

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

**DEPARTMENT:**      Engineering Department

**AGENDA DATE:**    Introduction – August 17, 2010  
                         Public Hearing – August 24, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:**      R. Alan Shubert,  
Engineering, (915) 541-4428

**DISTRICT(S) AFFECTED:**    All

**SUBJECT:**

An ordinance to amend the City code to reflect departmental reorganization by amending Title 9 (Health and Safety) to amend various sections to reassign duties which had been assigned to the Development Services Department, the Street Department and the Engineering Department, and the staff; the penalty being as provided in sections 9.12.890, 9.32.150, 9.40.140, 9.48.260, 9.50.130, 1.08.010 - 1.08.030, and throughout Chapter 9.52 of the El Paso City code.

**BACKGROUND / DISCUSSION:**

The City Manager proposed through the Budget for FY 2011 and the City Council has decided to re-organize the Engineering Department, the Street Department, the Environmental Services Department and to delete the Development Services Department. This action necessitates this ordinance and others to make changes to the City Code to reflect the organizational changes. No substantive changes are being made to the code in this ordinance--only the changes necessary to achieve reorganization and to make appropriate cross references to other code provisions.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*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*

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE CITY CODE TO REFLECT DEPARTMENTAL REORGANIZATION BY AMENDING TITLE 9 (HEALTH AND SAFETY) TO AMEND VARIOUS SECTIONS TO REASSIGN DUTIES WHICH HAD BEEN ASSIGNED TO THE DEVELOPMENT SERVICES DEPARTMENT, THE STREET DEPARTMENT AND THE ENGINEERING DEPARTMENT, AND THE STAFF; THE PENALTY BEING AS PROVIDED IN SECTIONS 9.12.890, 9.32.150, 9.40.140, 9.48.260, 9.50.130, 1.08.010 – 1.08.030, AND THROUGHOUT CHAPTER 9.52 OF THE EL PASO CITY CODE.**

**WHEREAS**, the Building Permits and Inspections Division is being moved to be a division of the Engineering and Construction Management Department which is being reorganized and renamed, the Street Department is being reorganized and renamed the Department of Transportation; and

**WHEREAS**, various provisions in the City Code need to be amended to reflect these changes and the creation of permit officials, as will be designated by the City Manager,

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

Section 1. That Chapter 9.11 (Tree Care), Section 9.11.010 (General provisions), of the El Paso City Code, is amended to read as follows:

**9.11.010 General provisions.**

A. Purpose. The purpose of this chapter is to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees located on public property and to prohibit nuisances or hazards caused by trees located on private and public property within the limits of the City of El Paso.

B. Applicability. This chapter applies to all trees located within public property and to trees located on public or private property that create a hazardous condition or nuisance to the general public.

C. Arborist. The arborist shall work with the parks and recreation department and the department of transportation to accomplish all duties that may be required to comply with this chapter of the city code.

D. Definitions. The following definitions apply under this chapter:

1. "Arboricultural Specifications Manual" means the manual containing regulations and standards for the planting, maintenance, and removal of trees located on public property. The manual shall be approved by the developing coordinating committee.
2. "Damage" means and includes, but not be limited to, the uprooting of a tree, severance of the root or branch system, the compaction of soil around a tree, a substantial change in the natural grade above a root system or around a trunk, or excessive pruning of living tissue.
3. "Public property" means all grounds owned and controlled by the City of El Paso and where the city has the responsibility of maintenance.
4. "Public tree" means any tree with at least two-thirds of its trunk on public property.
5. "Topping" means the severe reduction of the tree's size using heading cuts that shorten limbs or branches back to a predetermined crown size or limit with the result of reducing the natural canopy or disfigure the tree.
6. "Tree" means any self-supporting woody perennial plant typically having a mature trunk(s) diameter of at least three inches measured at twelve inches above grade.
7. "Utility" means public utilities, businesses or organizations in the business of supplying communications services, electrical energy, gas, heat, steam, water, or sewage disposal and treatment.

E. Arborist. The city arborist shall:

1. Administer the provisions of this chapter;
2. Administer the community forestry action plan;
3. Assist the board of parks and recreation in carrying out the duties and responsibilities as specified in Section 2.20.050 C. of this code; and
4. Administer and, in consultation with the tree board, periodically review and revise as necessary the provisions of the Arboricultural Specifications Manual.

F. Trees Located on Public Property.

1. Destruction or Damage of Trees Prohibited. It is unlawful for any person to intentionally damage, cut, carve, abuse, poison or otherwise harm or injure any tree located on public property. This section does not apply to persons authorized by the city who are taking actions necessary for the preservation and safety of the public or the proper care or maintenance of any tree in accordance with the Arboricultural Specifications Manual. The City of El Paso and its authorized agents, employees, and contractors shall have the authority to trim or remove any trees within public property.

