

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

CITY CLERK DEPT.

**DEPARTMENT:** Development Services/Planning Division

05 OCT 31 AM 10:10

**AGENDA DATE:** Introduction 11-8-05; Public Hearing 11-29-05

**CONTACT PERSON/PHONE:** Kimberly Forsyth, Zoning Administrator - 541-4631

**DISTRICT(S) AFFECTED:** City-wide

**SUBJECT:**

**AN ORDINANCE AMENDING TITLE 20 (ZONING) OF THE EL PASO MUNICIPAL CODE, BY AMENDING SECTION 20.08.090.B (SALE OF ALCOHOLIC BEVERAGES, RESTRICTIONS) IN ORDER TO PROHIBIT THE SALE OF ALCOHOLIC BEVERAGES WITHIN THREE HUNDRED FEET OF A PUBLIC OR PRIVATE SCHOOL, DAY-CARE CENTER OR CHILD-CARE FACILITY. THE PENALTY IS AS PROVIDED IN CHAPTER 20.68 OF THE CITY OF EL PASO MUNICIPAL CODE.**

**BACKGROUND / DISCUSSION:**

See attached information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

The Building and Zoning Advisory Committee (BZAC) recommended approval of this amendment to the Zoning Code. The Development Coordinating Committee recommended unanimous approval on Oct. 26, 2005. Recommendation is pending from the City Plan Commission.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**SECTION HEAD:** George Sarmiento

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **GENERAL INFORMATION:**

**SUBJECT:** The Development Services Department is requesting the following amendments to Section 20.08.090.B (Sale of beer, wine and other alcoholic beverages, Restrictions) in order to reflect current state regulations concerning alcoholic beverages:

- *To replace the language "school" with "public or private school"*
- *To replace the language "commercial day care" with "day care-center or child-care facility"*
- *To add language (Section B.2) that allows the sale, storage or handling of alcoholic beverages within 300 feet of a day-care center or child-care facility for an establishment with a food and beverage license (a restaurant)*
- *To add language (Section B.2.a.) that allows the sale, storage or handling of alcoholic beverages within 300 feet of a day-care center or child-care facility for an establishment that is located on a different story of a multi-story building*
- *To add language (Section B.2.b.) that allows the sale, storage or handling of alcoholic beverages within 300 feet of a day-care center or child-care facility for an establishment that is located in a different building and the day-care center or child-care facility is located on the second story or higher of a multi-story building*
- The BZAC, in the course of their review and proposed rewrite of Title 20, recommended approval of this amendment.
- The DCC on October 26, 2005 unanimously recommended approval of the proposed changes. The amendment has been scheduled for CPC action on Nov. 3, 2005 and their recommendation will be forwarded.

**AN ORDINANCE AMENDING TITLE 20 (ZONING) OF THE EL PASO MUNICIPAL CODE, BY AMENDING SECTION 20.08.090.B (SALE OF ALCOHOLIC BEVERAGES, RESTRICTIONS) IN ORDER TO PROHIBIT THE SALE OF ALCOHOLIC BEVERAGES WITHIN THREE HUNDRED FEET OF A PUBLIC OR PRIVATE SCHOOL, DAY-CARE CENTER OR CHILD-CARE FACILITY. THE PENALTY IS AS PROVIDED IN CHAPTER 20.68 OF THE CITY OF EL PASO MUNICIPAL CODE.**

**WHEREAS**, the zoning regulations of the City of El Paso have been established for the purpose of promoting the health, safety, morals and general welfare of its citizens; and,

**WHEREAS**, currently the El Paso Municipal Code prohibits the sale of alcoholic beverages within three hundred (300) feet of church, school or public hospital; and,

**WHEREAS**, the Development Coordinating Committee, and the City Plan Commission after public hearing, recommend approval of the proposed amendments to further expand the prohibition of the sale of alcoholic beverages within three hundred (300) feet of a school whether it be public or private, a day-care center or child-care facility; and,

**WHEREAS**, the El Paso City Council finds that the proposed amendments as herein enumerated will have a positive impact upon the public health, safety, morals, and general welfare of the City; and that the zoning regulations as amended will carry out the purpose and spirit of the policies expressed in *The Plan for El Paso*.

