

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

CITY CLERK DEPT.

DEPARTMENT: Engineering Department

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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 5 (Business Taxes, Licenses and Regulations) to amend various sections thereunder to reassign the duties of the Development Services Department and the staff; the penalty being as provided in sections 5.08.180, 5.30.010, 5.32.160, 5.34.010, 5.44.270, 5.48.260, 5.54.160, 5.60.040, 5.72.120; 5.76.080, 5.84.250, 5.90.100, 5.100.100, 5.94.010, and 1.08.010 – 1.08.030 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

*****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 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO AMEND VARIOUS SECTIONS THEREUNDER TO REASSIGN THE DUTIES OF THE DEVELOPMENT SERVICES DEPARTMENT AND THE STAFF; THE PENALTY BEING AS PROVIDED IN SECTIONS 5.08.180, 5.30.010, 5.32.160, 5.34.010, 5.44.270, 5.48.260, 5.54.160, 5.60.040, 5.72.120; 5.76.080, 5.84.250, 5.90.100, 5.100.100, 5.94.010, AND 1.08.010 – 1.08.030 OF THE EL PASO CITY CODE.

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

WHEREAS, various provisions in the City Code need to be amended to reflect this change 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 5.04 (Occupation Tax and License Fees-General Provisions), Section 5.04.030 (Payment prior to engaging in business required), of the El Paso City Code, is amended to read as follows:

5.04.030 Payment prior to engaging in business required.

Each person doing business within the city required to pay an occupation tax to the state shall, before engaging in or continuing to engage in any of such occupations or businesses, pay to the permit official the occupation tax herein specified for such occupation, and shall procure a license therefore.

Section 2. That Chapter 5.04 (Occupation Tax and License Fees-General Provisions), Section 5.04.040 (Late payment-Penalty), of the El Paso City Code, is amended read as follows:

5.04.040 Late payment-Penalty.

A. Whenever any occupation tax is paid after the date on which payment was due, a penalty shall be added in one-half the amount of the penalty assessed by the state for late payment of its tax on the same occupation. No charge shall be made, however, for visits by the permit official to collect the tax.

B. Whenever any license fee or license tax assessed under the police power is paid after the date on which payment was due, a penalty shall be added in the amount of ten dollars if paid in the first month after payment becomes due, and five dollars for each additional month or fraction thereof during which payment remains delinquent.

C. Late payment of any occupation tax, or any license fee or license tax, shall not bar prosecution for doing business without a license if such offense was committed at any time before such payment was made.

Section 3. That Chapter 5.04 (Occupation Tax and License Fees-General Provisions), Section 5.04.050 (Enforcement and collection), of the El Paso City Code, is amended to read as follows:

5.04.050 Enforcement and collection.

A. The permit official and his designees are authorized to make inspections of property as necessary to enforce the provisions of Title 5 of this code. If the owner or person in possession of such property shall refuse to permit the permit official or his designee to enter property for the purpose of making inspection, the permit official or his designee shall have recourse to every remedy provided by law to secure entry, including judicial warrant.

B. The permit official and his designees are authorized to issue misdemeanor citations to any person found to be in violation of Title 5 of this code.

C. The city may collect any occupation tax or license fee or license tax owing to it by any person by suit against such person in any court of competent jurisdiction.

Section 4. That Chapter 5.04 (Occupation Tax and License Fees-General Provisions), Section 5.04.060, Subsection A, (Sealing coin-operated machines for failure to pay), of the El Paso City Code, is amended to read as follows:

5.04.060, Subsection A, Sealing coin-operated machines for failure to pay.

A. The permit official or his designee is authorized to seal any coin-operated machine upon which an occupation tax is levied by the city and which tax has not been paid. The permit official or his designee shall collect a fee of five dollars for the release of any such machine so sealed in addition to the occupation tax levied.

Section 5. That Chapter 5.04 (Occupation Tax and License Fees-General Provisions), section 5.04.080 (License-Transfer), of the El Paso City Code, is amended to read as follows:

5.04.080 License - Transfer

In cases in which it is provided that a license may be issued in the name of a corporation or partnership on the basis of an examination taken by an officer, employee or partner, and after an officer, employee or partner of such corporation or partnership passes the examination the license is issued in his individual name, the permit official may, with the written consent of both the corporation or partnership and the individual holder of the license, transfer the license to the name of the corporation or partnership, provided the corporation or partnership complies with all ordinances relating to the supervision or doing of its work by properly licensed persons. The established fee for such transfer shall be paid.

