Dedicated to Outstanding Customer Service for a Better Community

S E R V I C E S O L U T I O N S S U C C E S S

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

DEPARTMENT: ENGINEERING & CONSTRUCTION MANAGEMENT DEPARTMENT

AGENDA DATE: INTRODUCTION: NOVEMBER 29, 2011
PUBLIC HEARING: DECEMBER 06, 2011

CONTACT PERSON NAME AND PHONE NUMBER: R. ALAN SHUBERT (915) 541-4423

DISTRICT(S) AFFECTED: ALL

SUBJECT:

An ordinance amending Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code, by repealing Title 5 in its entirety and adopting a new Title 5 in its place, the penalty as being provided in Chapter 1.08 of the El Paso City Code.

BACKGROUND / DISCUSSION:

In an effort to simplify and clarify current requirements and procedures for the various licenses and permitted activities listed under Title 5 of the El Paso City Code, several City departments undertook a comprehensive review. The primary intent of this exercise was to eliminate antiquated regulations, identify opportunities to streamline processes and to clean-up existing language to better reflect consistency and current procedures. The most significant outcome of this review is the proposed deletion of the following chapters: 5.12 Amusement Devices, 5.16 Appliance Dealers and Installers, 5.20 Circuses, Shows, Carnivals and Other Similar Exhibitions, 5.25 Distribution of Literature, Solicitation of Donations and other Regulated, 5.28 Dancehalls and Dances, 5.36 Gasoline Filling Stations, 5.40 Junk Dealers, 5.44 Kindergartens, 5.46 Assisted Living Facilities, 5.56 Messenger Services, 5.60 Mobile Home Sale Disclosures,5.68 Motor Carrier Transportation Agents, 5.76 Nurseries and Other Businesses Selling Plants or Fertilizer, 5.88 Private Detectives,5.92 Shoe shining, 5.104 Watchmen, 5.108 Servicing Cesspools, Grease Traps and Septic Tanks and 5.112 Bingo Regulation. This approach was approved by the Financial, Internal Audit, and Engineering/CIP & Management Services – LRC on September 1, 2011.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson

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SERVICE SOLUTIONS SUCCESS

PRIOR COUNCIL ACTION:
N/A

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
N/A

Enter appropriate comments or 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

Mayor
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ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE EL PASO CITY CODE, BY REPEALING TITLE 5 IN ITS ENTIRETY AND ADOPTING A NEW TITLE 5 IN ITS PLACE, THE PENALTY BEING AS PROVIDED IN CHAPTER 1.08 OF THE EL PASO CITY CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code be deleted in its entirety and replaced with the following:

TITLE 5

BUSINESS LICENSE AND PERMIT REGULATIONS

CHAPTER 5.01 GENERAL

5.01.010 Permit Official

For purposes of Title 5 of this code the "permit official" as defined in 1.04.030 shall be the primary authority for the issuance, denial, suspension or revocation of licenses and permits required. Specific chapters under Title 5 of this code may designate additional city officials with authority to issue, deny, suspend or revoke licenses or permits. Any reference to the permit official or other city official with authority to enforce the terms of this Title, shall also include that person's designee.

5.01.020 License/Permit – Term

Unless a specific chapter under Title 5 of this code specifies a different term, all licenses and permits issued pursuant to Title 5 of this code shall expire two years from the date of issuance, unless otherwise suspended or revoked. Applicants may, however, choose a one year permit or license rather than a two year permit or license if the fee for the two year permit or license is greater than $100.00.

5.01.030 License/Permit – Renewal

Unless a specific chapter under Title 5 of this code sets out a different renewal term, if, thirty days prior to the expiration of the license or permit, there are no outstanding violations, citations, or fees owed to the city by the license or permit holder which are directly related to the license or permit, the license or permit may be renewed for a period

of two years upon the filing of a new application and payment of the established renewal fee.

5.01.040 License/Permit- Fee Nonrefundable

All established fees charged and collected by the city from a license or permit applicant pursuant to the provisions of Title 5 of this code shall be nonrefundable unless otherwise specified.

5.01.050 License/Permit-Nontransferable

Any license or permit issued pursuant to the requirements of Title 5 of this code shall not be transferable to any other location or to any other holder. Upon a change of ownership of a licensed or permitted business, the former license or permit shall automatically expire and a new license or permit must be obtained. It shall be the duty of both the licensee/permitee and the person to whom the business is transferred to notify the permit official of such change in ownership.

5.01.060 License/Permit - Posting

Unless a specific chapter under Title 5 of this code sets out a different requirement, it shall be the duty of every person or business to keep any license or permit issued under and in accordance with the terms of Title 5 of this code posted in a conspicuous place in the place of business licensed or permitted.

5.01.070 License/Permit - Exemptions

The City of El Paso, the County of El Paso, the El Paso Housing Authority, the State of Texas, the United States Government and any other governmental entities that are, as a matter of law, exempt from having to pay permit fees, are exempt from the payment of the license or permit fees required in this title. Utility companies and other entities who have entered into a franchise agreement with the City of El Paso are bound by the terms of the franchise agreement in reference to the payment of license or permit fees.

5.01.080 Enforcement and Collection

A. The permit official is 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 to enter property for the purpose of making inspection, the permit official shall have recourse to every remedy provided by law to secure entry, including judicial warrant.
B. The permit official is authorized to issue citations to any person found to be in violation of Title 5 of this code.

C. Specific chapters under Title 5 of this code may designate additional city officials authority 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 authorized city official to enter property for the purpose of making inspection, the authorized city official shall have recourse to every remedy provided by law to secure entry, including judicial warrant.
D. Specific chapters under Title 5 of this code may designate additional city officials authority to issue citations to any person found to be in violation of Title 5 of this code.
E. The city may collect any license or permit fee owing to it by any person by suit against such person in any court of competent jurisdiction.

5.01.090 License/Permit – Appeal of Denial, Suspension or Revocation

Unless a specific chapter under Title 5 of this code sets out a different appeal process, any applicant/licensee/permittee may appeal the denial, suspension or revocation of a license or permit required by Title 5 of this code to the city manager as provided in this section.

A. Within ten business days of denial, suspension or revocation, the permit official or other city official authorized to deny, suspend or revoke a permit or license, shall prepare a report indicating the reasons for the denial, suspension or revocation, and shall provide a copy to applicant, licensee or permittee. Such official's decision is final unless within ten calendar days from the date of receiving such official's report, the applicant, licensee, or permittee 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 such official's report.
B. The city manager or designated deputy city manager shall review the report of the 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 a reasonable period of time after the appeal has been filed.
C. The city manager or designee shall sustain, reverse or modify the action of the official and shall notify the appellant of the decision in writing. The decision of the city manager or designee is final.

5.01.100 Violation, penalty

Unless a specific chapter under Title 5 of this code sets out a different violation or penalty, any person who violates a provision of Title 5 of this code shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in Chapter 1.08 of this code by a fine not to exceed five hundred dollars. Each day the violation occurs shall constitute a separate offense.

CHAPTER 5.02 ALCOHOLIC BEVERAGES

5.02.010 Compliance required

No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages unless the use is authorized by and the person has complied with all applicable requirements of the Texas Alcoholic Beverage Code, and Title 20 and 21 of the city code, as amended, and the person has paid the established fee and obtained a permit of the type required pursuant to the terms of this chapter.

5.02.020 Definitions

A word or term used in this chapter that is specifically defined by the Texas Alcoholic Beverage Code shall be construed to have the same meaning established by the Texas Alcoholic Beverage Code, as amended.
"Alcoholic beverage" means alcohol or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
"City Secretary" means the permit official or other designee of the city manager whenever referenced in the Texas Alcoholic Beverage Code.

5.02.030 Construction consistent with state law

This chapter is intended to be in conformity with the Texas Alcoholic Beverage Code and with all the rules and regulations promulgated under authority of the Texas Alcoholic Beverage Commission, both as amended.

5.02.040 No vested right conferred

The sale of alcoholic beverages is a privilege and this chapter is not intended to give any person a vested right to engage in such business.

5.02.050 Existing liquor districts are repealed

Liquor districts were repealed as of August 1, 2000.

5.02.060 Applicability to annexed territories

A. When at the time of any annexation of territory to the city there was in actual existence in the annexed area a place of business at which alcoholic beverages or intoxicating liquors were lawfully sold, the room in which such business was then being conducted shall be deemed a nonresidential section for the purposes of this section, and such business may continue to operate, but only upon the following conditions:

1. The person operating or desiring to operate such business shall file with the permit official an affidavit made by himself and by another person knowing the facts and competent to testify, showing the fact that such business was in lawful operation at the time of annexation, the location then actually occupied by the business, and the name and address of the owner of the business.
2. Such person shall also produce for inspection a current valid state license or permit under which the business was being operated at the time of annexation and shall file a copy thereof.
3. A business operated under authority of this section shall not be enlarged or extended; and if the business shall cease to be conducted for a continuous period of one hundred and twenty days, it shall be deemed to be permanently abandoned, and all rights to operate an alcoholic beverage business in that location by virtue of this section shall expire.
B. The privilege granted by the above provision shall apply in the case of both past and future annexations.
C. Nothing in this section shall authorize any act which is unlawful under Title 20 or 21 of this code, relating to zoning.

5.02.070 Certification of compliance with city requirements for application to the Texas Alcoholic Beverage Commission

A. This section applies to an application for a permit or license required by the Texas Alcoholic Beverage Code when the Texas Alcoholic Beverage Code requires certification by the city that the sale of alcoholic beverages at the place of business is authorized by city ordinance. This section also applies to a permittee seeking to change the place, address, premises, or location for which the permit or license is issued, when the Texas Alcoholic Beverage Code requires certification by the city 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 certification without reinspecting the place of business if there has been no material change since the previous inspection that would affect the certification required by this section., as determined by the official in his sole discretion.
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.
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 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 may 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 permit or 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 City Code. The permit official shall forward the certified application to the Texas Alcoholic Beverage Commission.
K. If the permit official does not receive the certifications required in subsections F, G, and H, or the permit official cannot otherwise certify on the application that the sale of alcoholic beverages at the place of business is authorized by city charter or city code, the permit official shall not certify the application.
L. The applicant may appeal the permit official's denial of the certification of the application to the city council by written notice filed with the city clerk within ten days of the applicant's receipt of the notice of denial of the certification from the permit official.

5.02.080 Resubmission of application

Once a permit or license has been denied by the city council for a specific place of business, an applicant shall not be allowed to resubmit an application for that same location until twelve months has elapsed from the date the city council denied the previous permit or license application.

5.02.090 City protest of permit/license

A. The city manager for the City of El Paso 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 shall be presented by the city manager with the assistance of the city attorney if necessary.
B. The city manager 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 shall be presented by the city manager with the assistance of the city attorney if necessary.

5.02.100 City Liquor license/permit--Fee

A. Once an applicant has obtained a license or permit from the Texas Alcoholic Beverage Commission, they must also obtain the corresponding license or permit from the city. There shall be charged and collected by the city the established fee from every licensee or permittee issued any license or permit by the state or its authorized agents, and from which licensee or permittee the city is given the power by the Texas Alcoholic Beverage Code to collect a fee. The city license or permit shall correspond to the same class of license or permit issued such licensee or permittee by the state.
B. No person may manufacture, distill, brew, sell, import, export, transport, distribute, possess, possess for the purpose of sale, warehouse, store, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages without first paying the established fee and obtaining the following applicable license(s) or permit(s) from the city:

1. Brewer's Permit, as defined by Chapter 12 of the Texas Alcoholic Beverage Code.
2. Nonresident Brewer's Permit, as defined by Chapter 13 of the Texas Alcoholic Beverage Code.
3. Distiller's and Rectifier's Permit, as defined by Chapter 14 of the Texas Alcoholic Beverage Code.
4. Winery Permit, as defined by Chapter 16 of the Texas Alcoholic Beverage Code.
5. Wine Bottlers Permit, as defined by Chapter 18 of the Texas Alcoholic Beverage Code.
6. Wholesaler's Permit, as defined by Chapter 19 of the Texas Alcoholic Beverage Code.
7. General Class B Wholesaler's Permit, as defined by Chapter 20 of the Texas Alcoholic Beverage Code.
8. Local Class B Wholesaler's Permit, as defined by Chapter 21 of the Texas Alcoholic Beverage Code.
9. Package Store Permit, as defined by Chapter 22 of the Texas Alcoholic Beverage Code.
10. Local Distributor's Permit, as defined by Chapter 23 of the Texas Alcoholic Beverage Code.
11. Wine Only Package Store Permit, as defined by Chapter 24 of the Texas Alcoholic Beverage Code.
12. Wine and Beer Retailer's Permit, as defined by Chapter 25 of the Texas Alcoholic

Beverage Code.
13. Wine and Beer Retailer's Off-Premise Permit, as defined by Chapter 26 of the Texas Alcoholic Beverage Code.
14. Mixed Beverage Permit, as defined by Chapter 28 of the Texas Alcoholic Beverage Code.
15. Mixed Beverage Late Hours Permit, as defined by Chapter 29 of the Texas Alcoholic Beverage Code.
16. Daily Temporary Mixed Beverage Permit, as defined by Chapter 30 of the Texas Alcoholic Beverage Code.
17. Caterer's Permit, as defined by Chapter 31 of the Texas Alcoholic Beverage Code.
18. Other Private Club Late Hours Permits, as defined by Chapter 33 of the Texas Alcoholic Beverage Code.
20. Beverage Cartage Permit, as defined by Chapter 44 of the Texas Alcoholic Beverage Code.
21. Bonded Warehouse Permit, as defined by Chapter 46 of the Texas Alcoholic Beverage Code.
22. Manufacturer's License, as defined by Chapter 62 of the Texas Alcoholic Beverage Code. A Manufacturer's License holder shall pay the established fee for
a. The first establishment
b. The second establishment
c. The third, fourth and fifth establishments
d. Each establishment in excess of five
23. General Distributor's License, as defined by Chapter 64 of the Texas Alcoholic Beverage Code.
24. Local Distributor's License, as defined by Chapter 65 of the Texas Alcoholic Beverage Code.
25. Branch Distributor's License, as defined by Chapter 66 of the Texas Alcoholic Beverage Code.
26. Importer's License, as defined by Chapter 67 of the Texas Alcoholic Beverage Code.
27. Importer's Carrier's License, as defined by Chapter 68 of the Texas Alcoholic Beverage Code.
28. Retail Dealer's On-Premise License, as defined by Chapter 69 of the Texas Alcoholic Beverage Code.
29. Retail Dealer's On-Premise Late Hours License, as defined by Chapter 70 of the Texas Alcoholic Beverage Code.
30. Retail Dealer's Off-Premise License, as defined by Chapter 71 of the Texas Alcoholic Beverage Code.
31. Brewpub License, as defined by Chapter 74 of the Texas Alcoholic Beverage Code.