2. Maintenance of Trees.

a. The city may plant, prune, maintain and remove trees, plants and shrubs within the lines of all public property, as are necessary to preserve the aesthetic value of such public areas and for the health and safety of the public and trees. Such planting, maintenance or removal will be done in accordance with Arboricultural Specifications Manual.

b. Utilities. No public or private tree other than those species that may attain a mature height no greater than ten feet below an existing overhead utility wire may be planted under or within ten feet of any overhead utility wire on public property. Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors in compliance with the franchise agreements between the city and the utility company.

- c. Tree Topping. No tree located on public property shall be topped. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be crown reduced where necessary to protect the public health, safety and welfare.
  - d. Tree Protection Zone. Whenever city department plans to do construction work around any public tree, proper safe guards and root protection zones as outlined in the Arboricultural Specifications Manual must be approved by the city arborist.
  - e. Jurisdiction Over Public Property. The directors of the department of transportation and parks and recreation department or their designees shall have the power to perform accepted tree care in accordance with the Arboricultural Specifications Manual. If any tree or any part thereof is in unsafe condition, or is injurious to the common good, or to the sewer pipes, pavements or improvements, or is infested by disease or insects which are dangerous to other trees, the city arborist may remove such trees or part thereof, or spray such tree, or order such tree, or part thereof removed.
- G. Trees Located on Private Property. Public nuisances on private property. It is unlawful for a property owner to cause, create, keep, or otherwise permit transmissible disease infections or insect infestations of trees on private property. Transmissible disease infections or insect infestations of trees are declared a nuisance.
- 1. Authority of City. The city may order that the property owner or agent of the owner of any tree(s) located on private property, infected by transmissible disease or infested with insects, treat or allow the city to treat the infected or infested tree(s) located on private property. Upon complaint or observation meriting further inspection. The city shall have the authority to enter upon private lands to make field inspections, including the removal of specimens for any laboratory analysis that may be necessary to determine the presence of a transmissible infection or infestation.
  - 2. Issuance of Order. When the city determines that an infectious disease or insect infestation is present, the city shall assess the need for immediate action to curb the spread of the infection or infestation to city trees. If the infection or infestation warrants immediate action to prevent spread to city trees, the city may order the property owner to immediately treat, remove or dispose of the infected or infested trees, or allow the city to do so. If the infection or infestation does not warrant drastic action, the city may order that the property owner or agent of the owner treat, or remove and dispose of the infected or infested trees within a specified time, but not less than thirty days. The city's order shall be issued by certified mail (return receipt requested). If the owner or agent of the owner does not satisfactorily complete the necessary work within the time allowed by the city's order, the city may enter upon the property to treat, to remove, or to destroy the infected or infested tree(s) by approved practice.
  - 3. Property Owner Appeal of Order. If the property owner wishes to appeal the city's order on the basis that the tree is not infested or infected, such appeal must be received by the director of the city's department of transportation within ten days of receipt of the city's order. The appeal must be in writing. Once the appeal is received by the director, the director shall notify the appeal board so that the board may schedule a date for the appeal to be heard. The appeal board shall consist of a quorum of the directors or their designee, of each of the following departments: engineering

and construction management department, department of transportation, parks and recreation department, and environmental services. An official from the Texas Forest Service may serve as an ex-officio member, without the right to vote, nor shall he be counted for purposes of establishing a quorum. The director of the department of transportation will be responsible for notifying the property owner of the appeal date, providing all the necessary documents to the board, and conducting the appeal. The board shall render a decision based on all the evidence and documentation presented. The decision of the board shall be final. The director of the department of transportation shall notify the property owner in writing of the board's decision.

4. City Abatement of Infestation. If the property owner fails to complete any work required to be done by the city within the time specified, the city may cause the work to be done and the cost of the same shall be assessed against the property owner. Any notice given pursuant to this section shall state that if the work required is not done within the time specified, the city will cause the same to be done at the expense of the property owner. A statement of the costs incurred by the city shall be mailed to the property owner and such statement shall be paid within thirty days of the date of mailing thereof. If any property owner is unable to pay the cost of such work within thirty days, he may enter into an agreement for the payment of the same in monthly installments. If the property owner fails to pay the costs incurred by the city or fails to enter into an agreement for payment of the costs and pay such cost in accordance with the agreement, civil action by the city to recover the costs may be pursued and the city attorney is authorized, without further authorization from city council, to institute any civil suit necessary to recover the costs incurred by the city, to include costs associated with the civil suit.

H. Any person who shall cause, create, keep, or otherwise permit a nuisance declared under this chapter or any person who intentionally damages, cuts, carves, abuses poisons or otherwise harms or injures any tree located on public property shall be guilty of a misdemeanor, and upon conviction thereof shall be fined as provided in Sections 1.08.010, 1.08.020 and 1.08.030. Each day that such nuisance shall continue shall constitute a separate offense; provided, the imposition of a penalty hereunder shall not abrogate the right of the city to cause the abatement of any nuisance.