Section 6. That Chapter 5.08 (Alcoholic Beverages), Section 5.08.020 (Definitions), of the El Paso City Code, is amended in part, to amend the definition of “city secretary” to read as follows:

“City secretary” means the permit official or other designee of the city manager whenever referenced in the Texas Alcoholic Beverage Code.

Section 7. That Chapter 5.08 (Alcoholic Beverages), Section 5.08.110 (Certification of compliance with requirements), of the El Paso City Code, is amended to read as follows:

5.08.110 Certification of compliance with requirements.

- A. This section applies to an application for a permit or license required by the Texas Alcoholic Beverage Code. This section also applies to a permittee seeking to change the place, address, premises, or location for which the permit or license is issued, if the Texas Alcoholic Beverage Code requires certification by the city secretary that the sale of alcoholic beverages at the place of business is authorized by city ordinance.
- B. The applicant for a permit or license subject to this section shall file a completed and verified application with the permit official. The application shall be on forms promulgated by the Texas Alcoholic Beverage Commission.
- C. The permit official shall forward copies of the completed and verified application to the building official, the fire chief and the director of the department of public health.
- D. Each official receiving a copy of the application under subsection C shall undertake the investigation and inspections necessary to certify the findings required by the official under this section. If the place of business was inspected in the twelve months preceding the date the application was filed, an official may make his or her certification without reinspecting the place of business if there has been no material change, as determined by

the official in his sole discretion since the previous inspection that would affect the certification required by this section.

E. The applicant shall make the business place available for all inspections authorized and undertaken under this section. Inspections under subsection D may relate, without limitation, to the requirements established by the zoning code, building code, plumbing code, mechanical code, gas code, electrical code and fire code, as may be amended; and to any provisions of this code of ordinances and state requirements that are administered or enforced by the department of public health.

F. If the building official determines that the sale of alcoholic beverages at the place of business is an authorized use at that location and the place of business complies with all applicable provisions of the building code, plumbing code, mechanical code, gas code and electrical code, as may be amended, the building official shall certify that finding to the permit official.

G. If the fire chief certifies that the place of business complies with all applicable provisions of the fire code, the fire chief shall certify that finding to the permit official.

H. If the director of the department of public health determines that the place of business complies with all applicable provisions of the city or state health code that are enforced by the department of public health, the director shall certify that finding to the permit official.

I. If the departments or officials listed in subsections F, G and H are unable to provide the required certifications because a structure, or retrofit or remodeling at the proposed place of business has not been completed, then the departments shall provide an interim certification to the permit official, and the permit official may certify the application. However occupancy and the conduct of business at the place of business is prohibited until a certificate of occupancy for the place of business, a city alcoholic beverage license and a food license have been issued.

J. When the permit official receives the certifications required in subsections F, G and H, the permit official shall certify on the application that the place of business is in a "wet area" and that the sale of alcoholic beverages for which the permit or license is sought is not prohibited at that location by any provisions of the El Paso City Charter or the City Code. The permit official shall forward the certified application to the Texas Alcoholic Beverage Commission.

Section 8. That Chapter 5.08 (Alcoholic Beverages), Section 5.08.120 (City protest of permit/license), of the El Paso City Code, is amended to read as follows:

5.08.120 City protest of permit/license.

A. The City Manager or his designee may protest the issuance of state beer licenses, wine and beer permits, beer distributor's and beer manufacturer's licenses to the county judge and the Texas Alcoholic Beverage Commission in accordance with Texas Alcoholic Beverage Code Section 61.32. Evidence supporting the protest will be presented by the City Manager or his designee with the assistance of the city attorney if necessary.

B. The City Manager or his designee may protest the issuance or renewal of a state permit or license in compliance with Texas Alcoholic Beverage Commission Code

Sections 11.41 and 61.32. Evidence supporting the protest will be presented by the City manager or his designee with the assistance of the city attorney if necessary.

Section 9. That Chapter 5.08 (Alcoholic Beverages), Sections 5.08.060 (Applicability to annexed territories), 5.08.080 (Issuance of permit or license), 5.08.130 (Payment prior to engaging in alcoholic beverage business required), 5.08.150 (Licenses expired for two months or more), and 5.08.160 (License application processing) of the El Paso City Code, are amended to change the phrase “development services department” to “permit official”, as used within these sections.