5.02.110 Issuance of permit or license

Upon the payment of the established fee to the city, the approval of any required reviews and inspections and exhibition to the permit official of the permit or license duly issued by the state to the applicant or person paying such fee, the permit official shall, in the

name of the city, issue and deliver to such applicant or person a permit or license to engage in the business in the city of the character described in and authorized by the permit or license from the state held by such applicant or person. The permit or license so issued in the name of the city shall authorize the conduct of such business upon the premises described in the permit or license from the state, and shall be void upon expiration or revocation of the state license or permit.

5.02.120 License/Permit application processing

No license or permit required under this chapter shall be issued until the proper application, on a form approved by the permit official accompanied by all required documents, has been filed with the permit official.

5.02.130 Separate permit required

A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the city.

5.02.140 Liquor license/ permit--Term

A license or permit issued under this chapter expires on the second anniversary of the date it is issued. If the city issues a permit with an expiration date less than two years after the date the permit is issued, the city shall prorate the license or permit fee on a monthly basis so that the license or permit holder pays only that portion of the license or permit fee that is allocable to the number of months during which the license or permit is valid.

5.02.150 Licenses/Permits expired for two months or more

The permit official shall report to the Texas Alcoholic Beverage Commission all licenses or permits expired for two months or more.

5.02.160 Renewal, assignment and transfer of licenses

The provisions of the Texas Alcoholic Beverage Code Chapter 11 and Chapter 61 relating to renewal, assignment and transfer of a license or permit, and relating to refund of license and permit fees, shall apply to licenses, permits and fees of the city.

5.02.170 Violations and penalties

Any person, firm, corporation or agent who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars. Each such person shall be deemed guilty of a separate offense for each and every day or portion

thereof during which any violation of any of the provisions of this chapter is committed or continued.

CHAPTER 5.03 CHARITABLE SOLICITATIONS

5.03.010 Definitions

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:
"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.
"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 5.03.030 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.
"Cost of fundraising" means all costs incurred in raising the funds solicited.
"Organization" means and includes associations, clubs, societies, firms, partnerships and corporations as well as individuals or groups of individuals.
"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.
"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.

5.03.020 Permit required

Except as provided in section 5.03.030, it shall be unlawful to conduct any charitable solicitations campaign in the city unless the person, organization, society, association or corporation conducting same and responsible therefore shall first have paid the established fee and obtained a permit in compliance with the terms of this chapter.

5.03.030 Permit exceptions

Except to the extent hereinafter stated in this section, the provisions of this chapter shall not apply to:
A. Any organization which solicits funds solely from its own voting members, not using public streets or public places for such purposes. "Members" means those persons who, for the payment of fees, dues or other such assessments, receive a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to right to vote, elect officers or hold office;
B. Any organization which solicits funds on premises owned or controlled by the organization soliciting funds or with the permission of the organization or person who owns or controls the premises;
C. Any organization whose receipts from solicitations do not exceed five hundred dollars annually.
Notwithstanding the fact that the provisions of this section do not otherwise apply, any person, organization, society, association or corporation conducting any charitable solicitations campaign in the city may be required, within seven calendar days of receiving a written request from the permit official, to submit to the permit official such books and financial records as the permit official deems necessary to verify that any funds received as a result of the charitable solicitations campaign are actually being used for their stated purpose. Each day or portion thereof during which such books and records

are required to be submitted to the permit official, but are not submitted, shall constitute a separate violation of this section.

5.03.040 Application--Information to be contained

A permit to conduct a charitable solicitations campaign in the city shall be granted only after review and approval of the application by the permit official. Such application shall be sworn to by the applicant, and shall contain the following information:
A. The full name and the city address of the individual(s) or organization applying for the permit to solicit, and if the organization is a chapter or other affiliate of an organization having its principal office outside the city, the name and address of the parent organization;
B. The names and addresses of all officers, directors and trustees of the organization applying for the permit;
C. The purpose or purposes for which the gross receipts derived from such charitable solicitations campaign are to be used;
D. The name of the person, or persons by whom the receipts of such solicitations shall be disbursed;
E. The name and address of the person or persons who will be in charge of conducting the charitable solicitations campaign in the city;
F. An outline of method or methods to be used in conducting the charitable solicitations campaign;
G. The period within which such charitable solicitations campaign shall be conducted, including the proposed date for the beginning and end of such campaign;
H. The total amount of funds proposed to be raised;
I. The projected amount or schedule of all salaries, wages, fees and commissions, expenses and costs to be expended, and the approximate percentage of funds to be collected which will go to charity and the approximate percentage which will go for fundraising;
J. The names and addresses of all individuals who will act as agents for the applicant and the names and addresses of any professional promoter(s) or professional solicitor(s) employed by the applicant to participate in such solicitation;
K. A statement of the funds, if any, collected by the applicant during the preceding year from a charitable solicitations campaign conducted within the city. Such statement to show the amount collected, the cost of fundraising, the percentage that went to charity and the final distribution thereof. Annual financial reports of the applicant may be filed in lieu of a separate campaign statement;
L. A statement of the character and extent of the charitable, educational, patriotic or philanthropic work done by the applicant within the city during the last preceding year;
M. If the applicant is a corporation, a copy of its charter or articles of incorporation; if the applicant is a foreign corporation, a copy of its certificate to do business in the state;
N. If the applicant is a charitable organization or other organization to which contributions are tax deductible for federal income purposes, proof of its current status as such an organization.

5.03.050 Application--Fee

The established fee for a permit to conduct a charitable solicitations campaign in the city shall be paid by the applicant at the time of the filing of the application.

5.03.060 Review by the Permit Official

Upon receipt of a proper application as provided in this chapter, the permit official shall review the application and in accordance with Section 5.03.070 of this chapter, issue the permit applied for, unless the permit official finds:
A. One or more of the statements made in the application are not true;
B. That applicant or person in charge of the charitable solicitations campaign has made or caused to be made false statements or misrepresentations on the application or has made false statements; or
C. The application does not comply with the requirements of Section 5.03.040.

5.03.070 Issuance of permit

Within ten working days of the receipt of the application for a permit, the permit official shall either issue a permit to conduct a charitable solicitation campaign or notify the applicant that the application does not meet the criteria established in Section 5.03.060, and specifically point out what information or explanation has not been furnished that is required before a permit can be issued.

5.03.080 Duration of permit

A. Each charitable solicitation permit issued under this chapter shall expire at the termination of the solicitation period specified in the application or one year from the date of issuance, whichever is less.

B. Charitable organizations continuously operating on an annual basis may hold permits effective for a one-year period corresponding with the fiscal year of the organization.

5.03.090 Revocation

If after review, the permit official determines that any permit holder, or any agent or representative of a permit holder, has made false statements or misrepresentations in the application, then it shall be the duty of the permit official to revoke the permit; provided, however, that the permit holder shall be given written notice by certified mail that the permit is being revoked.

5.03.100 Reports to be filed

A. All persons or organizations issued permits under this chapter shall furnish to the permit official within thirty days after the charitable solicitations campaign has been completed a detailed report and a financial statement showing the amount of funds raised by the charitable solicitations campaign, the amount expended for cost of fundraising, including a detailed report of the wages, fees, commissions and expenses paid to any person in connection with such fundraising, and the disposition of the balance of the funds collected by the campaign sworn to by an officer of the permitted organization; provided, however, that the permit official may extend the time for filing of the report required by this chapter for an additional period of thirty days for good cause shown. The permittee shall make available to the permit official, or to any person designated in writing by the permit official as his representative for such purpose, all books, records and papers whereby the accuracy of the report required by this chapter may be investigated.
B. An organization which is granted an annual solicitation permit and which prepared an annual report and financial statement shall be permitted to furnish a copy of such report and statement to the permit official within sixty days after the close of its fiscal year in lieu of the report required by subsection A of this section and if the gross receipts from charitable solicitations of such organization exceeds one thousand dollars, shall comply with the requirements of subsection B of this section.

5.03.120 Agents and solicitors of permit holders

A. All persons to whom permits have been issued under this chapter shall furnish proper credentials to their agents and solicitors for such charitable solicitations campaign. A current membership card in the organization conducting the solicitation shall suffice for such identification. No person shall solicit under any permit granted under this chapter without the credentials required by this section, and the credentials shall be shown upon request to any person solicited, and to any police officer or permit official.
B. No person shall conduct or participate in any charitable solicitation campaign, except under a valid permit issued in compliance with this chapter.

5.03.130 Receipts

Any person receiving money or anything having a value of one dollar or more from any contributor under a solicitation made pursuant to a permit granted under this chapter shall give to the contributor upon request a written receipt signed by the solicitor showing plainly the name and permit number of the organization under whose permit the solicitation is conducted, the date and the amount received; provided however, that this section shall not apply to any contributions collected by means of a closed box or receptacle used with the express approval of the permit official where it is impractical to determine the amount of such contributions.

5.03.140 Responsibility for acts of solicitors

The recipient of a permit for a charitable solicitations campaign shall be responsible for the acts and conduct of his authorized representatives in connection with such campaign.

5.03.150 Certain methods of solicitation prohibited

The following types of solicitations are prohibited:
A. Solicitations which involve the selling of tickets to an event where the ticket sales will exceed the capacity of the facilities where the event is to be held.
B. Solicitation by means of coin or currency boxes or receptacles, except:
1. When each such box or receptacle is serially numbered and the permit official advised of the number and location of each;
2. When each such box or receptacle is the responsibility of a bona fide member, agent or solicitor of the soliciting organization;
3. When such responsible person is required to pick up each box or receptacle at the end of the solicitation; and
4. When the use of such boxes and receptacles is expressly authorized by the permit official.
C. Solicitations from persons at any theater or any other place of public performance where admissions are charged for the privilege of attending.
D. Solicitations from occupants of motor vehicles stopped on a public roadway in obedience to a traffic control signal light, except as may be allowed under Section 12.32.060 of this code.

CHAPTER 5.04 FLEA MARKET OPERATOR

5.04.010 Flea market operator license 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, 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.
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; and
b. Any other remedy available by law.

CHAPTER 5.05 PUBLIC SWIMMING POOL LICENSES

Article I. - General Provisions

5.05.010 - Compliance required.

No person shall operate or maintain a public swimming pool or public spa without having first obtained and paid for a valid license for such facility from the permit official in accordance with this chapter. As a condition to obtain required licenses and renewals, the construction and operation of public swimming pools and public spas shall comply with the requirements of Chapter 9.48 (Public Swimming Pools and Spas) of this code.

5.05.020 - Definitions.

A. "Coliform" means all facultative anaerobic, gram negative, non-spore-forming, rod-shaped bacteria that ferment lactose with gas and acid formation within forty-eight hours at thirty-five degrees Celsius.
B. "Department" means the department of environmental services.
C. "Director" means the director of the department of environmental services, or designee.
D. "Disinfecting equipment" means any type of commercial chlorinator or brominator.
E. "Existing pool" means a public swimming pool or public spa constructed prior to October 1, 2002.
F. "Facility" as used in this chapter, means a public swimming pool, public spa or group of public swimming pools and/or spas at one location or address.
G. Reserved.
H. "Licensee" means a person who has a valid license to operate a public swimming pool or public spa.
I. "Operator" means a business manager, complex manager, property owner, association manager, rental agent or other individual who is in charge of the day to day operation or maintenance of the property that includes a public swimming pool or public spa and is the person responsible to ensure that the public pool or public spa and associated facilities comply with state and local public swimming pool or spa operation and maintenance standards.
J. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
K. "Private pool" means a swimming pool located at the property of a single-family or two-family dwelling used or intended for use solely by the owner, operator or lessee thereof, family and invited friends without payment of any fee.
L. "Public spa" means any spa, other than a private spa, including therapeutic spas.
M. "Public swimming pool" means any class of swimming pool, other than a private pool, including therapeutic pools.
N. "Re-circulation system" consists of pumps, piping, filters, water conditioning, disinfecting and other accessory equipment.
O. "Spa" means a hydro-therapeutic pool, also known as a jacuzzi.
P. "Superchlorination (shock treatment)" means the practice of adding eight to ten times the normal chlorine dose to destroy algae or reach breakpoint for the reduction of

chloramines.
Q. "Swimming pool" means a body of water, over twenty-four inches in depth, in an artificial or semi-artificial receptacle or other container, whether located indoors or outdoors, used or intended to be used for public or private swimming, wading or recreational bathing by adults and/or children, whether or not any charge or fee is imposed for its use and which is operated and maintained by any person, and includes all structures, wading pools, appurtenances, equipment, appliances and other facilities appurtenant to and intended for the operation and maintenance of the swimming pool.
R. "Temporary public swimming pool or public spa" means a temporary above ground public swimming pool or public spa intended for public use operated under a temporary license for an event for a limited number of days.
S. "Water sample" means a portion of water taken from a pool or spa to determine the quality.

