grant of the tax exemption. If the reviewing authority determines that conditions have changed to make the site noncompliant with the certificate of appropriateness or it has not been maintained in the same or better condition as when originally approved, the reviewing authority shall prepare a report detailing the noncompliance or maintenance deficiencies and notify the applicant in writing that the applicant has sixty days in which to cure the noncompliance or maintenance deficiencies. A copy of the reviewing authority's report shall be provided to the applicant.

3. The reviewing authority shall re-inspect the site after the expiration of the sixty days allowed in subsection F. 2. of this section to cure the noncompliance or maintenance deficiencies. If the reviewing authority determines at that time that the site is noncompliant with the approved certificate of appropriateness or it has not been maintained in the same or better condition as when originally approved, the reviewing authority shall schedule a hearing within thirty days to allow the applicant to present evidence and argument that the site is compliant with the approved certificate of appropriateness and is being maintained in the same or better condition as when originally verified as complete by the reviewing authority. The reviewing authority shall make a final determination within ten days after the conclusion of the hearing.

4. If the reviewing authority makes a final determination that the site remains noncompliant with the approved certificate of appropriateness or that it is not being maintained in the same or better condition as when originally approved, the reviewing authority shall give written notice of such finding to the applicant and shall present his determination and findings to the city council.

5. The city council shall hold a hearing and notify the applicant of the date, time and place of the hearing so that the applicant may attend and present evidence of compliance with the certificate of appropriateness and maintenance of the site. The city council shall make a finding, based upon the evidence presented by the reviewing authority and the applicant, whether the site is or is not in compliance with the original certificate of appropriateness, and whether the improvements have or have not been maintained in substantially the same condition as was originally approved in the certificate of appropriateness.

6. Prior to making a final decision, the city council may refer the item to the reviewing authority, to gather further information and report the information to the city council. The applicant may present an alternate plan in order to comply with the certificate of appropriateness,

and the city council or may amend and approve the alternate plan and issue an amended certificate of appropriateness as part of a finding that the site is qualified to continue to receive the tax exemption. If the city council finds that the site is not in compliance, then the tax exemption for the site shall cease immediately, and the reviewing authority shall notify the central appraisal district of the date of the termination of the exemption.

Section 2. Except as expressly herein amended, Title 3 (Revenue and Finance), Chapter 3.04 (Property Taxes) Section 3.04.035 (Exemption – Historically significant sites) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED THIS ____ DAY OF_____, 2012.

THE CITY OF EL PASO:

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:

_____
Mathew McElroy, Director
City Development Department

APPROVED AS TO FORM:

_____
Kristen L. Hamilton
Assistant City Attorney

ORDINANCE NO._____