Section 10. That Chapter 5.12 (Amusement devices), Section 5.12.040 (Class A License—Application—Contents), 5.12.070 (Class A license—Transfer), 5.12.080 (Class A license—Managerial employees), 5.12.100 (Class B license—Application—Transfer—Suspension—Revocation), and 5.12.120 (Coin-operated amusement machines—Identification tags—Sealing), of the El Paso City Code, are amended to change the phrases “license bureau” and “city license bureau”, to “permit official” as used in these sections.

Section 11. That Chapter 5.16 (Appliance Dealers and Installers), Section 5.16.050 (Appliance installation and serviceman’s license – Examination - Issuance), of the El Paso City Code, is amended to read as follows:

5.16.050 Appliance installation and serviceman's license—Examination—Issuance.

- A. The city will hold examinations for applicants with such frequency as deemed reasonably necessary. Examinations shall be in writing (to include diagrams and figures) and designed to test the applicant's fitness for the license sought. Examinations shall be the same for all applicants examined at the same time.
- B. The city shall, from time to time, promulgate basic rules for examinations to include materials permitted or required, passing scores review and protest procedures, study guides and permitted frequency of reexamination for applicants failing to make a passing score.
- C. Examinees making passing scores on examinations shall be certified to the permit official. The permit official shall, upon receipt of the appropriate fee, issue the license for which the applicant has been certified.

Section 12. That Chapter 5.16 (Appliance Dealers and Installers), Sections 5.16.040 (Appliance installation and serviceman’s license-Application-Filing), 5.16.060 (License expiration and renewal), and 5.16.080 (License suspension and revocation) of the El Paso City Code, are amended to change the phrase change the phrase “director of the

development services department or his designee” to “permit official”, as used within these sections.

Section 13. That Chapter 5.16 (Appliance Dealers and Installers), Section 5.16.090 (Licensees to maintain current address with city), of the El Paso City Code, is amended to read as follows:

5.16.090 Licensees to maintain current address with city.

All licensees must maintain a correct current address with the permit official.

Section 14. That Chapter 5.20 (Circuses, Shows, Carnivals and Other Similar Exhibitions), Section 5.20.060 (Deposit for cleaning up grounds—Withdrawal of cost to city), of the El Paso City Code, is amended to change the phrase “deputy director for solid waste management” to the “director of the environmental services department”, as used in this section.

Section 15. That Chapter 5.24 (Charitable Solicitations), Section 5.24.010 (Definitions), of the El Paso City Code, is amended in part to delete the definition of “permit official”.

Section 16. That Chapter 5.30 (Flea Market Operator Permit), section 5.30.010 (Flea market operator permit provisions) of the El Paso City Code, is amended read as follows:

5.30.010 Flea market operator permit provisions.

A. Operator Permit Application and Processing.

1. First time application and renewal for an operator permit shall be made on a form provided by the permit official.
2. A plot plan of the site area shall accompany the application and shall show the location and dimension of the following:
 - a. All proposed vendor stalls/spaces, including food vendors;
 - b. Off-street parking;
 - c. Sanitary portables or fixed sanitary facilities;
 - d. Existing or proposed structures and uses;
 - e. Pedestrian walkways, fire accessways and required setback areas;
 - f. Storage areas.
3. Within thirty days of receipt of the application, the permit official shall issue the operator permit if all applicable provisions have been met. If all applicable provisions have not been satisfied, then the application shall be denied and the permit shall not be issued, until the applicant complies with all applicable regulations.

4. A new operator's permit shall be required if the outdoor flea market is expanded or changed in any capacity or with any change in owner or operator of the outdoor flea market.
5. The established annual fee for an operator permit shall be paid and shall be nonrefundable.
6. The operator shall cooperate and permit the city to conduct inspections of the premises at reasonable times to ensure compliance with this chapter.

B. Permit Denial, Suspension and Revocation.

1. The city may suspend or revoke any permit granted hereunder by serving the permittee with written notice by hand-delivery or certified mail, return-receipt requested, if the permittee is found to be in violation of the code or found to pose a significant health risk to the public.
2. The permit official shall issue the written notice of denial, suspension or revocation of a permit to the permittee and shall contain, as a minimum, the following:
 - a. State the name and address of the location of the flea market and name of the permit holder;
 - b. State the permit is denied, suspended or revoked;
 - c. Indicate the reason(s) for the denial, suspension or revocation;
 - d. Order all or a portion of the flea market to be closed and not accessible to the public;
 - e. A statement prohibiting the further use and operation of the flea market;
 - f. Recommended corrective measures to bring the structure or flea market into compliance with the requirements of this chapter and any other applicable provision of the code;
 - g. Establish a reasonable time limit for the completion of the corrective measures;
 - h. State the permit, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and
 - i. State that the denial, suspension or revocation may be appealed to the construction board of appeals.
3. The permit official may post a sign at any location where a permit has been suspended or revoked pursuant to this chapter alerting the public that the location no longer has a valid permit.