Article II. - Licenses

5.05.030 - Required.

No operator or property owner shall operate or maintain, or permit the operation or maintenance of, a public swimming pool or public spa without first having obtained and paid for a valid license from the permit official. Such required license(s) shall be available for inspection by any authorized city official upon demand.

5.05.040 - 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 5.05.040 A.

5.05.050 - License application.

Operators desiring a license to operate or maintain a new or existing public swimming pool or public spa shall make application for the appropriate license to the permit official. Applications shall be on forms obtained from the permit official and shall contain, as a minimum, the following information:

A. Name of owner and operator if different from owner;

B. Address of owner and operator if different from owner;

C. Address of public swimming pool or public spa;

D. Indication if existing facility or new facility;

E. The number of public swimming pools and/or public spas on the facility.

F. Copy of certificate of occupancy if new facility.

5.05.060 - Application processing.

A. The permit official and the director shall review new applications and renewals.

B. Upon receipt of an application, the director shall perform an inspection to ascertain the compliance of the facility with the requirements of Chapter 9.48 and of this chapter.

C. The director shall promptly notify the permit official when a facility is found to be in compliance with the requirements of Chapter 9.48 and of this chapter. For facilities in violation of the codes, the director shall issue a correction notice to the operator, in accordance with Chapter 9.48. The owner or operator receiving a correction notice shall promptly remedy the violation and ask for a re-inspection by the director. Until the violation(s) have been satisfactorily corrected and passed by the director, a license shall not be issued and the facility shall not be used.

5.05.070 - License issuance.

A. Subject to the approval of the director and upon receipt of the established fee, the permit official shall issue the license, unless one of the following applies:

1. One or more of the statements made in the application are not true;

2. The applicant has failed to submit a complete application; or

3. The requirements of the applicable city code provision in this title relating to permit requirements or issuance are not met.

B. Licenses are valid only for the location and owner or operator to whom the license is issued. A change in the name of the owner or operator to whom the license is issued shall require the submission of a new application for a new license.

C. Licenses may not be transferred to another party for any use or benefit.

D. The owner or operator shall obtain the appropriate license and pay the established fee prior to starting operations.

E. A person may appeal a denial of a license to the city manager as provided in Chapter 9.48

5.05.080 - License renewal.

A. The license for a public swimming pool or public spa may be renewed by submitting a renewal application to the permit official. Renewal applications shall be on forms obtained from the permit official.

B. Renewal applications shall be processed in the same manner as original applications.

5.05.090 - Temporary licenses.

A. The director and the permit official shall be authorized to issue temporary licenses for the operation of a temporary public swimming pool or public spa.

B. Temporary licenses may be issued for a special event.

C. Temporary licenses shall not be valid for more than five days.

D. Temporary licenses shall automatically expire at eleven fifty-nine p.m. on the date of expiration.

E. The owner or operator shall obtain the appropriate license and pay the established fee prior to starting operations.

F. Temporary license applications shall be processed in the same manner as original applications as described in this chapter.

5.05.100 - Correction and re-inspection.

Correction and re-inspection issues shall be treated pursuant to 9.48 of the City Code.

5.05.110 - Suspension of license.

Suspensions shall be treated in accordance with Chapter 9.48 of the City Code.

5.05.120 - Revocation of license.

Revocation of licenses shall be treated in accordance with Chapter 9.48 of the City Code.

5.05.130 - Appeals.

Appeals shall be handled in accordance with Chapter 9.48 with the City Code.

5.05.140 - 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.

Article III. - Enforcement

5.05.150 - Enforcement authority.

The city manager and 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.

5.05.160 - Violations and penalties.

Any person who violates a provision of this chapter shall, upon conviction, be guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars. Each day the violation occurs shall constitute a separate offense.

CHAPTER 5.06 HOME OCCUPATION LICENSE

5.06.010 Definition

"Home Occupation" means a permitted occupation carried on primarily within a home where such use is clearly incidental and secondary to the principal use of the property as a dwelling as defined in Section 20.02.454 of this code and meeting the additional requirements of Section 20.10.270 and Title 21 of this code.

5.06.020 Home occupation license provisions

A. No person shall operate or maintain, or permit the operation or maintenance of a home occupation without first having obtained a valid license from the permit official.
B. 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.
C. Application for a home occupation license shall be made on a form provided by the permit official and shall be accompanied by the established fee.
D. As part of the application, the applicant shall provide written permission for the City of El Paso to conduct an inspection of the property in its entirety that is subject of the application prior to a home occupation license being issued and at reasonable times as necessary. Deficiencies of health, safety, zoning and construction standards established by the City in the city code will be noted in writing and must be corrected before the license is issued.
E. A request for renewal and renewal fee must be paid prior to expiration of the license.
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, 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. The name and address of the location of the home occupation and name of the licensee;
b. A statement that the license is denied, suspended or revoked;

c. The reason(s) for the denial, suspension or revocation;
d. An order that 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. The reasonable time limit established for the completion of the corrective measures;
h. A statement that the license, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and
i. A statement that the denial, suspension or revocation may be appealed to the City Manager pursuant to 5.01.090 of this code.
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. Penalties. The city manager and 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 hereby 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. An offense under this ordinance is a Misdemeanor.
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; and
b. Any other remedy available by law.

CHAPTER 5.07 BOARDING HOME FACILITIES

5.07.001 - Purpose

The purpose of this chapter is to implement the provisions of Chapter 254, Texas Health and Safety Code, as amended, which allows the city to establish regulations for the protection of the health and safety of residents of boarding home facilities. In the event of a conflict, this chapter must be construed so as to comply with Chapter 254, Texas Health and Safety Code. It is the intent and purpose of the city to administer and enforce this chapter to ensure quality care and the protection of the health and safety of boarding home facility residents by establishing standards, requiring permits and requiring boarding home facilities operating within the city limits to comply with these regulations.

5.07.005 - Applicability

This chapter applies to all boarding home facilities within the City of El Paso. This chapter does not apply to:
1. Home and community support services licensed under Chapter 142 of the Texas Health and Safety Code;
2. Convalescent and nursing homes and related institutions licensed under Chapter 242 of the Texas Health and Safety Code;
3. Continuing care facilities licensed under Chapter 246 of the Texas Health and Safety Code;
4. Assisted living facilities licensed under Chapter 247 of the Texas Health and Safety Code;
5. Intermediate care facilities for the mentally retarded licensed under Chapter 252 of the Texas Health and Safety Code;
6. A person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation and monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation;
7. An establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;
8. A retirement community;
9. A monastery or convent;
10. A child-care facility as defined by Section 42.002 of the Texas Human Resources Code;
11. Family violence shelter center as defined by Section 51.002 of the Texas Human Resources Code; or
12. A sorority or fraternity house or other dormitory associated with an institution of higher education.

5.07.010 - Definitions

A. Definitions. For purposes of this chapter, the following terms have these specially defined meanings.
1. "Abuse" is defined in the Texas Human Resource Code Section 48.002 and means:
a. The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or
b. Sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an

ongoing relationship with the person.
2. "Assistance with self-administering medication" means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, placing medication in a resident's hand or in/on a clean surface such as a medication reminder box and reminding the resident when a prescription medication needs to be refilled.
3. "Boarding home facility" means an establishment that:
a. Furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
b. Provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services to those persons.
4. "Commission" means the health and human services commission.
5. "Elderly person" means a person who is 65 years of age or older.
6. "Enforcement official" means employees of the building permits and inspection division, fire department, public health department and other enforcing officers as defined or designated by the city manager, and are authorized to enforce provisions of this chapter.
7. "Exploitation" is defined in the Texas Human Resource Code Section 48.002 and means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.
8. An "injury, incident or unusual accident" means an event that resulted in a change in the resident's physical or mental status that occurred in the boarding home facility or on the grounds of the boarding home facility that requires intervention by a private or public entity responsible for medical or mental health services or an event that requires the facility taking resident safety and protection measures including:
a. An allegation of abuse, neglect, or exploitation;
b. Death;
c. A resident's absence from the facility when circumstances place the resident's health, safety or welfare at risk;
d. Fire;
e. Criminal acts; and
f. Altercations between residents.
9. "Neglect" is defined in the Texas Human Resource Code Section 48.002 and means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.
10. "Personal care services" means:
a. Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
b. The administration of medication by a person licensed to administer medication or the

assistance with or supervision of medication; or
c. General supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.
11. "Person with a disability" means a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is eighteen years of age or older or under eighteen years of age and who has had the disabilities of minority removed.
12. "Resident" means a person who is residing in a boarding home facility.

5.07.020 - Permit required and fee

A. After the effective date of the ordinance codified in this section [July 1, 2011], no person shall operate a boarding home facility, as defined in the chapter, without first obtaining a permit from the city and paying the established fee for such permit. The building permits and inspections division is the responsible agency for issuance of a final permit. A permit issued under this chapter shall permit the permittee to engage in the operation of a boarding home facility, provided that all other provisions of this chapter are complied with.
B. Fees. Permit fees collected shall be used for the administration of the city's permitting program, to include permitting, renewal of the permit and inspections, or for purposes directly related to providing boarding facility services or other assisted living facility services to elderly persons or persons with disabilities.
C. Boarding home owners/operators must provide to the building permits and inspections division documentation of any applicable construction or remodeling permits as part of the permit process before an initial permit is issued. All permits must be prominently displayed in the boarding home.
D. An annual operational permit shall be required by the fire official for boarding home facilities operating under the following occupancy classifications (as per the adopted fire code): R-2, R-3, R-4, I-1.

5.07.030 - Inspections

A boarding home site must pass all required inspections and the owner/operator must keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding corrective actions. Proof that all required inspections have been completed must be provided to the building permits and inspections division prior to the issuance of a permit. The following inspections are required:
1. Annual fire inspection by the fire code official.
2. Annual kitchen inspection by the local health authority;
3. Annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission, if required.
4. Annual inspection to determine compliance with the property maintenance code,

building codes and zoning ordinances.

5.07.040 - Construction/remodeling

A. Each owner/operator of a boarding home facility must ensure the resident's health, safety, comfort and protection from fire hazard through the following standards that address the construction or remodeling of a boarding home facility, including locally adopted fire code, plumbing, heating, lighting, ventilation and other housing conditions.
B. Each facility must meet the following applicable codes and regulations:
1. Local zoning and building codes;
2. Federal, state and local adopted fire codes and applicable standards;
3. Federal, state and local health and safety codes; and
4. Federal and state accessibility regulations.
C. Mobile homes shall not be permitted for use as boarding homes or additions to existing boarding homes.
D. Sleeping rooms must have at least seventy square feet of floor space in single-occupancy rooms and at least sixty square feet of floor space for each occupant in multi-occupancy rooms.
E. A telephone must be available, twenty-four hours per day, must be easily accessible, and must afford privacy for use by residents. A listing of emergency telephone numbers, including the numbers of the local police, fire department, ambulance, the office of the local governmental entity that issued the boarding house permit, the Texas Department of Family and Protective Services (DFPS), the local mental health authority, and the Texas Information and Referral Network must be placed in plain view on or next to the telephone and accessible to persons who are visually or hearing impaired, as needed.
F. Each facility must have a kitchen that:
a. Is accessible to the residents sharing the use without going through a sleeping room of another resident;
b. Has a food preparation area with a total of not less than six square feet;
c. Contains a minimum floor space of sixty square feet for dining area or, each kitchen with dining attached must be at least one hundred square feet;
d. Has a minimum two compartment sink for manual dishwashing;
e. Has a cooking stove fueled by gas or electricity;
f. Contains at least one cabinet of adequate size, suitable for storage of food and utensils.