Section 2. That Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.040 (Permit-Approval process), of the El Paso City Code, is amended to read as follows:

**9.12.040 Permit—Approval process.**

A. Upon receipt of a completed application for a permit and payment of the established application processing fee, the director shall conduct the appropriate inspections. The city manager and his designees, including but not limited to the code enforcement division and the building official, shall conduct an inspection of all plumbing and plumbing fixtures of the establishment prior to the site assessment and after payment of the established fee. If the plumbing inspection is approved, then the site assessment is conducted. The director shall approve issuance of a permit if the assessment reveals

compliance with the requirements of this chapter and compliance with all city ordinances governing the proposed operation.

B. If the plumbing inspection is approved, then the site assessment is conducted. The director shall approve issuance of a permit if the assessment reveals compliance with the requirements of this chapter and compliance with all city ordinances governing the proposed operation. The established site assessment fee shall be paid at the time the permit application is submitted and must be paid prior to the site assessment occurring. One or more additional established site assessment fees will be required for follow up site assessments for any establishment that does not qualify to receive the permit at the time of an assessment visit.

C. During the site assessment of a mobile establishment regulated under Chapter 12.46 of this code, conducted on and after June 15, 2001, the director shall inspect the flashing or blinking signals required under that chapter, and no permit shall be issued unless such signals are present and operational. If a mobile establishment is seeking an exemption from the one thousand-foot separation requirement referenced in Section 9.12.800 at the time of site assessment, the director shall request a copy of the contract referenced in Section 9.12.800 and shall not complete the site assessment until said contract is provided by applicant.

Section 3. That Chapter 9.12 (Food and Food Handling Establishments), to include section 9.12.580 (Plumbing), of the El Paso City Code is amended to read as follows:

#### **9.12.580 Plumbing**

All plumbing and plumbing fixtures must be approved by the building official of the city prior to permit issuance.

Section 4. That Chapter 9.32 (Tattooing and Body Piercing), Section 9.32.030, Subsections A and B, (License required), of the El Paso City Code, is amended to read as follows:

#### **9.32.030, Subsections A and B, License required.**

A. A person shall not conduct, operate or maintain a studio or temporary location for tattooing and/or body piercing unless the person holds a license issued by the permit official that is approved pursuant to the provisions of Chapter 5.96 of this code.

B. Each artist seeking to perform tattooing and/or body piercing shall submit a signed, verified license application to the permit official with the appropriate application fee as designated in Chapter 5.96 of this code.

Section 5. That Chapter 9.32 (Tattooing and Body Piercing), Section 9.32.040, subsection A, (License investigation), of the El Paso City Code, is amended to read as follows:

**9.32.040, Subsection A, License investigation.**

A. The permit official or his designee, after investigation and approval of the studio or temporary location, shall refer an application filed in accordance with the requirements of Chapter 5.96 of this code, to the director designated in that chapter who shall conduct an investigation to determine if:

1. The applicant is sufficiently skilled in the practice of tattooing and/or body piercing; and
2. If the applicant has engaged in conduct which has or could endanger the public health and safety of individuals receiving tattoos and/or body piercing

Section 6. That Chapter 9.48 (Public Swimming Pools and Spas), Sections 9.48.030 (License required), 9.48.250 (Suspension of licenses and closure by director), and 9.48.255 (Revocation of licenses and closure by director), of the El Paso City Code, are amended to change the phrase “development services department” to “permit official”, as used within these sections.

Section 7. That Chapter 9.40 (Noise), Section 9.40.010, Definition #3, (Definitions) of the El Paso City Code, is amended to read as follows:

**9.40.010 Definitions, Definition #3**

3. “Commercial property” means a parcel of real property which is zoned in any zoning district described as being commercial in Title 20 of this code.

Section 8. That Chapter 9.50 (Public and Workplace Smoking Restrictions), Section 9.50.110, (Enforcement) of the El Paso City Code, is amended to read as follows:

**9.50.110 Enforcement.**

A. Enforcement of this chapter shall be implemented by the environmental services department, the public health department, the engineering and construction management department, and the fire and police departments.

B. Notice of the provisions set forth in this chapter shall be given to all applicants for a business license in the city.

C. Any person may register a complaint under this chapter to initiate enforcement with the environmental services department.

D. The departments identified in subsection A shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this chapter.

E. Any owner, manager, operator or employee of any establishment regulated by this chapter shall be responsible for informing persons violating this chapter of the provisions through appropriate signage.

F. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

Section 9. This ordinance shall take effect on September 1, 2010.

Section 10. Except as herein amended, Title 9 of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS 24<sup>th</sup> day of August 2010.

CITY OF EL PASO

ATTEST:

\_\_\_\_\_  
John F. Cook, Mayor

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
Elaine S. Hengen  
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

  
Patricia D. Adauto  
Deputy City Manager