C. Enforcement—Penalty.

1. **Civil and Criminal Penalties.** The city manager and his designees, including but not limited to the code enforcement division, shall have the power to administer and enforce the provisions of this chapter as may be required by governing law. Any person violating any provision of this chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this chapter is declared to be a nuisance.
2. **Criminal Prosecution.** Any person violating any provision of this chapter shall, upon conviction, be fined a sum not exceeding two thousand dollars. Each day that a provision of this chapter is violated shall constitute a separate offense.
3. **Civil Remedies.** Nothing in this chapter shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this chapter and to seek remedies as allowed by law, including, but not limited to the following:

- a. Injunctive relief to prevent specific conduct that violates this chapter or to require specific conduct that is necessary for compliance with this chapter;
- b. A civil penalty up to five hundred dollars a day when it is shown that the defendant was notified of the provisions of this chapter and after receiving notice committed acts in violation of this chapter or failed to take action necessary for compliance with this chapter; and
- c. Any other remedy available by law.

Section 17. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.010 (Compliance required), 5.32.030 (Required), 5.32.050 (License application), 5.32.060 (Application processing), 5.32.070 (License issuance), 5.32.080 (License renewal), and 5.32.090 (Temporary licenses), of the El Paso City Code, are amended to change the phrase “development services department”, to “permit official” as used in these sections.

Section 18. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.040 (Construction approval) of the El Paso City Code, is amended read as follows:

5.32.040 Construction approval.

- A. New public swimming pools and public spas shall have a valid certificate of occupancy from the building official demonstrating compliance with Chapter 18.08 and Chapter 18.02 of this code.
- B. Existing public swimming pools and public spas that have been altered, expanded, renovated or otherwise remodeled shall have an updated certificate of occupancy or certificate of completion demonstrating compliance with the requirements of Section 5.32.040 A.

Section 19. That Section 5.32.140 (Fees), of the El Paso City Code, is amended to read as follows:

5.32.140 Fees.

Fees are established and required for all licenses and services provided in this chapter. The owner or operator shall pay the established fees for the licenses and services provided by the city. Said fees shall include but not be limited to a water sampling fee.

Section 20. That Section 5.32.150 (Enforcement authority), of the El Paso City Code, is amended to read as follows:

5.32.150 Enforcement authority.

The city manager and his designees, including but not limited to the code enforcement division and the permit official, shall be authorized to administer and enforce the provisions of this chapter and Chapter 9.48.

Section 21. That Chapter 5.34 (Home Occupation License), Section 5.34.010 (Home occupation license provisions), of the El Paso City Code, is amended to read as follows:

5.34.010 Home occupation license provisions.

- A. Proof of a State of Texas license must be provided, where applicable, for child and adult care facilities prior to a home occupation license being granted.
- B. Application for a home occupation license shall be made on a form provided by the permit official and shall be accompanied by the appropriate fee as may be established by formal action of the El Paso City Council. Such fee is nonrefundable.
- C. As part of the application, the applicant shall provide written permission for the City of El Paso to conduct an inspection of the property that is subject of the application prior to a home occupation license is issued. Deficiencies will be noted in writing and must be corrected before the license is issued.
- D. A home occupation license expires after one year from the date of issuance and must be renewed on an annual basis. A request for renewal and renewal fee must be paid prior to expiration of the license. A penalty for late submittal of the home occupation license renewal shall result in a late fee of twenty percent of the renewal fee to be paid in addition to the renewal fee. If the licensee fails to fulfill any of the conditions stated herein, the City of El Paso may terminate such license within ten days after providing written notice to the licensee of the failure to correct such deficiencies. The licensee may appeal the City of El Paso's decision to the construction board of appeals.
- E. Fees for new applications and renewals of home occupation licenses shall be as adopted by formal action of city council, and shall be nonrefundable.
- F. License Denial, Suspension and Revocation.
 - 1. The permit official may suspend or revoke any license granted hereunder by serving the licensee with written notice by hand-delivery or certified mail, return-receipt requested, if the licensee is found to be in violation of this chapter or found, in the opinion of the permit official, to pose a significant health risk to the public.
 - 2. The permit official shall issue the written notice of denial, suspension or revocation of a license to the licensee and shall contain, as a minimum, the following:
 - a. State the name and address of the location of the home occupation and name of the licensee;
 - b. State the license is denied, suspended or revoked;
 - c. Indicate the reason(s) for the denial, suspension or revocation;
 - d. Order the portion of the dwelling used for a home occupation to be closed and not accessible to the public;
 - e. A statement prohibiting the further use of the structure for a home occupation;
 - f. Recommended corrective measures to bring the structure into compliance with the requirements of this chapter and any other applicable provision of the code;
 - g. Establish a reasonable time limit for the completion of the corrective measures;