5.07.050 Sanitary and related conditions

A. Each owner/operator of a boarding home facility must be responsible for maintaining the dwelling and premises in a clean and sanitary condition.
B. Each owner/operator must be responsible for the extermination of any insects, rodents or other pests in the rooms occupied by residents, storage areas, attics, or on the premises and yard.
C. Each facility shall meet all applicable state and local sanitary codes.
D. Poisonous, toxic, and flammable materials shall:
1. Be stored and maintained away from bed linens, towels, or kitchen equipment;

2. Be prominently and distinctly labeled for easy identification of contents; and
3. Not be used in a way that contaminates food equipment or utensils, or in a way that constitutes a hazard to employees or residents.
E. All food and drink shall be:
1. Clean, free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances;
2. Prepared, stored, handled, and served so as to be safe for human consumption;
3. Maintained at a temperature of 41 degrees Fahrenheit or below for foods subject to spoilage;
4. Maintained at 135 degrees Fahrenheit or above at all times for hot foods ready to serve;
5. Maintained in the freezer at a temperature of no higher than 0 degrees Fahrenheit; and
6. Stored in food containers that are appropriately labeled, dated and protected from flies, insects, rodents, dust, and moisture.
F. With the exception of service animals for the disabled birds, cats, dogs or other animals are not permitted in rooms or areas in which food is prepared, stored or where utensils are washed or stored.
G. Employees or residents engaged in food handling shall:
1. Observe sanitary methods, including hand washing as appropriate; and
2. Not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.
3. Regardless of the number of residents, each boarding home facility shall hold a valid food handling permit issued by the applicable local or state regulatory authority in the name of the owner/operator and for the specific boarding home facility.
4. If preparing meals for residents, staff must have a food-handler's permit.
H. Each boarding home facility shall be equipped with a first aid kit as recommended by the American Red Cross.

5.07.060 - Reporting and investigation of injuries, incidents and unusual accidents and the establishment of other policies and procedures to ensure resident health and safety

A. Each owner/operator of a boarding home facility must develop and implement policies and procedures for investigating and documenting injuries, incidents and unusual accidents that involve residents. Owners/operators must also establish policies and procedures necessary to ensure resident health and safety.
1. Minimum requirements for the documentation of injuries, incidents or unusual accidents should include, but are not limited to:
a. Date and time of the injury, incident or unusual accident occurred;
b. Description of the injury, incident or unusual accident;
c. Description of any medical or mental health treatment the resident received;
d. Steps taken by the owner/operator to prevent future injuries, incidents or unusual accidents if a problem at the room and board facility resulted in the injury, incident or unusual accident.
e. When the resident's legal guardian or legally authorized representative was notified

about the injury, incident or unusual accident.
2. Residents, the resident's guardian, or legally authorized representatives should be given access to records within forty-eight hours of requesting the records from the owner/operator.
B. In addition to investigating and documenting injuries, incidents or unusual accidents, an owner/operator must report any allegations of abuse, neglect or exploitation of an adult age sixty-five or older or an adult with a disability to the Texas Department of Family and Protective Services. Failure to report suspected abuse, neglect or exploitation of an elderly adult or adult with a disability is a Class A misdemeanor.
1. Each owner/operator should ensure that each resident has access to a telephone twenty-four hours per day that is easily accessible and affords privacy for use by residents.
2. The owner/operator shall ensure that no resident is harassed, threatened or intimidated at anytime for making a report of abuse, neglect or exploitation.
3. Owner/operators will provide each resident with a copy of the definitions of abuse, neglect or exploitation as outlined in Chapter 48 of the Human Resources Code.
4. Owner/operators will allow law enforcement personnel, emergency medical and fire personnel access to the room and board facility when these professionals are responding to a call at the owner/operator's room and board facility.
C. No operator or other employee of a boarding home facility shall provide services or engage in behavior that constitutes a financial conflict of interest including:
1. Borrowing from or loaning money to residents;
2. Witnessing wills in which the operator or employee is a beneficiary;
3. Co-mingling the resident's funds with the operator's or other residents' funds; or
4. Becoming the guardian, conservator or power of attorney for a resident.
D. If an owner/operator becomes the representative payee for a resident or assists a resident with general money management, the owner/operator shall:
1. Maintain separate financial records for each resident for which the owner/operator is the representative payee for the entire period of time the owner/operator is the resident's representative payee and continue to maintain the resident's records for one year past the last calendar day the owner/operator is the resident's representative payee;
2. Include in the records an itemized list of expenditures that the owner/operator has made on behalf of the resident, including the charges that are assessed by the owner/operator;
3. Maintain receipts for all expenditures in addition to the itemized documentation; and
4. Develop a budget with the resident outlining routine expenditures and ensure that expenditures that are not routine are discussed with the resident before the resident's funds are expended; and
5. The owner/operator will allow the resident, the resident's guardian, or legally authorized representative access to the resident's financial records that are maintained by the owner/operator within forty-eight hours of receiving a request.
E. An owner/operator of a boarding home facility shall develop a service agreement with each resident and maintain a copy of the agreement signed by the resident.

5.07.070 - Assistance with self-administration of medication

A. Assistance with self-administration of medication may be provided to adult residents who can identify their medication and know when their medication should be taken but require assistance with self-administration. Assistance with self-administration of medication may not be provided to minors.
B. Assistance with self-administration of medication is limited to:
1. Reminding the resident to take medication;
2. Opening a container, removing medication from a container, and placing medication in a resident's hand or in/on a clean surface, such as a pill cup or medication reminder box, for the resident's self-administration; and
3. Reminding the resident when a prescription needs to be refilled.
C. All residents' medication must be stored in a locked area. The boarding home facility must provide a central locked storage or individual locked storage areas for each resident's medication.
1. If the boarding home facility uses a central medication storage area, a boarding home employee must be available to provide access at all times and each resident's medication must be stored separately from other residents' medications within the storage area.
2. If a resident's medication requires refrigeration, the boarding home facility must provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.
3. Medications labeled for "external use only" must be stored separately within the locked area.
4. Poisonous substances must be labeled, stored safely, and stored separately from medications within a locked area.
5. If a boarding home facility stores controlled drugs, the facility must adopt and enforce a written policy for preventing the diversion of the controlled drugs.
D. Medication that remains in the boarding home facility after a resident is no longer lodging in the facility must be properly disposed of by the owner or operator in accordance with applicable county or municipality requirements.

5.07.080 - Posting requirements

The boarding home facility must prominently and conspicuously post for display in a public area, that is readily available to residents, the operator, employees, and visitors the following:
1. The permit issued by the city;
2. A sign prescribed by the city specifying how complaints may be registered with the city;
3. A notice in a form prescribed by the city stating that inspection and related reports are available at the facility for public inspection and providing a telephone number that may be used to obtain information concerning the facility;
4. A concise summary of the most recent inspection report relating to the facility; and

5. A notice in a form prescribed by the city that lists the name, location, and contact information for:
(a) The closest local public health services agency in the proximity of the facility; and
(b) A local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting emergencies to the organization or entity.

5.07.090 Requirements for in-service education of facility's staff

A. Each owner/operator and employee is subject to the following initial training requirements prior to contact with residents:
1. Employer rules and policies;
2. Recognizing and reporting abuse, neglect and exploitation;
3. Resident's rights, including all applicable rights from the following:
a. Texas Human Resource Code, Chapter 102, Rights of the Elderly;
b. Texas Human Resource Code, Chapter 112, Developmental Disabilities;
c. Texas Property Code, Chapter 301, Fair Housing Practices; and
d. Texas Property Code, Chapter 92, Residential Tenancies.
4. Policies and procedures for contacting emergency personnel when a resident's health or safety is at risk;
5. Complaint process specific to the city and boarding home;
6. Assistance with self-administration of medication;
7. Prevention of injuries, incidents and unusual accidents;
8. Emergency, evacuation and disaster plan; and
9. Service specific orientation that includes, but is not limited to:
a. Nutrition, including meal preparation and dietary needs;
b. Sanitation;
c. Laundry; and
d. Housework.

B. Each owner/operator and employee is subject to the following ongoing training requirements:
1. Updates and changes in any policies and procedures within ten days of the owner, operator or employee becoming aware of the change.
2. Orientation specific to the needs of each new resident within one day of the resident moving into the home.
3. Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization or other circumstances which affect the resident's needs within one day of the owner, operator, or employee becoming aware of the change.

5.07.100 - Criminal background history checks

A. A boarding home facility owner/operator's permit to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the owner/operator has been convicted of a criminal offense listed in subsections C or D. of this section or if the owner/operator has in its employ any person convicted of a criminal offense listed in subsection C or D.

B. The owner/operator must complete any state or federal request and release forms that are required to obtain a criminal history report for the owner/operator. In addition to the permit fee, the owner/operator will provide funding to the county/municipality in a manner specified by the county/municipality to cover any fees imposed by state or federal agencies for the report.

C. The following histories will disqualify an owner/operator from obtaining a permit to operate a boarding home or will serve as a bar to being employed by a boarding home facility:

1. An offense under Chapter 19, Penal Code (criminal homicide);
2. An offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
3. An offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecency with a child);
4. An offense under Section 22.011, Penal Code (sexual assault);
5. An offense under Section 22.02, Penal Code (aggravated assault);
6. An offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
7. An offense under Section 22.041, Penal Code (abandoning or endangering child);
8. An offense under Section 22.08, Penal Code (aiding suicide);
9. An offense under Section 25.031, Penal Code (agreement to abduct from custody);
10. An offense under Section 25.08, Penal Code (sale or purchase of a child);
11. An offense under Section 28.02, Penal Code (arson);
12. An offense under Section 29.02, Penal Code (robbery);
13. An offense under Section 29.03, Penal Code (aggravated robbery);
14. An offense under Section 21.08, Penal Code (indecent exposure);
15. An offense under Section 21.12, Penal Code (improper relationship between educator and student);
16. An offense under Section 21.15, Penal Code (improper photography or visual recording);
17. An offense under Section 22.05, Penal Code (deadly conduct);
18. An offense under Section 22.021, Penal Code (aggravated sexual assault);
19. An offense under Section 22.07, Penal Code (terroristic threat);
20. An offense under Section 33.021, Penal Code (online solicitation of a minor);
21. An offense under Section 34.02, Penal Code (money laundering);
22. An offense under Section 3 5 A. 02, Penal Code (Medicaid fraud);
23. An offense under Section 42.09, Penal Code (cruelty to animals);
24. An offense under Chapter 31, Penal Code (theft), that is punishable as a felony;
25. An offense under Section 30.02, Penal Code (burglary); or
26. A conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

D. A person may not own a boarding home or be employed in a position the duties of which involve direct contact with a resident in a boarding home before the fifth anniversary of the date the person is convicted of any felony offense not listed in subsection C. or any of the following non-felony offenses:

1. An offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor;
2. An offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;
3. An offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;
4. An offense under Section 37.12, Penal Code (false identification as peace officer);
5. An offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct); or
6. A conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

E. The owner/operator must ensure that all employees, including volunteers who are not residents, have had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every year thereafter, and that the individual is not disqualified under the provisions of subsections C. and D. of this section. The owner/operator will immediately discharge any employee or volunteer whose criminal history check reveals conviction of a crime that bars employment or volunteer service.

5.07.110 - Assessment and periodic monitoring of residents

A. Owners/operators of a boarding home facility or their designee will complete and document an annual assessment and conduct periodic monitoring to ensure that a resident is capable of self-administering medication and completing basic elements of personal care as listed in subsection B. and C. The assessment will be used as a tool to determine if the needs of the resident can be addressed in a boarding home facility or if the resident needs personal care services and/or medication administration that cannot be provided by the boarding home facility.

B. Elements of the self-administration of medication to be assessed by the boarding home facility owner/operator or designee include the ability to perform each of the following tasks with little assistance:
1. Identifying the name of the medication;
2. Providing a reason for the medication (the owner/operator cannot force the resident to disclose a health condition that is the basis for the medication if the resident refuses);
3. Distinguishing color or shape;
4. Preparing correct number of pills (dosage);
5. Confirming the time to take medication(s); and
6. Reading labels.

C. Elements of personal care to be assessed by the boarding home facility owner/operator include the resident's ability to:
1. Eat independently;
2. Bathe without assistance;
3. Dress without assistance; and
4. Move and transfer independently.

D. As a result of an assessment, if an owner/operator finds that a resident is in a state of possible self-neglect due to no longer being able to perform basic elements of personal care as listed in subsection C. and believes that a higher level of care is needed, the owner/operator is responsible for the following:
1. Contacting the department of family and protective services by phoning the statewide intake division at 1-800-252-5400;
2. Notifying the resident's guardian or legally authorized representative; and
3. Contacting the appropriate health or human services authority to advise that the resident requires services beyond what can be provided by the boarding home facility.
E. A state of self-neglect does not exist if the resident receives outside professional services that meet the resident's need for personal care or self-administration of medication. In these cases, the resident can remain in the room and board facility provided that all needs for personal care and self-administration of medication are met.

5.07.120 - Inspection

The enforcement official may inspect any boarding home facility at reasonable times as necessary to determine if it is an assisted living facility and to ensure compliance with this chapter.

5.07.130 - Required reports to the health and human services commission

With the exception of the year this chapter is adopted, each year thereafter, prior to September 30, the building permits and inspections division shall submit a report to health and human services commission. The report shall contain the following information:
1. The total number of boarding home facilities permitted during the preceding state fiscal year;
2. The total number of boarding home facility applications denied permitting, including a summary of cause for denial;
3. The total number of boarding home facility permits active on August 31 of the preceding state fiscal year;
4. The total number of residents reported housed in each boarding home facility reported;
5. The total number of inspections conducted at each boarding home facility by the city;
6. The total number of permits revoked or suspended as a result of an inspection; and
7. A summary of the outcome for the residents displaced by revocation or suspension of a permit.