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

**Section 1.** That Section 20.08.090.B (Sale of alcoholic beverages, Restrictions) of the El Paso Municipal Code shall be deleted in its entirety and replaced with the following:

“B. Restrictions.

1. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred feet of a church, public or private school, or public hospital unless expressly varied pursuant to the requirements of this section.

2. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred (300) feet of a day-care center or a child-care facility as they are defined in Texas Human Resources Code §42.002 and the permit or license holder does not hold a food and beverage certificate issued by the Texas Alcoholic Beverage Commission, unless expressly varied pursuant to the requirements of this section. This section shall not apply:

- a. If the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or
  - b. If the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.
3. The distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be measured along the property lines of the street fronts and from front door to front door, and in direct line across intersections;
4. The distance between the place of business where alcoholic beverages are sold and a public or private school, day-care center or child-care facility shall be measured in direct line from the property line of the public or private school, day-care center or child-care facility, to the property line of the place of business, and in a direct line across intersections;
5. The prohibition of the sale of alcoholic beverages within three hundred feet of a church, school or public hospital shall not apply to the sale of alcoholic beverages by any business that held a valid license on August 31, 1983, and has remained established and engaged in the sale of alcoholic beverages within three hundred feet of any church, public or private school or public hospital; nor shall the provisions of this section prevent any business legally engaged in the sale of alcoholic beverages on August 31, 1983, and continuing to be so engaged within three hundred feet of any church, public or private school or public hospital from securing a renewal of their license, nor from a new license being issued for such location to any other applicant.
6. The prohibition of the sale of alcoholic beverages within three hundred feet of a day-care center or child-care facility shall not apply to the sale of alcoholic beverages by any business that held a valid license on July 31, 2000, and has remained established and engaged in the sale of alcoholic beverages within three hundred feet of any day-care center or child-care facility; nor shall the provisions of this section prevent any business legally engaged in the sale of alcoholic beverages on July 31, 2000, and continuing to be so engaged within three hundred feet of any day-care center or child-care facility from securing a renewal of their license, nor from a new license being issued for such location to any other applicant.
7. The city council may grant an exception from prohibition of the sale of alcoholic beverages within three hundred feet of a church, public or private school, day-care center or child-care facility or public hospital after notice and public hearing if the council determines that the enforcement of the prohibition in a particular instance:
- a. Is not in the best interest of the public;
  - b. Constitutes waste or the inefficient use of land or other resources;
  - c. Creates an undue hardship on an applicant;
  - d. Does not serve its intended purpose;
  - e. Is not effective or necessary; or
  - f. For any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.”

**Section 2.** Except has herein amended, Title 20 (Zoning) of the El Paso Municipal Code shall remain in full force and effect.

**APPROVED this 29<sup>th</sup> day of NOVEMBER, 2005.**

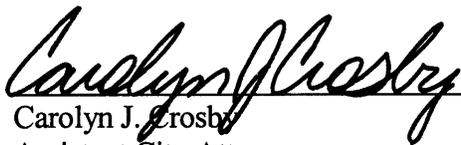
**THE CITY OF EL PASO, TEXAS**

\_\_\_\_\_  
John Cook  
Mayor

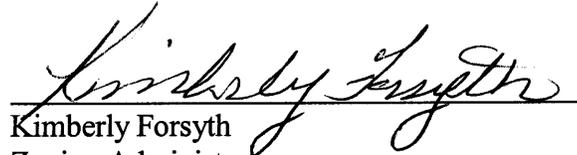
**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
Municipal Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Carolyn J. Crosby  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kimberly Forsyth  
Zoning Administrator