- h. State the license, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and
 - i. State that the denial, suspension or revocation may be appealed to the construction board of appeals.
 - 3. The permit official may post a sign at any location where a license has been suspended or revoked pursuant to this chapter alerting the public that the location no longer has a valid license.
- G. Enforcement—Penalty.
- 1. Civil and Criminal Penalties. The city manager and his designees, including but not limited to the code enforcement division, shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this ordinance is declared to be a nuisance.
 - 2. Criminal Prosecution. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars. Each day that a provision of this ordinance is violated shall constitute a separate offense.
 - 3. Civil Remedies. Nothing in this chapter shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this chapter and to seek remedies as allowed by law, including, but not limited to the following:
 - a. Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance;
 - b. A civil penalty up to five hundred dollars a day when it is shown that the defendant was notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
 - b. Any other remedy available by law.

Section 22. That Chapter 5.36 (Gasoline Filling Stations), Sections 5.36.030 (License-Application-Investigation) and 5.36.060 (License-Fee), of the El Paso City Code, is amended to change the phrase “director of the development services department or his designee” to “permit official”, as used within these sections.

Section 23. That Chapter 5.36 (Gasoline Filling Stations), Section 5.36.090 (License-Suspension and revocation-Appeal), of the El Paso City Code, is amended to read as follows:

5.36.090 License–Suspension and revocation-Appeal.

A. The city manager and his designees, including but not limited to the code enforcement division, the police chief, the fire chief, the building official, and the permit official and their designees, shall, at all reasonable times, have access to the premises of any gasoline filling station for the purpose of determining whether or not all applicable city ordinances are being complied with, and failure on the part

of any gasoline filling station to comply with such ordinances shall be reported to the permit official, who may suspend or revoke any license issued hereunder, if the permit official shall determine that there has been any such failure. Before suspending or revoking any such license, however, the permit official shall notify the licensee in writing, of the charge or charges against the licensee and afford such licensee an opportunity to be heard, in person or by counsel, with reference to such charges.

B. A person who has a permit issued under this title, who has been served with a denial, suspension or revocation notice of said permit, may appeal the permit official's action to the city manager as provided herein. Within ten business days of taking such action, the permit official shall prepare a report indicating the reasons for the denial, suspension or revocation, and shall provide a copy to the person. The permit official's decision is final unless within ten calendar days from the date of receiving the permit official's report, the person files with the city clerk a written appeal to the city manager specifying reasons for the appeal. Said appeal shall also include a written rebuttal to the permit official's report.

C. The city manager or his designated deputy city manager shall review the permit official's report and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral presentation or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within a reasonable period of time after the appeal has been filed.

D. The city manager or designee shall sustain, reverse or modify the action of the permit official and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

Section 24. That Chapter 5.44 (Kindergartens), Section 5.44.040 (Registration-Form-Filing) of the El Paso City Code, is amended to read as follows:

5.44.040 Registration—Form—Filing.

A. Registration of kindergartens shall be filed with the permit official on a form provided by the official, which shall show the location of the kindergarten, the name and residence address of the owner (or if a corporation, the name and residence address of the president or other chief officer), the maximum number of children who will be accepted or who are in attendance, and which shall state that the registrant and persons employed by the registrant in connection with the operation of the kindergarten have never been convicted of any felony or misdemeanor involving moral turpitude, and which shall further state that to the best of the knowledge and belief of the registrant the kindergarten so registered is in compliance with the provisions of this chapter.

B. The registration form shall further provide that by making such registration the person, association or corporation so operating, conducting or managing a kindergarten within the city agrees and consents to the making of an inspection of the physical premises used for kindergarten purposes by the city manager or his designee, to include but not be limited to the code enforcement division, at any reasonable time during any day other than Sundays or holidays and in such manner as not to unreasonably interfere with the conduct of kindergarten classes.