5.07.140 - Appeal Process for denial, revocation, suspension or denial for renewal of permit

A. A boarding home facility owner/operator's permit to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the owner/operator fails to comply with the requirements of this chapter.
B. The applicable enforcement official shall notify the building official of a boarding

home facility owner/operator's failure to comply with any of the provisions of this chapter. The building official shall send a written notice of violation to the owner/operator detailing the violation(s) and providing thirty days within which to cure. The applicable enforcement official shall keep the building official informed as to the compliance/non compliance with the notice of violation. If the violations have not been cured within thirty days, the building official shall notify the owner/operator that the permit has been denied, revoked, suspended or denied renewal.

C. Appeal.

1. The owner/operator may appeal the denial, revocation, suspension or denial of renewal of permit to the appellate authority, the deputy city manager for health and safety, by providing notice of such appeal within fifteen days of receipt of notice that permit has been denied, revoked, suspended or denied renewal.

2. Form of appeal. The appeal shall be in writing and shall contain a written statement and other documentation to support the appellant's reasons why the permit should not be denied, revoked, suspended or denied renewal and shall be accompanied by an established fee. If the applicant is requesting a reasonable accommodation (modification or exception to this chapter) the applicant must state what type of accommodation is requested and why such accommodation is necessary. The written appeal shall be submitted to the permit official.

3. Upon receipt of a written appeal, the permit official shall forward the appeal along with all documents constituting the record of the permit official's decision and transmit the documents to the appellate authority within five business days from receipt of the written appeal. Receipt of a written appeal stays any action on the denial, revocation, suspension or renewal of the permit until a decision from the appellate authority is rendered, unless the permit official certifies in writing to the appellate authority that a stay would cause imminent peril to life or property.

4. The appellate authority shall decide the appeal within ten business days. The appellate authority shall notify the city attorney's office if the appellant is requesting a reasonable accommodation, so that such request can be reviewed in accordance with the provisions of the Fair Housing Act. The appellate authority shall affirm, reverse or modify the decision from which the appeal was taken. The appellant shall be notified of the appellate authority's decisions within five business days. After notification to the appellant has been provided, action in accordance with the appellate authority's decision can be taken by the building official.

5.07.150 - Offenses and criminal penalties

Any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and punished by a fine not exceeding two thousand dollars; and if such violation shall be continuing, each day's violation shall constitute a separate offense.

CHAPTER 5.08 LAUNDRIES

5.08.010 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

"Director" means the director of the department of environmental services.
"Public Laundry" means any place, room, building or structure which is used for the purpose of washing, drying, starching or ironing wearing apparel, household linens or other washable fabrics by or for the general public.

5.08.020 License—Required—Application—Investigation—Issuance

A. It is unlawful for any person to conduct any public laundry business within the city without first paying the established fee and 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. 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 laundry facility, 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 for any laundry, whether such public laundry is conducted within or without 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 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. 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 applicable provisions of this chapter, shall issue the license applied for within ten days of the completion of his 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. That applicant has made or caused to be made false statements or misrepresentations on the application;
3. The applicant has failed to submit a complete application;
4. The established fee has not been paid; or

5. The conditions of the proposed laundry do not conform with the provisions or requirements of this chapter.

5.08.030 License—Denial—Suspension—Revocation

The permit official, upon consultation with the director, and by written notice to the licensee, 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 laundry is dangerous or detrimental to the health of the city or the health of the persons employed therein. 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 in 5.01.090 of this code.

5.08.040 Natural light—Windows—Skylights

No public laundry shall be operated or conducted in any cellar, basement or in any room or place in any building which is not provided with sufficient natural light by means of windows or skylights, so that on clear days between one hour after sunrise and one hour before sunset a newspaper of ordinary type is readily readable therein; and the general arrangement of the machinery and equipment shall be such as not to unnecessarily obstruct the lighting and ventilation through such windows and skylights.

5.08.050 Prohibitions

No persons shall be permitted to sleep in any room used as a public laundry. No laundered or unlaundered fabrics belonging to the trade of any laundry shall be kept in any room that is used for living purposes.

5.08.060 Sanitary conditions

Every room or place used as a public laundry or for the storage of unlaundered or laundered fabrics in connection therewith, shall at all times be kept in good repair and maintained in a clean and sanitary condition as to floors, windows, ceiling, woodwork, machinery, utensils and fixtures.

5.08.070 Diseased employees prohibited

No person afflicted with tuberculosis, acute or active venereal disease, communicable or loathsome skin disease or other communicable disease shall be permitted to work in any public laundry, and no owner, proprietor, manager or person in charge of any public laundry shall knowingly permit or suffer any such person to be employed therein.

5.08.080 Use of wallpaper prohibited

No wallpaper of any character shall be applied to the walls or ceiling of any room or place used for public laundry purposes.

5.08.090 Air space—Ventilation

Any room, place or building used as a public laundry must have a clear height between the floor and finished ceiling of not less than ten feet and must be ventilated by means of windows to the outer air, and in every room or place so used at least one thousand cubic feet of air space shall be provided for each person employed therein.

5.08.100 Floor construction

The floor of every room or place in any public laundry, except the washroom, shall be constructed of standard flooring or of some impervious material. The washroom of any public laundry licensed under the provisions of this chapter shall be constructed of concrete, cement, tile or stone laid in cement or of some other impervious material, and shall be watertight and properly drained to the public sewer, and the angle where the floor and the wall join shall likewise be watertight.

5.08.110 Plumbing and drainage facilities

Every public laundry shall be provided with adequate sanitary plumbing and drainage facilities satisfactory to the director. The installation of all drains and plumbing fixtures shall be in accordance with the requirements of the building code. Every water closet, sink or other plumbing fixture installed therein shall be of an approved type, impermeable and thoroughly sanitary.

5.08.120 Clothing room

A separate room or sufficient space in a room entirely separate from the room in which the fabrics are washed and dried shall be provided in every public laundry and shall be maintained in a dry and sanitary condition, in which employees may keep their wraps or outer clothing.

5.08.130 Separation of laundered and unlaundered fabrics

Every person maintaining, conducting or operating any public laundry shall be required to provide facilities for the separate handling for clean and soiled fabrics, and no clean or laundered fabrics shall be allowed to come in contact with any unlaundered or soiled fabrics at any time.

5.08.140 Boiling and sterilization

No fabrics received at any public laundry to be laundered shall be removed therefrom until the same have been thoroughly sterilized in a washing machine or other receptacle provided for that purpose in which the water has been brought to a boiling temperature or maintained at a temperature of one hundred seventy degrees Fahrenheit for at least twenty minutes; except, however, silks, woolens or other fabrics which would be injured by the foregoing process, provided the same shall be treated with soap, bleach or such other standard disinfectant solutions as shall be approved by the director.

5.08.150 Sprinkling restricted

No owner, proprietor or manager of any public laundry or any person employed therein shall be permitted to sprinkle any fabrics with water or other liquid substance ejected from the mouth or blown out of any other device communicating or coming in contact with the mouth of such person.

5.08.160 Applicability of provisions

A. The provisions of this chapter shall not apply to any room located in a dwelling, in which room domestic laundry work is done by or for the occupants thereof exclusively, or to any female doing private laundry work in her home for personal customers; provided, that not more than two persons shall be so employed in such domestic laundry work.
B. The provisions of this chapter shall likewise apply to public laundries which furnish to the general public facilities or equipment for laundry work to be done by the customer on the premises of the laundry, whether or not employees of the laundry take part in such work.

5.08.170 Inspections

It shall be the duty of the director and he is authorized and empowered to inspect or cause to be inspected from time to time, all premises wherein public laundries are conducted for the purpose of ascertaining whether the provisions of this chapter and all other ordinances of the city relative to the keeping and operating of public laundries are being complied with, and it shall be his duty to cause all such ordinances and laws to be strictly enforced.

CHAPTER 5.09 SEXUALLY ORIENTED BUSINESSES

5.09.010 Rationale and findings

A. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, moral and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or

reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

B. Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Fantasy Ranch, Inc. v. City of Arlington*, No. 04-11337, 2006 WL 2147559 (5th Cir. 2006); *N.W. Enters. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d (W.D. Tex. 2002), *aff'd* 340 F.3d 295 (5th Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *aff'd* 176 F.3d 1358 (11th Cir. 1999); *Ctr for Fair Public Policy v. Maricopa County*, 336 F.3d 1152 (9th Cir. 2003); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Reliable Consultants, Inc. v. City of Kennedale*, Case No. 4:05-CV-166-A (N.D. Tex., May 16, 2005); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich., Aug. 28, 2006); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas — 1986; Indianapolis, Indiana — 1984; Garden Cove, California — 1991; Houston, Texas — 1983; Phoenix, Arizona — 1979, 1995-98; Chattanooga, Tennessee — 1999-2003; Minneapolis, Minnesota — 1980; Los Angeles, California — 1977; Whittier, California — 1978; Spokane, Washington — 2001; St. Cloud, Minnesota — 1994; Littleton, Colorado — 2004; Oklahoma City, Oklahoma — 1986; Dallas, Texas — 1997, 2004; Greensboro, North Carolina —2003; Kennedale, Texas — 2005; Effingham, Illinois — 2005; Amarillo, Texas — 1977; El Paso, Texas —1986; New York, New York Times Square — 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota);

The city council finds:

1. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and

property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter and sexual assault and exploitation;
2. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area;
3. Each of the foregoing negative secondary effects constitutes a harm, which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

5.09.020 Definitions

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.
"Adult bookstore" or "adult video store" means an establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.
A "principal business activity" exists where the commercial establishment:
1. Has a substantial portion of its displayed merchandise which consists of said items;
2. Has a substantial portion of the wholesale value of its displayed merchandise, which consists of said items;
3. Has a substantial portion of the retail value of its displayed merchandise which consists of said items;
4. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items;
5. Maintains a substantial section of its interior business space for the sale or rental of said items; or
6. Maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

"Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club or other commercial establishment, whether or not alcoholic beverages are served, whose primary business is the offering to customers of live entertainment that features persons who appear semi-nude.
"Adult lounge" means an adult cabaret, as defined above, which is permitted or licensed premises, pursuant to the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.
"Adult motion picture theater" or "adult movie theatre" means an establishment, that contains a room with a screen or projection area, whose primary business is the exhibition to customers of films, motion pictures, videocassettes, digital video disc, slides, any electronically produced media or similar photographic reproductions which are distinguished by or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas or intended to provide sexual stimulation or sexual gratification to such customers and are regularly shown to more than five persons for any form of consideration.
"Characterized by" means describing the essential character or quality of an item. As applied in this chapter, no business will be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.
"City" means city of El Paso, Texas.
"Conduct any business in a sexually oriented business" means any person who engages in any one or more of the following:
1. Operate a cash register, cash drawer or other depository on the premises of the sexually oriented business where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the sexually oriented business or the activities of the premises of the sexually oriented business;
2. Display or take orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;
3. Deliver or provide to any customer any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;
4. Act as a door attendant to regulate entry of customers or other persons into the premises of the sexually oriented business; or
5. Supervise or manage other persons in the performance of any of the foregoing activities on the premises of the sexually oriented business.
"Director" means the permit official, as designated by the City Manager.
"Employee" means any person, whether or not the person is designated as an employee, independent contractor, agent or otherwise, who renders any service whatsoever to the customers of a sexually oriented business, works in or about a sexually oriented business or who conducts any business in a sexually oriented business and who receives or has the expectation of receiving any compensation from the operator, or customers of the sexually oriented business. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers and cashiers. It is expressly intended that this definition cover not only

conventional employer-employee relationships but also independent contractor relationships, agency relationships and any other scheme or system whereby the "employee" has an expectation of receiving compensation, tips or other benefits from the sexually oriented business or its customers in exchange for services performed on the premises. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"Establish" or "establishment" means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
3. The addition of any sexually oriented business to any other existing sexually oriented business.

"Hearing officer" means an attorney who is licensed to practice law in Texas, and retained to serve as an independent tribunal to conduct hearings under this chapter.

"Influential interest" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee" it means the person in whose name the sexually oriented business employee license has been issued.

"Manager" means any person who supervises, directs or manages any employee of a sexually oriented business or any other person who conducts any business in a sexually oriented business with respect to any activity conducted on the premises of the sexually oriented business, including any on-site manager.

"Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

"On-site manager" means a person charged by an owner or operator of a sexually oriented business with the responsibility for direct supervision of the operation of the sexually oriented business and with monitoring and observing all areas of the sexually oriented business to which customers are admitted at all times during which the sexually oriented business is open for business or customers are on the premises of the sexually oriented business.

"Operate" or "cause to operate" means to cause to function or to put or keep in a state of doing business.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is

authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

"Person" means individual, proprietorship, partnership, corporation, association, or other legal entity.

"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the licensee, as described in the application for a sexually oriented business license.

"Regularly" means and refers to the consistent and repeated doing of the act so described.

"Semi-nude" or "state of semi-nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard or similar wearing apparel provided the areola is not exposed in whole or in part.

"Sexual device" means any three-dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy or devices primarily intended for medical or healthcare use.

"Sexual device shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which does not restrict access to their premises by reason of age.

