

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: DEVELOPMENT SERVICES

AGENDA DATE: INTRODUCTION – AUGUST 14, 2007

PUBLIC HEARING – AUGUST 21, 2007

CONTACT PERSON/PHONE: R. ALAN SHUBERT, DEVELOPMENT SERVICES, (915) 541-4557

DISTRICT(S) AFFECTED: ALL

SUBJECT:

An ordinance amending Title 5, El Paso City Code (Business Taxes, Licenses and Regulations), Chapter 5.24 (Charitable Solicitations) by amending Section 5.24.010 (definitions) in its entirety, by deleting Section 5.24.020 (Charitable Solicitations Commission) in its entirety and amending section 5.24.150 (Denial of a permit) to allow for an administrative appeals process. The penalty being as provided in Sections 1.08.010 - 1.08.030 of the city code.

BACKGROUND / DISCUSSION:

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

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

OTHER: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____
AN ORDINANCE AMENDING TITLE 5, EL PASO CITY CODE (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.24 (CHARITABLE SOLICITATIONS) BY AMENDING SECTION 5.24.010 (DEFINITIONS) IN ITS ENTIRETY, BY DELETING SECTION 5.24.020 (CHARITABLE SOLICITATIONS COMMISSION) IN ITS ENTIRETY AND AMENDING SECTION 5.24.150 (DENIAL OF A PERMIT) TO ALLOW FOR AN ADMINISTRATIVE APPEALS PROCESS. THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08.010 - 1.08.030 OF THE CITY CODE.

WHEREAS, the Charitable Solicitations Commission (the "Commission") was established in 1986 to act as an advisory board to the City Council as to matters affecting the review, approval or denial of Charitable Campaign Solicitation Applications made to the City of El Paso (the "City"); and

WHEREAS, in 2004 the Charitable Solicitations Application process was amended whereby a permit to conduct a charitable solicitations campaign in the City shall be granted only after review and approval of the application by the Director of the Development Services Department; and

WHEREAS, an administrative appeal process will adequately manage the task previously assigned to the Commission and shall result in the sunset of said Commission.

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

1. That Title 5, El Paso City Code (Business Taxes, Licenses And Regulations), Chapter 5.24 (Charitable Solicitations), Section 5.24.010 (Definitions) is hereby amended in its entirety as follows:

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this section:

- A. "Appeals official" means the city manager or a deputy city manager as designated by the city manager.
- B. "Charity" or "charitable, educational, patriotic or philanthropic purpose" means the use, actual or represented, of money or property for any of the following purposes:
 - 1. For the benefit of any poor, underprivileged, needy, sick or handicapped person;
 - 2. For the benefit of any church, congregation, religious society or other religious group or order which is not exempt from this chapter under Section 5.24.030 of this chapter;

3. For patriotic purposes such as the teaching of patriotism;
 4. For the benefit of any veteran or veteran's organization or association;
 5. For the defense or general welfare of the United States, or any state or nation;
 6. For the relief of any race or group of people;
 7. For civic purposes such as social or cultural functions or the improvement or beautification of any state, city or community;
 8. For the benefit of any fraternal or social organization, or any member or group of members of such an organization;
 9. For the benefit of existing educational institutions or for the establishment or endowment of educational institutions, or for the aid and assistance in the education of any person or group of persons.
- C. "Charitable solicitations campaign" means:
1. Any course of conduct whereby any person shall solicit money or property on the plea or representation that the proceeds therefrom are for any charitable, educational, patriotic or philanthropic purpose; or
 2. Any course of conduct whereby any corporation chartered under the Texas Nonprofit Corporation Act, or any of its agents, solicits money or property; or
 3. Any course of conduct whereby any person shall solicit money or property for an organization which is organized for any charitable, educational, patriotic or philanthropic purpose.
- D. "Commission" means the charitable solicitations commission created by this chapter.
- E. "Cost of fundraising" means all costs incurred in raising the funds solicited.
- F. "Organization" includes associations, clubs, societies, firms, partnerships and corporations as well as individuals or groups of individuals.
- G. "Permit official" means the building permits and inspections director or such other person or persons designated by the city manager.
- H. "Professional promoter" or "professional solicitor" means a person who, for compensation, plans, promotes, conducts, manages, carries on or makes solicitations for any charitable solicitations campaign. A bona fide officer or regular employee of a charitable, educational, patriotic or philanthropic organization shall not be deemed a professional promoter or professional solicitor by reason of his participation in a charitable solicitations campaign by or on behalf of his employer.
- I. "Solicit" or "solicitation" means the following methods of securing or attempting to secure money or property:
1. Any oral or written request;
 2. The distribution, circulation, mailing, posting or publishing of any handbill, written advertisement or publication;
 3. The making of any announcement through the press, radio, television or by telephone or telegraph concerning an appeal, assembly, athletic or sporting event, bazaar, benefit campaign, contest, dance, dinner, entertainment, social gathering or similar event which the general public is

requested to patronize, or to which the general public is requested to make contributions;

4. The sale, or the offer or attempt to sell any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing.

A solicitation shall be deemed completed when made, whether or not the person making the solicitation receives any money or property, or makes any sale.

2. That Title 5, El Paso City Code (Business Taxes, Licenses And Regulations), Chapter 5.24 (Charitable Solicitations), Section 5.24.020 (Charitable solicitations commission) is hereby deleted in its entirety.

3. That Title 5, El Paso City Code (Business Taxes, Licenses And Regulations), Chapter 5.24 (Charitable Solicitations), Section 5.24.150 (Denial of a Permit.) is hereby amended in its entirety as follows:

- A. A permit applicant who is denied a permit by the permit official, shall be furnished a written statement indicating the reason, or reasons, why the permit was denied.
- B. An applicant may appeal the denial of an application in writing within ten days after notice of the denial has been received by submitting a written request to the permit official. Within five business days, or such longer period of time as agreed to by the applicant, the appeals official shall hold a hearing on whether to issue the permit or uphold the denial. The applicant shall have the right to present evidence at said hearing and to question appropriate city officials. The decision to issue the permit or uphold the denial shall be based solely on the approval criteria set forth in this chapter. The appeals official shall render a decision on the appeal within five business days after the date of the hearing. In the event that the purpose of the proposed event is a spontaneous response to a current event, or where other good and compelling causes are shown, the appeals official shall reasonably attempt to conduct the hearing and render a decision on the appeal as expeditiously as is practicable.
- C. The decision of the appeals official is subject to review by the City Council. Prior to the filing of any petition for declaratory judgment or other judicial determination pursuant to subsection D, the applicant shall appeal the decision of the appeals official to the City Council. The applicant shall submit a written appeal request to the permit official, who shall forward the request for placement on the agenda of the next available regular City Council meeting in compliance with all ordinances and statutes relating to the placement of items on the Council agenda and the posting of the agenda. The decision to issue or uphold the denial shall be based solely on the approval criteria set forth in this chapter.
- D. The decision of the City Council is subject to review in the District Courts of El Paso County. Any petition for a declaratory judgment or other judicial determination as to whether the permit should be granted shall be filed with the clerk of the district court within 30 days after the applicant has received notice of the decision. The city shall transmit the record to the court no later than five

business days after filing its answer. The city shall in all matters before the court, seek prompt judicial action and promptly file and respond to all pleadings, discovery and other matters before the court.

3. Except as expressly amended herein, all other provisions of that Title 5, El Paso City Code (Business Taxes, Licenses And Regulations), Chapter 5.24 (Charitable Solicitations) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this ____ day of _____, 2007.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVE AS TO CONTENT:



R. Alan Shubert, P.E., C.B.O., Director
Development Services Department