Section 25. That Chapter 5.44 (Kindergartens), Section, 5.44.100 (Use of cellar and basement rooms), of the El Paso City Code, is amended to change the phrase “development services department” to “building official”, as used within this sections.

Section 26. That Chapter 5.44 (Kindergartens), Section 5.44.260 (Inspections), of the El Paso City Code, is amended to read as follows:

5.44.260 Inspections.

The city manager and his designees, including but not limited to the code enforcement division, the fire chief, the building official, and the permit official and their designees, shall from time to time inspect all kindergartens and see that all safety and health requirements are met.

Section 27. That Chapter 5.48 (Laundries), Section 5.48.020 (License-Required-Application-Investigation-Issuance), of the El Paso City Code, is amended to read as follows:

5.48.020 License—Required—Application—Investigation—Issuance.

- A. It is unlawful for any person to operate any public laundry business within the city without first obtaining a license therefore. Application for such license shall be made in writing to the permit official on a form to be provided by him for that purpose, together with the required established application fee. The application shall be sworn to by the applicant and shall contain the following information:
1. The full name and the city address of the individual(s) or organization applying for the license;
 2. Information relating to compliance with the physical requirements for a public laundry as required in this chapter; and
 3. Such other information, attachments, and submissions that are requested on the application form as reasonably necessary for a fair determination as to whether the license should be issued.
- B. It is unlawful for any person to solicit public laundry business within the city, whether such public laundry is operated inside or outside of the city, without such person having first obtained a license as provided herein and having complied with all the provisions of this chapter and paid the established license fee.
- C. Upon receipt of a proper application as provided in this chapter, the permit official shall review the application and forward a copy of the application to the director of the department of environmental services. These officials shall cause an investigation to be made of the premises described in such application for the purpose of determining whether the conditions therein conform with the provisions of this chapter and whether a license should be issued. Such investigation shall be completed within thirty days after

the date of receipt of the application. If such investigation reveals a violation of any of the provisions stated in this ordinance, the applicable established re-inspection fee shall be assessed and paid to the city five days before a re-inspection is conducted.

D. The permit official in accordance with the applicable provisions of this chapter shall issue the license applied for within ten days of the completion of the investigation, unless the permit official finds any of the following:

1. One or more of the statements made in the application are not true;
2. The applicant has failed to submit a complete application;
3. The required fee has not been paid; or
4. The conditions of the proposed public laundry do not conform with the provisions or requirements of this chapter.

Section 28. That Chapter 5.48 (Laundries), Section 5.48.050 (License-Denial-Suspension-Revocation) of the El Paso City Code, is amended to read as follows:

5.48.050 License—Denial—Suspension—Revocation.

A. The permit official, upon consultation with the director of the department of environmental services as appropriate, may suspend or revoke any license granted under the terms of this chapter for violation of any of the provisions of this chapter, or because such public laundry is dangerous or detrimental to the health of the city or the health of the persons employed therein.

B. A license holder who has been served with a denial, suspension, or revocation notice, may appeal the permit official's action to the city manager as provided herein. Within ten business days of taking such action, the permit official shall prepare a report indicating the reasons for the denial, suspension, or revocation, and shall provide a copy to the license holder. Such permit official's decision is final unless within ten calendar days from the date of receiving his report, the license holder files with the city clerk a written appeal to the city manager specifying reasons for the appeal. Said appeal shall also include a written rebuttal to the report.

C. The city manager or designee shall review the report of the permit official and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral presentation or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within ten days after the appeal has been filed.

D. The city manager or designee shall sustain, reverse or modify the action of the permit official and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

Section 29. That Chapter, 5.54 (Sexually Oriented Businesses), Section 5.54.020 (Definitions), of the El Paso City Code, is amended in part, to amend the definition of “director” to read as follows:

“Director” means the permit official, as designated by the City Manager.