"Sexually oriented business" means an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," or a "sexual device shop."

"Specified anatomical areas" means and includes:

1. Less than completely and opaquely covered: human genitals, pubic regions, buttock, and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified criminal activity" means any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of the release from confinement imposed for that conviction, whichever is the later date:

1. Prostitution; promotion of prostitution; aggravated promotion of prostitution; compelling prostitution; obscenity; sale, distribution or display of harmful material to minor; sexual performance by a child; employment harmful to children; or possession or

promotion of child pornography; as defined in Chapter 43 of the Texas Penal Code;
2. Public lewdness; indecent exposure; or indecency with a child; as defined in Chapter 21 of the Texas Penal Code;
3. Sexual assault or aggravated sexual assault as defined in Chapter 22 of the Texas Penal Code;
4. Criminal attempt, solicitation or conspiracy to commit any of the foregoing offenses; or
5. Any offense in another jurisdiction that, had the predicate act(s) been committed in Texas, would have constituted any of the foregoing offenses.
"Specified sexual activity" means any of the following:
1. Intercourse, oral copulation, masturbation or sodomy; or
2. Excretory functions as part of or in connection with any of the activities described in subsection 1, above.
"Substantial" means at least thirty-five percent of the item(s) so modified.
"Transfer of ownership or control" of a sexually oriented business means any of the following:
1. The sale, lease or sublease of the business;
2. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange or similar means; or
3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
"Viewing room or booth" means the room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, any electronically produced media or other video production which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.

5.09.030 Classification

The classifications for sexually oriented businesses shall be as follows:
A. Adult bookstore or adult video store;
B. Adult cabaret or adult lounge;
C. Adult motion picture theater or movie theatre;
D. Sexual device shop.

5.09.040 License required

A. Business License. It is unlawful for any person to engage in, conduct, or operate a sexually oriented business in the city without paying the established fee and obtaining a valid sexually oriented business license.
B. Employee License. It is unlawful for any person to be an "employee," as defined in this chapter, of a sexually oriented business in the city without paying the established fee and obtaining a valid sexually oriented business employee license, except that a person

who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

C. Application. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the permit official a completed application made on a form provided by the permit official. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection D herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection C, accompanied by the appropriate established fee:

1. The applicant's full legal name and any other names used by the applicant in the preceding five years. Applicant is also required to include mother's maiden name;
2. Current address of the applicant;
3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency;
4. A current photograph of applicant;
5. If the application is for a sexually oriented business license, the business name, location, mailing address and phone number of the sexually oriented business;
6. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process;
7. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable;
8. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

a. Been declared by a court of law to be a nuisance, or

b. Been subject to a court order of closure or padlocking;

9. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with the stage, booth and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

At the time of filing an application, the filing applicant shall present himself or herself to the city of El Paso police department headquarters for the purpose of being fingerprinted and photographed. The police department shall take the photographs and fingerprints within four business hours of the time that the filing applicant presents himself or herself to be fingerprinted and photographed.

The information provided pursuant to this subsection C shall be supplemented in writing by certified mail, to the permit official within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

D. Signature. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he or she shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

E. The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the permit official on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or a court order.

5.09.050 Issuance of license

A. Business License. Upon the filing of a completed application for a sexually oriented business license, the permit official shall immediately issue a temporary license to the applicant if the completed application is from a pre-existing sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within twenty days of the filing of a completed sexually oriented business license application, the permit official shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The permit official shall issue a license unless:

1. An applicant is less than eighteen years of age;
2. An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form;
3. The established license application fee required by this chapter has not been paid;
4. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in compliance with locational requirements of Title 20 of this code or any other portion of this code;
5. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

a. Been declared by a court of law a nuisance, or

b. Been subject to an order of closure or padlocking;

6. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

B. Employee License. Upon the filing of a completed application for a sexually oriented business employee license, the permit official shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within twenty days of the filing of a completed sexually oriented business employee license application, the permit official shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The permit official shall issue license unless:

1. The applicant is less than eighteen years of age;
2. The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form;
3. The established license application fee required by this chapter has not been paid;
4. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
a. Been declared by a court of law to be a nuisance, or
b. Been subject to an order of closure or padlocking;
5. The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

5.09.060 Inspection

Sexually oriented businesses and sexually oriented business employees shall permit the permit official, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

5.09.070 Renewal of license

A. Licenses may be renewed only by making application and payment of the established renewal fee.
B. Application for renewal of an annual license should be made at least ninety days before the expiration date of the current annual license, and when made less than ninety days before the expiration date, the expiration of the current license will not be affected.

5.09.080 Suspension

A. Business License. The permit official shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty days if the sexually oriented business licenses has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter.
B. Employee License. The permit official shall issue a written notice of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this chapter.

5.09.090 Revocation

A. The permit official shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this chapter on two or more occasions within a twelve-month period.
B. The permit official shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
1. The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
2. The licensee has knowingly or recklessly engaged in or allowed possession, use or sale of controlled substances on the premises of the sexually oriented business;
3. The licensee knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
4. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises or the sexually oriented business.
C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
D. When, after the notice and hearing procedure described in this chapter, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date the revocation becomes effective.

5.09.100 Hearing; denial, revocation and suspension; appeal

A. When the permit official issues a written notice of intent to deny, suspend, or revoke a license, the permit official shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the director for the respondent. The notice shall specify a date, not less than ten days nor more than twenty days after the date the notice is issued, on which the hearing officer shall conduct a hearing on the permit official's written notice of intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel (at respondent's expense), present evidence and witnesses on his or her behalf, and cross-examine any of the permit official's witnesses. The permit official shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five days after the hearing. The decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.

If the decision is to deny, suspend, or revoke the license, the decision shall become effective on the thirtieth day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the permit official to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the permit official shall contemporaneously therewith issue the license to the applicant.

B. If any court action challenging a license denial, suspension, or revocation is initiated, the city shall prepare and transmit to the court a transcript of the hearing within ten days after receiving written notice of the filing of the court action. The city shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the director:

Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension, or revocation, the permit official shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement.

5.09.110 Transfer of license

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

5.09.120 Hours of operation and supervision of premises

A. No sexually oriented business shall be or remain open for business between two a.m. and six a.m. on any day.
B. The licensee or manager named and approved with respect to issuance of a permit or the holder of the current manager's permit, shall be present on the premises of a sexually oriented business at all times when the establishment is in operation.

5.09.130 Regulations pertaining to exhibition of sexually explicit films or videos

A. A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing room, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, any electronically produced media or other video productions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The permit official may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
2. It shall be the duty of the operator, and of any employees present on the premises, to insure that no patron is permitted access to any area of the premises, which has been designated as an area in which patrons will not be permitted.
3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to insure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

4. It shall be the duty of the operator, and of any employees present on the premises, to insure that no sexual activity occurs in or on the licensed premises.
5. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
a. That the occupancy of viewing rooms less than one hundred fifty square feet is limited to one person;
b. That sexual activity on the premises is prohibited;
c. That the making of openings between viewing rooms is prohibited;
d. That violators will be required to leave the premises;
e. That violations of these regulations are unlawful.
6. It shall be the duty of the operator to enforce the regulations articulated in subsections (5)(a) through (d) above.
7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two square feet of floor area. If the premises has two or more operator's stations designated, then the interior shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to insure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to insure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

5.09.140 Loitering, exterior lighting, visibility and monitoring requirements

A. It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
B. It is unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
C. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

5.09.150 Penalties and enforcement

A. A person who knowingly engages in or permits another person to engage in a specified sexual activity on the premises of a sexually oriented business shall be guilty of a Class A misdemeanor. A person who engages in any violation of this chapter other than a specified sexual activity violation shall be guilty of a Class C misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense.
B. Any premises, building, or other structure in which a sexually oriented business, as defined in this chapter, is repeatedly operated or maintained in violation of the provisions of this chapter shall constitute a public nuisance and shall be subject to abatement proceedings initiated by the city of El Paso in a court of competent jurisdiction. Three violations of this chapter in a twelve-month period shall constitute repeated operation or maintenance as discussed in the preceding sentence.
C. The city's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this chapter, or any of the laws in force in the city or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

5.09.160 Applicability of ordinance to existing businesses

All existing sexually oriented businesses and sexually oriented business employees are granted a de facto temporary license to continue operation or employment for a period of ninety days following the effective date of this chapter. By the end of said ninety days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this chapter.

5.09.170 Prohibited conduct

It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.
A. It shall be a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
B. It shall be a violation of this chapter for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least eighteen inches from the floor in a room of at least six hundred square feet.
C. It shall be a violation of this chapter for any employee who while appearing semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the

clothing of a customer on the premises of a sexually oriented business.
D. It shall be a violation of this chapter for any person to knowingly allow a person under the age of eighteen years to come or remain on the premises of a sexually oriented business as an employee or patron.
A sign in a form to be prescribed by the permit official, and summarizing the provisions of subsections A through D of this section shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

5.09.180 Scienter required to prove violation or business licensee liability

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this chapter, or the purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability was imputed was powerless to prevent the act.

5.09.190 Failure of city to meet deadline not to risk applicant/licensee rights

In the event that a city official is required to act or to do a thing pursuant to this chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official under this chapter, and not completed in time prescribed, includes approval of condition(s) necessary for approval by the city of an applicant or licensee's application for sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city's action has passed.

5.09.200 Severability

This chapter and each section and provision of said chapter hereunder, are declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is declared that such sections and provisions would have been passed independently of such section or provision so known

to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.

5.09.210 Conflicting code provisions repealed

Any provision(s) in the El Paso City Code specifically in conflict with any provision in this chapter is deemed inoperative and repealed.

5.09.220 Effective date

Upon adoption, the provisions of this chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees defined herein, whether such businesses or activities were established or commenced before, on or after the effective date of this chapter, which was May 8, 2007. All existing sexually oriented businesses that are operating under an existing license from the city shall continue operation under the same license and renew said license when applicable under this chapter. By August 10, 2007, all sexually oriented business must make any and all necessary changes to the interior configuration of the regulated business premises to conform to this chapter. All employees of sexually oriented businesses must make application for a license pursuant to this chapter by August 10, 2007, and thereafter, within ten days of becoming an employee subject to this chapter.

Chapter 5.10 - TATTOOING AND BODY PIERCING LICENSES

Article I. - General Provisions

5.10.010 - Compliance required.

A person shall not conduct, operate or maintain a studio unless the person holds a license issued by the Texas Department of State Health Services. In addition, a license must be approved by the permit official and issued by the permit official if it is determined that the studio complies with the zoning codes and all construction and health requirements as set forth in Title 18 (Building and Construction) and Title 9 (Health and Safety) of this Code.

5.10.020 - Definitions.

A. "Artist" means a person who performs tattooing, intradermal cosmetics and/or certain body piercing, and who is responsible for complying with the provisions of this chapter.

B. "Body piercer" means a person who performs body piercing and who is responsible for adherence to the provisions of this chapter; hereafter referred to as artist.

C. "Booth" means an area in the studio or temporary location where tattooing and/or body piercing is performed.

D. "Department" means the department of environmental services.

E. "Director of the department of environmental services" means the director of the department of environmental services, or his designee.

F. Reserved.

G. "Operator" means business manager, property owner or other individual who is in charge of the day-to-day operation or maintenance of the studio and is the person responsible to ensure that the studio complies with state and local operation and maintenance standards.

H. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

I. "Studio" means a permanent, nondwelling building or portion of a building, designated by a license holder and located in accordance with applicable local zoning codes where body piercing, tattooing or intradermal cosmetic application is performed, completely separated from living quarters; hereafter referred to as studio.

J. "Tattooer" means a person who performs tattooing or applies intradermal cosmetics and who is responsible for adherence to the provisions of these sections; hereafter referred to as artist.

K. "Temporary location" means a fixed location at which an individual operator/artist performs tattooing and/or body piercing for a specified length of time of not more than seven days in conjunction with a single event or celebration, where the primary function of the event is tattooing and/or body piercing.

L. "Temporary license" means a license that allows the holder to conduct tattooing and/or body piercing for a specified length of time not more than seven days at a temporary location.

Article II. - Licenses

5.10.030 - Required.

A. No person/artist shall engage in the practice of tattooing or body piercing without first having obtained and paid for a valid license or temporary license from the director of the development services department and complying with the requirements of Chapter 9.32 of this Code. An artist must obtain a license from the building licenses and inspections department within five working days of the initial inspection.

B. All licenses shall be displayed in a prominent place in the studio or temporary location for inspection by any authorized city official.

C. The license requirements of this chapter do not apply to persons who engage only in the following:

1. A studio or temporary location located within a medical facility which is licensed under another law, or an office or clinic of a person licensed by the Texas State Board of Medical Examiners; or

2. A person who performs only ear lobe piercing; or

3. A facility in which only ear lobe piercing is performed.

5.910.040 - License application.

Each artist seeking to perform tattooing and/or body piercing shall submit a signed, verified application annually, with the appropriate application fee(s), to the director of the development services department. Applications shall be on forms obtained from the building licenses and inspections department and shall contain, as a minimum, the following information:

A. Name of owner of studio and artist, if different from owner;

B. Address of owner of studio and artist, if different from owner;

C. Address of studio;

D. Indication if existing studio (in operation for the preceding twelve months) or new studio;

E. Any other information as required by the application.

5.10.050 - Application processing.