Section 30. That Chapter 5.60 (Mobile Home Sale Disclosures), Section 5.60.020 (Required-Content), of the El Paso City Code, is amended to read as follows:

5.60.020 Required—Content.

Before any mobile home is sold in the city the seller shall disclose to the purchaser in a single written statement, the receipt of which the purchaser shall acknowledge in writing, the following clearly legible statement: Mobile homes may not be used for human habitation in the City of El Paso except in Residential Mobile Home Districts and in duly licensed trailer courts in accordance with applicable provisions of the El Paso City Code. Before purchasing a mobile home, you are advised to contact the building official, City of El Paso, concerning whether the location where you desire to place a mobile home would be legal. In addition, such written statement shall contain the date of the proposed sale, the names and addresses of the buyer and seller, and a brief identification of the type of mobile home being sold. One copy of such written statement shall be provided by the seller to the purchaser. A second copy, with receipt acknowledged by the purchaser, shall be retained by the seller as evidence of compliance in accordance with Section 5.60.030.

Section 31. That Chapter 5.60 (Mobile Home Sale Disclosures), Section 5.60.030 (Evidence of compliance), of the El Paso City Code, is amended to read as follows:

5.60.030 Evidence of compliance.

Evidence of compliance with the requirements of this chapter shall be preserved by the seller for a period of not less than two years after the date each disclosure is required to be made. Each seller shall, when directed by the code enforcement division or other designee of the city manager, permit the authority, or his duly authorized representative, to inspect the seller's records which provide evidence of compliance with this chapter.

Section 32. That Chapter 5.72 (Motor Vehicle Dealers and Salesmen), Sections 5.72.020 (License-Application-Contents), and 5.72.050 (License-Transfer), of the El Paso City Code, are amended to change the phrase “development services department” to “permit official”, as used in these sections.

Section 33. That Chapter 5.76 (Nurseries and Other Businesses Selling Plants or Fertilizer), Section 5.76.020 (License-Application), of the El Paso City Code, is amended to change the phrase “development services department” to “permit official”, as used in this section.

Section 34. That Chapter 5.84 (Dealers in Secondhand Goods, Coins and Precious Metals), Section 5.84.040 (License-Application-Contents), is amended to change the phrase “city development services department” to “permit official”, as used in this section.

Section 35. That Chapter 5.84 (Dealers in Secondhand Goods, Coins and Precious Metals), section 5.84.050 (License-Fee) of the El Paso City Code, is amended to read as follows:

5.84.050 License—Fee.

An annual license fee is established and shall be paid in the established amount, as applicable to a first location and as applicable for each additional location.

Section 36. That Chapter 5.84 (Dealers in Secondhand Goods, Coins and Precious Metals), Section 5.84.060 (License-Investigation-Issuance) of the El Paso City Code, is amended to read as follows:

5.84.060 License—Investigation—Issuance.

Upon receipt of an application for a license in accordance with the provisions of Section 5.84.040, the permit official, in conjunction with designees of the police chief, shall cause such investigation of the application and applicant’s business to be made as deemed necessary to protect the public good. Unless it is determined otherwise after the results of investigation, the permit official shall issue a license no later than thirty days following the date of the filing of the application.

Section 37. That Chapter 5.84 (Dealers in Secondhand Goods, Coins and Precious Metals), Sections 5.84.070 (License-Denial-Grounds), 5.84.080 (License-Denial-Appeal), and 5.84.130 (License-Suspension and revocation), of the El Paso City Code, are amended to change the phrase “development services department” to “permit official”, as used in these sections.

Section 38. That Chapter 5.88 (Private Detectives), Sections 5.88.020 (License-Application), and 5.88.030 (License-Investigation-Fingerprinting-Issuance), 5.88.040 (License-Fee-Bond), 5.88.050 (Employees-Bond required), and 5.88.060 (Bond requirements-Exceptions), of the El Paso City Code, are amended to change the correct the title of the Chapter to “Private detectives,” and to change the phrase “director of the development services department or his designee” to “permit official”, as used in these sections.

Section 39. That Chapter 5.90 (Security Alarm Systems), Section 5.90.020 (Permit-required), of the El Paso City Code, is amended to change the phrase “development services department” to “code enforcement division”, as used in this section.

Section 40. That Chapter 5.90 (Security Alarm Systems), Section 5.90.020 (Permit – Required), of the El Paso City Code, is amended to change the phrase “city licensing bureau” to “permit official”, as used in this section.

Section 41. That Chapter 5.90 (Security Alarm Systems), Section 5.90.030 (Application), of the El Paso City Code, is amended to change the phrase “development services department” to “permit official”, as used in this section.

Section 42. That Chapter 5.94 (Sign Permit Fees, Licenses and Bonds), Section 5.94.010 (Sign permit fees, licenses and bonds) of the El Paso City Code is amended to change the phrase “development services department” to “permit official”, as used in the section.