A. Upon approval of the director and compliance of the applicant with Chapter 9.32 of this Code and payment of all fees as identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council, the license shall be issued and valid for three hundred sixty-five days. Said license shall be renewed on or before the date of expiration each year.

B. In the event either the director of the development services department or the director denies the application, the applicant shall be notified in writing as to the reason(s) for the denial, as set forth in Section 5.96.070 of this chapter.

5.10.060 - License transfer.

A. Licenses shall be valid only at the location(s) at which the artist was employed at the time the license was issued. Any change in location of employment shall require a new license application.

B. Licenses may not be transferred to a third party for any use or benefit.

5.10.070 - License denial, suspension and revocation.

The director of the development services department and/or the director may deny an application for license/temporary license or may suspend or revoke any license/temporary license granted hereunder by serving applicant or license holder with written notice by hand-delivery or certified mail, return-receipt requested, if:

A. The applicant is found to be in violation of this chapter or found, in the opinion of the director, to pose a significant health risk to the public for failure to met the minimum health standards set forth in Title 9 (Health and Safety) of this Code;

B. The director shall issue the written notice of denial, suspension or revocation of a license or temporary license to the owner and/or artist of the studio or temporary location and shall contain, as a minimum, the following:

1. State the name and address of the studio or temporary location and name of the artist;

2. State the license is denied, suspended or revoked;

3. Indicate the reason(s) for the denial, suspension or revocation;

4. Order the studio, booth or temporary location closed;

5. A statement prohibiting the further use of the studio or booth;

6. Recommended corrective measures to bring the studio, booth, temporary location or artist into compliance with the requirements of this chapter and Title 9 of this Code;

7. Establish a reasonable time limit for the completion of the corrective measures;

8. State the license, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and

9. State that the denial, suspension or revocation may be appealed under the provisions set forth in Section 5.96.080 of this chapter.

C. The director of the department of environmental services shall post a sign at any location where a license has been suspended or revoked pursuant to this chapter or Title 9 (Health and Safety) of this Code. Said sign shall contain the following statement:

TATOO AND BODY PIERCING STUDIO/BOOTH CLOSED BY ORDER OF THE CITY OF EL PASO DEPARTMENT OF ENVIRONMENTAL SERVICES. VIOLATORS OF THIS ORDER ARE SUBJECT TO PROSECUTION PURSUANT TO TITLE 5, TITLE 9 AND ANY OTHER APPLICABLE

PROVISIONS OF THE EL PASO CITY CODE.

5.10.080 - Appeals.

A. The applicant or license holder who has been served with a denial, suspension or revocation notice, may appeal the action to the city manager as provided herein. Within ten business days of taking such action, the director of the development services department, in consultation with the director of the department of environmental services as appropriate, shall prepare a report indicating the reasons for the denial, suspension or revocation, and shall provide a copy to the owner or operator. The development services department director's decision is final unless within ten calendar days for the date of receiving his report, the owner or operator 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.

B. The city manager or his designated deputy city manager shall review the development services department director'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.

C. The city manager or designee shall sustain, reverse or modify the action of the director of the development services department and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

5.10.090 - Fees.

The owner, operator or artist shall pay to the City such fees identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the city council for the licenses and services provided in accordance with this chapter.

Article III. - Enforcement

5.10.100 - Enforcement authority.

The director of the department of environmental services and the director of the development services department and their designees shall be authorized to administer and enforce the provisions of this chapter and Chapter 9.32 of this Code.

5.10.110 - Violations and penalties.

Any person who violates a provision of this chapter shall, upon conviction, be guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars. Each day the violation occurs shall constitute a separate offense.

CHAPTER 5.11 MOTOR VEHICLE DEALERS

5.11.010 License--Required

No person, firm or corporation shall engage in the business of selling, bartering or exchanging motor vehicles without first paying the established fee and obtaining a license as herein provided.

5.11.020 License--Application--Contents

Application for such license shall be filed with the permit official in writing, sworn to by the applicant and accompanied by the established fee, and shall show:
A. The name and residence address of the owner or owners of the business, and if a corporation the names and residence address of the principal officer thereof. If any of the owners, or in the case of a corporation, the principal officer, is not a resident of El Paso County, then the application shall also show the name and residence address of an agent residing in El Paso County on whom process may be served;
B. The name under which the business is to be conducted and the location thereof. More than one location may be included in the same application. If the business is conducted under an assumed name the application shall show that the assumed name has been filed with the county clerk in accordance with state law;
C. The permit official may inspect the premises of the business at any time during business hours.

5.11.030 License--Fee

The established fee for the license shall be multiplied by the number of locations if there is more than one.

5.11.040 License-Revocation

The permit official may revoke any license hereunder for any false statement in the application, or for any violation of this chapter by the license holder, or for failure of the license holder to pay any judgment rendered against him by a court of competent jurisdiction for any fraud, misrepresentation or contractual default in a matter arising out of the licensed business.

5.11.050 Place of business--Requirements

Every dealer required to be licensed hereunder shall have a fixed place of business, on which there shall be an office, inside a building or other roofed structure, on which there shall be a sign showing the name (or properly filed assumed name) of the person, firm or corporation which holds the dealer's license. If the office is not kept open, with someone in attendance, at least eight hours between sunrise and sunset on every business day, the dealer shall post on the main door of the office a sign correctly showing the hours during which the office will be open, which shall not be less than three hours between sunrise

and sunset on at least five days of each week. The office shall have telephone service, listed in the name (or properly filed assumed name) of the license holder. The license shall at all times be kept posted in the office in a place readily visible to customers.

5.11.060 State registration and title laws--Compliance with required

No dealer shall sell, barter or exchange any motor vehicle without complying with all registration and title laws of this state.

5.11.070 Contracts with buyers when full purchase price not paid

When any motor vehicle is sold and the full purchase price is not paid at the time of delivery, the contract with the buyer shall be in writing, with all blanks filled before the buyer signs and the dealer shall give a true signed copy of such contract to the buyer immediately after the contract is signed.

5.11.080 Warranties and representations--Dealer to furnish copies to buyer

Whenever the dealer gives any warranty, or makes any representation which the buyer would, under the law of contracts, be entitled to rely on, the dealer shall, before the sale or exchange is closed, give the buyer a signed written statement of such warranty or representation, unless the warranty or representation is included in a written contract between the parties or covered by the certificate of title. Failure of the dealer to comply with the requirement of this section shall not deprive the buyer of any right he may otherwise have to enforce any warranty or representation.

5.11.090 Reports to police

A. If, in connection with the doing of any business for which a license is required hereunder, a dealer finds that the motor number, serial number or manufacturer's number of any motor vehicle, motor, motor block, or any part thereof has been altered, changed, erased or mutilated, he shall immediately notify the police department, giving any information he may have as to the description, possession and location of the vehicle or part, as may be useful to the police in complying with the Texas Penal Code.
B. The dealer shall likewise report to the police department any vehicle or part thereof brought on the licensed premises, or offered as a trade-in elsewhere, when the dealer has reasonable grounds to believe that the certificate of title or license plates are false, or the vehicle or part has been stolen, or has been used in the commission of a crime.

CHAPTER 5.12 DEALERS IN SECOND HAND GOODS, DEALERS IN CRAFTED PRECIOUS METALS, COIN DEALERS AND PAWNBROKERS

5.12.010 Definitions

A."Crafted precious metal" means jewelry, silverware, an art object, or another object made wholly or partly from precious metal, other than a coin, a bar, or commemorative medallion, or scrap or a broken item selling at five percent or more than the scrap value of the item.
B. "Engaged in or conducting business" means the purchase, sale, barter or exchange of any secondhand goods including advertising therefore and including such business conducted by a secondhand dealer in a permanent location including, Flea-markets, Mercado's, Market places and Open air markets.
C. "Itinerant dealer" means any dealer as defined herein who engages in any temporary or transient business conducted in a shop, room, hotel room, motel room or other premises rented for any duration less than thirty consecutive days or used on a temporary basis. (An itinerant dealer is not a local dealer who must move his shop from his existing location to a new location within the city due to loss of lease or voluntary move prior to the expiration of the minimum thirty-day period.)
D. "Pawnbroker" means a person engaged in the business of lending money on the security of pledged goods or purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.
E. "Precious metal" means gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals.
F. "Secondhand dealer" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized engaged in or conducting business in the city of El Paso for purchasing, trading, bartering or exchanging secondhand goods as defined by this chapter.
G. "Secondhand goods" consists of any item of personal property or object of value which is not purchased or sold as new. Secondhand goods do not include property purchased by one licensed, established merchant in the normal course of business from another licensed, established merchant. Secondhand goods shall include, but are not limited to, the following items:
1. Jewelry of any kind and of any metal, precious or semiprecious in nature;
2. Gold, silver and/or other precious metals in whatever identifiable form except for numismatic coins or bullions;
3. Any type of gem or precious stone, including diamonds;
4. Consumer electronics intended for everyday use, most often in entertainment, communications and office productivity to include personal computers, telephones, MP3 players, audio equipment, televisions, calculators, GPS automotive electronics, digital cameras and recorders using video media such as DVDs, VCRs or camcorders;
5. Hand tools, power tools and gardening tools.

Article I. Dealers in Secondhand Goods

5.12.020 Policy

It is declared to be the policy of the city, in the exercise of its police power for the protection of the safety, health and welfare of its citizens to regulate the purchase, sale, barter or exchange of secondhand goods.

5.12.030 License--Required

It is unlawful for an individual, partnership, corporation, joint venture, trust, association or other legal entity to engage in the business of second-hand goods as defined in this article, without first paying the established fee and obtaining a license therefore, as hereinafter provided. A separate application and license shall be required for each location, place or premises used for the conduct of the business of the secondhand dealer. A separate established fee shall be charged for each additional license issued.

5.12.040 License-Term

Licenses issued pursuant to this chapter shall expire one year from the date of issuance, unless otherwise suspended or revoked.

5.12.050 License-Renewal

If, thirty days prior to the expiration of the original license, there are no outstanding violations, citations, or fees owed to the city by the license holder license or permit holder which are directly related to the license or permit, the license may be renewed annually upon the filing of a new application and payment of the established renewal fee.

5.12.060 License--Application--Contents

Applicants for a license under this article shall file with the permit official, a written sworn application signed by the applicant. If the applicant is an individual, the application must be signed by the individual. If the applicant is a partnership, the application must be signed by all partners. If the applicant is a joint venture or association, the application must be signed by all members of the joint venture or association. If the applicant is a corporation, the application must be signed by the president of the corporation, showing:

A. The name or names of all persons employed, or to be employed, including managers and supervisors, in applicant's business;

B. The local address or addresses of such person or persons while engaged in the business;

C. The permanent address or addresses of such persons;

D. The capacity in which such person or persons will act, that is, whether as proprietor, agent or otherwise;

E. If a corporation, other than a Texas corporation, the state where the corporation was incorporated;

F. The place or places in the city where it is proposed that applicant's business will be conducted;

G. Any itinerant dealer must also designate the length of time during which it is proposed such business will be conducted;

H. A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers;
I. Credentials from the person, firm or corporation for which the applicant proposes to do business, authorizing the applicant to act as such representative;
J. Whether or not the person or persons employed or having management or supervision of the applicant's business have been convicted of a felony, misdemeanor or violation of any municipal ordinance, the nature of such offenses and the punishments assessed therefor;
K. The place or places, other than the permanent place of business of the applicant where applicant within the six months prior to this current application conducted a previous transient business in secondhand or used personal goods, stating the nature thereof and giving the street address of any building or office in which such business was conducted.

5.12.070 License--Investigation--Issuance

Upon receipt of an application for a license in accordance with the provisions of Section 5.12.040, the permit official in conjunction with designees of the police chief, shall conduct an investigation to determine if there are grounds for denial of the license. If there are no grounds for denial the permit official shall issue a license no later than thirty days following the date of the filing of the application.

5.12.080 License--Denial--Grounds

The permit official shall deny a license if the investigation reveals one or more of the following:
A. Conviction of any felony within five years immediately preceding the date of the filing of the application;
B. Conviction of any crime of moral turpitude within five years immediately preceding the date of the filing of the application;
C. Fraud, misrepresentation or false statement of facts of material consequence in the application;
D. Proof of a finding with the Better Business Bureau within the last six months preceding the current application indicating that applicant has engaged in a fraudulent transaction or enterprise.
The permit official shall issue a letter of rejection of license application to the applicant's listed address by certified mailing with a statement indicating the reasons for the rejection.

5.12.090 Place of business--License restrictions

Any license issued under the provisions of this article shall designate the place in which the second-hand dealer shall carry on such business; and such business shall not be carried on or conducted in any other place.

5.12.100 License--Suspension and revocation

The police chief or the permit official may suspend or revoke a second hand dealer license for a violation of any provisions of this chapter by mailing a letter to the license holder's listed address by certified mail with a statement indicating the reason(s) for the suspension or revocation.