Section 43. That Chapter 5.94 (Sign Permit Fees, Licenses and Bonds), Section 5.94.010 (Sign permit fees, licenses and bonds) of the El Paso City Code is amended to change the phrase “director of the development services department or his designee” to “permit official”, as used in the section, except for subsection 5.94.010 B 11 (Enforcement—Penalty), which is separately amended herein in Section 43 of this ordinance.

Section 44. That Chapter 5.94 (Sign Permit Fees, Licenses and Bonds), Section, 5.94.010 (Sign permit fees, licenses and bonds), Subsection B 11 (Enforcement—Penalty) of the El Paso City Code is amended to read as follows:

5.94.010, Subsection B 11, Sign permit fees, licenses and bonds

B. 11. Enforcement—Penalty.

a. Civil and Criminal Penalties. The city manager and his designees, including but not limited to the code enforcement division shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this chapter is declared to be a nuisance.

b. Criminal Prosecution. Any person violating any provision of this chapter shall, upon conviction, be fined a sum not exceeding two thousand dollars. Each day that a provision of this chapter is violated shall constitute a separate offense.

c. Civil Remedies. Nothing in this chapter shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- i. Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance;
- ii. A civil penalty up to five hundred dollars a day when it is shown that the defendant was notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
- iii. Any other remedy available by law.

Section 45. That Chapter 5.96 (Tattooing and Body Piercing Licenses), Section 5.96.010 (Compliance required) of the El Paso City Code is amended to change the phrase “director of the development services department or his designee” to “permit official”, as used in the section.

Section 46. That Chapter 5.100 (Vendors and Solicitors), Sections 5.100.030 (License-Application-Revocation for failure to make required reports), 5.100.040 (License fees), 5.100.050 (License-Issuance-Contents-Display-Nontransferable), and 5.100.090 (Exemptions), of the El Paso City Code, are amended to change the phrase “development services department” to “permit official”, as used in these sections.

Section 47. That Chapter 5.100 (Vendors and Solicitors), Section 5.100.080 (Inspection, condemnation and confiscation of merchandise – Revocation of license) of the El Paso City Code, is amended to read as follows:

**5.100.080 Inspection, condemnation and confiscation of merchandise—
Revocation of license.**

It shall be the duty of the permit official, code enforcement division, or of the peace officers of the city, to inspect merchandise offered for sale in the city by a vendor or solicitor, and such officials, inspectors and peace officers shall have the power to condemn and confiscate any merchandise which they deem to be unsafe or otherwise unfit for sale to the public, or which they deem to be misrepresented as to grade, quality or condition. Such condemnation shall remain in effect as long as necessary to protect the public from the danger which is being prevented by the condemnation. After conducting a hearing, the chief of police may revoke the license of any person who shall offer for sale merchandise which is unsafe or unfit for sale to the public, or who shall intentionally misrepresent the quality, grade or conditions of any merchandise offered for sale.

Section 48. That Chapter 5.100 (Vendors and Solicitors), Section 5.100.090, Subsection E only, (Exemptions) of the El Paso City Code, is amended to read as follows:

5.100.090, Subsection E, Exemptions.

E. Any person who has obtained a home occupation license under the provision of Section 20.04.820 and any other applicable provision in Title 20 for home occupations, and who engages in the business of vending or soliciting solely on the premises for which the home occupation license was issued;

Section 49. That Chapter 5.104 (Watchmen), sections 5.104.020 (License-Application-Filing-Contents), 5.104.030 (License-Application-Investigation-Fingerprinting), 5.104.060 (Bond), 5.104.070 (Employees-Fitness-Bond), and 5.104.080 (Employees-Bond not required under certain conditions), of the El Paso City Code, are amended to change the phrase “development services department” to “permit official”, as used in these sections.

Section 50. That Chapter 5.112 (Bingo Regulation), Section 5.112.010 (Certification-Fee) of the El Paso City Code, is amended read as follows:

5.112.010 Certification—Fee.

Whenever the Texas Alcoholic Beverage Commission requires the city clerk to certify applications for bingo licenses initially and at the time of renewal of the license granted by the Texas Alcoholic Beverage Commission the person(s) seeking this certification shall pay a fee of ten dollars for the certification of the bingo license application. This fee will defray the cost of verifications performed by the city clerk and other staff as designated by the city manager.

Section 51. This ordinance shall take effect on September 1, 2010.

Section 52. Except as herein amended, Title 5 of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS 24th day of August 2010.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

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