5.12.110 Records--Required

A. Every secondhand dealer shall keep a record of all transactions. The transaction record system guidelines shall be established in conjunction with the El Paso police department for the purpose of promoting uniformity and accessibility to the police department with minimum inconvenience to both the dealer and the department.
B. The record of all transactions shall be written in the English language and in a clear, legible manner.
C. Secondhand dealers shall use the secondhand dealer receipts that are sold by the City of El Paso or may utilize online services provided at the El Paso Police website.
D. Secondhand dealers must fill out secondhand dealer receipt for all secondhand goods that are purchased, bartered, traded and consigned.
E. Transaction records must be sequentially numbered.
F. The record maintained by the secondhand dealer shall be made at the time of the transaction and shall set forth the following information:
1. Date of purchase transaction;
2, Secondhand dealer business name;
3. Secondhand store address (block number, street, city, state and zip);
4. Confirmation of identification card with photo (driver's license, military identification card, any state or federal issued identification card) to identify the seller, as well as the seller's signature on the receipt where indicated;
5. Sellers address (block number and street, city, state and zip);
6. Seller's date of birth (month, day and year);
7. Seller's name (last name, first name, middle/initial);
8. Seller's general physical description (hair color, eye color, height and weight);
9. Standards for describing used goods;
All secondhand goods must be accurately and fully described. All serial numbers and model numbers must be recorded on the original and all copies of the secondhand ticket. If the record keeping is maintained electronically, the required information must be entered in the system that produces the secondhand ticket. As applicable, the item type, make, model number engraving, inscriptions, color, size, length, unique markings, owner applied numbers, inventory number, metal, stone, karat and design must be recorded. Each individual item must be recorded fully and accurately. Jewelry must include weight, type of metal including purity, style, stones and the gender for the person for which the items was manufactured. Stones must be described as to type, including results of electronic testing, color as apparent to the untrained eye, shape, number, size and

approximate weight. Class ring descriptions must also include school name, class year and any names or words on the ring;
10. The price or consideration paid or received at the time of transaction; and
11. All entries in the record shall be signed by the person making the entry.
12. The secondhand dealers shall fill out all required information on the required receipt and include both signatures and employee identification. The record shall be held by the secondhand dealer for business records as required herein. If the receipt is submitted electronically a separate ticket will be produced and requires an employee identification number to be displayed as part of the submittal.
13. Such records shall be retained for a period of one year from the date of transaction even if the secondhand dealer no longer possesses or owns the property.
14. The secondhand dealer's transaction records must be kept during business hours at the business address listed on the dealer's license.

5.12.120 Reports to police

It shall be the duty of every secondhand dealer to make available for the inspection by the police department every business day, a copy of the records required to be kept under the terms of this article.

5.12.130 Records--Inspection

A. The record book, the goods, articles or things purchased, received or kept for sale or exchange by every secondhand dealer shall be open to inspection by any member of the police department at all reasonable business times.
B. By accepting a secondhand dealer license, the holder consents that any member of the police department may enter the licensed premises at all reasonable business times to conduct an investigation or inspect the premises for violations of this article.

5.12.140 Purchases from an itinerant dealer

Any itinerant dealer who does not maintain a permanent location within the city, (to wit: a place or premise which has not been hired, rented or leased for at least thirty days, upon or from which business is conducted), shall deliver a copy of the records of purchases to the chief of police or his designee within twenty-four hours of terminating the temporary location.

5.12.150 Purchasing from minors

No secondhand dealer shall purchase, trade or deal in secondhand goods with any individual under the age of eighteen years of age without written consent of his parent or guardian. This consent shall become part of the permanent record of the transaction and must be included with all other identification records required under Section 5.12.090.

5.12.160 Goods to be kept without concealment

Every dealer in secondhand goods shall, during regular business hours, keep without concealment and on the licensed premises for a period of twenty days, subject to the inspection by any peace officer, all goods, wares and merchandise, purchased or received from any person, before selling, shipping or otherwise disposing of the same.

5.12.170 Melting, wrecking and remodeling

A. If the secondhand dealer's intention is to melt, wreck and/or remodel the secondhand goods, the secondhand dealer must record all data required pursuant to section 5.12.090 and hold the secondhand goods for twenty days.
B. Purchase of melted items. A secondhand dealer in the course of business may not purchase an object that is formed as the result of melting precious metal unless;
1. The object is purchased from a manufacturer or a dealer in precious metal (bars, buttons, lumps tailings, scrap) and/or
2. For purchases listed in 5.12.150B.1 of this section, the seller must provide a purchase receipt to the secondhand dealer who is purchasing the melted items and document what the said item was prior to melting. The acquiring dealer must provide a copy of the purchase receipt obtained from the seller to the police department along with any other necessary documentation. The acquiring dealer must keep a copy of the purchase receipt at the licensed business.
3. A secondhand dealer selling to another secondhand dealer must provide documentation of where the melted item originated, i.e. a secondhand store ticket or other receipt.

5.12.180 Exclusions

The provisions of this article do not apply to the following businesses or dealers:
A. Junk- as used in this chapter means old metal, glass, paper, cordage, rags, bones, rubber or other waste which may be treated so as to be used again in some form; vehicles or machines which are worn out and intended for scrapping; or any article or substance commonly considered to be junk for the purpose of trade. The term does not include secondhand articles or substances which are still usable for the purpose for which they were originally intended and are sold with a view to such further original use; provided, junk dealers and their employees shall not be excused from compliance with any of the provisions of this chapter as to any particular article or substance because the same or part thereof is capable of further use for its original purpose;
B. Used motor vehicles;
C. Antique dealers which for purposes of this exclusion shall be read to be defined as any dealer who engages exclusively in the business or occupation of selling, bartering or exchanging any painting, furniture, china or other object painted or made more than fifty years prior to the date of sale, which is valuable primarily by reasons of age, scarcity or the skill and craftsmanship of the artists and artisan. Antiques will not include family heirlooms made of gold and silver or other precious metals;

D. Coin collectors or coin shops which engage exclusively in the coin business or occupation except as provided in Article II of this chapter. This exclusion does not exempt such dealers or businesses from compliance with the regulations as hereinafter provided in relation to any gold, silver, platinum or other precious metal or jewelry which they may purchase, trade, barter or exchange in addition to their coin and bullion operations;
E. Neighborhood garage sales;
F. Nonprofit or charitable, secondhand goods or thrift-type shops;
I. Licensed gun dealers who engage exclusively in the business or occupation of selling, buying, bartering or exchanging guns or firearms. Provided, however, this exclusion does not exempt such dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum or other precious metal or jewelry which they may purchase, sell, trade, barter or exchange in addition to their gun business.

Article II. Dealers in Crafted Precious Metals

5.12.190 State registration required to be filed with City

Dealer in crafted precious metals shall file annually with the city a copy of the dealer's certificate of registration issued pursuant to the Texas Occupations Code.

5.12.200 Licensing, recordkeeping and goods retention requirements

Dealers in crafted precious metals who also purchase, trade, barter or exchange any type of secondhand goods in conjunction with the crafted precious metal dealership shall be subject to the extensive record keeping, licensing and goods retention requirements as established in Article I of this chapter as far as the secondhand items are concerned.

Article III. Coin Dealers, Coin Collection Swap Meets and Conventions

5.12.210 Licensing, recordkeeping and goods retention requirements

Coin collectors and coin dealers shall not be subject to the same extensive recordkeeping and goods retention requirements as secondhand dealers so long as their dealings are limited to coins. However, if any such coin establishment also purchases, trades, barters or exchanges any other type of secondhand goods including gold, silver and/or other precious metal or jewelry in conjunction with its coin dealership, such establishment shall be subjected to the extensive record keeping, licensing and goods retention requirements, as established in Article I of this chapter, as far as these other items of gold, silver and/or precious metals or jewelry are concerned.

5.12.220 Registration

Coin collectors and coin dealers although not subject to the recordkeeping, licensing requirements and goods retention provisions of Article I of this chapter as it relates to their coin dealings, nonetheless, will be required to meet the following conditions as they relate to their coin business:
A. Registration:
1. All coin dealers and/or collectors who conduct a coin business and conduct no other precious metal business shall be required to register with the permit official;
2. All coin swap meets and conventions shall be required to register with the permit official no later than three days before the scheduled date of the swap meet. The sponsor or sponsors of such a swap meet shall be required to submit the following information at the time of registration:
a. The type of swap meet to be conducted,
b. The location of the swap meet or convention,
c. The time and date of the swap meet or convention and its expected duration,
d. The approximate number of participants.

Article IV. Pawnbrokers

5.12.230 Pawnbrokers licensed by the State

Pawnbrokers shall continue to be licensed by the state and must follow mandates required by the Texas Finance Code, Chapter 371. In addition to the required state license, pawnbrokers shall comply with the city's recordkeeping requirements as set forth in this Article.

5.12.240 Hours of business

No pawnbroker shall keep his place of business open for business or transact any business therein between the hours of nine p.m. and six a.m. on the following day.

5.12.250 Recordkeeping

Every pawnbroker shall keep at his place of business a well-bound book in which the following records shall be kept:
A. An accurate description of the article pawned or purchased, including serial and model numbers, if any;
B. The date and hour of the transaction;
C. From whom received, together with a reasonably accurate description of the pawnor or vendor and his address;
D. The amount for which the article is pawned, its probable value and the rate of interest agreed upon;
E. If purchased by the pawnbroker then the amount of purchase; and
F. The final disposition made of such property, and if sold, to whom sold and the amount for which each article was sold.

5.12.260 Pawn ticket or bill of sale issuance requirements

The pawnbroker shall give to the pawnor a standard form pawn ticket corresponding to the entry on the book of registry. If the article is purchased by the pawnbroker he shall receive from the vendor a standard form bill of sale which evidences transfer of ownership of the article. If the pawnbroker informs the person selling that such person will be able to repurchase the article sold within a certain time for a stipulated price, then this transaction shall be considered a pledge and a bill of sale is not to be substituted for the required pawn ticket.

5.12.270 Daily reports to police required

It shall be the duty of the pawnbroker to send a daily report to the chief of police detailing all pledges and purchases. The report shall include the information required in Section 5.12.250. This daily report sheet must be turned in by nine a.m. each day.

5.12.280 Auction sale of unredeemed pledged articles--Place--Notice-- Required

If any article deposited with such pawnbroker as a pledge shall not be redeemed at or before the time agreed upon, the pawnbroker may sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days notice of such sale.

5.12.290 Auction sale of unredeemed pledged articles--Notice--Posting in public places required.

Such notices of sale shall be given by posting of written or printed advertisements at not less than three public places in the county, one of which places shall be the courthouse of such county.

5.12.300 Auction sale of unredeemed pledged articles--Notice---Contents--Filing copy with county.

Such advertisements of sale shall state the time and place of such sale and shall contain a full description of each article to be sold and the name of the person depositing the same, and a copy thereof shall be filed in the office of the county clerk of the county.

5.12.310 Auction sale of unredeemed pledged articles--Hours.

All auction sales made by the pawnbroker shall be made between the hours of ten a.m. and four p.m.

5.12.320 Dealing with minors.

No pawnbroker shall buy any property from a minor, or make to any minor a loan secured by pledge of property, without the written consent of the parent or guardian of such minor. The authorization must be kept with the records relating to the sale or pledge. It is not necessary to obtain this consent when transacting business with military personnel.

5.12.330 Responsibility of agents, servants or employees.

No person acting as the agent, servant or employee of any pawnbroker shall do any act which the pawnbroker is prohibited from doing.

5.12.340 Authority to issue citations.

The following public officials are authorized to enforce the provisions of this chapter and shall have the power to issue misdemeanor citations to any person who is violating the provisions of this chapter.

1. Police chief and his designee.

CHAPTER 5.13 SECURITY ALARM SYSTEMS

5.13.010 Definitions

For the purposes of this chapter:
A. "Alarm system" means any device or system used to detect or prevent burglary, theft, shoplifting, pilferage or other such emergency situations which when activated causes notification to be made directly or indirectly to the police department. The term includes an alarm or system that transmits a signal intended to summon the police department or is connected to an alarm system business and includes a local alarm system or an alarm that emits an audible or visual signal on the exterior of a structure. For purposes of this chapter, an alarm system shall not include:
1. An alarm installed on a vehicle, unless the vehicle is used for a habitation at a permanent site;
2. Any alarm device designed solely to detect or give notice of fire or smoke; or
3. An alarm installed upon premises occupied by the United States government, the state, the city, the county or by any government entity, situated within the corporate limits of the city.
B. "Alarm site" means a single premises or location served by an alarm system or systems that are under the control of one person.
C. "Alarm system business" means any person, partnership, corporation or other legal entity which installs, services, monitors or responds to alarm systems for compensation as defined by the Texas Occupations Code.
D. "Applicant" means the person or entity who submits an application to obtain a permit and shall become the permit holder.
E. "Automatic dialing device" means any device connected to an alarm system which

automatically sends a prerecorded message or coded signal indicating the activation of the alarm system directly to the police department.
F. "Conversion" means the transaction or process by which one alarm business begins servicing or monitoring of an alarm system installed by another alarm business or an alarm system which was previously serviced or monitored by another alarm business.
G. "Duress alarm" shall mean the deliberate activation of a silent alarm by entering at a keypad a code that is different from the normal arm/disarm code or by a separate deliberate act at another device.
H. "False alarm" means an alarm signal activated by an alarm system, eliciting a response by the police department within thirty minutes of the receipt of the alarm notification by the police department when, after inspection of the interior or exterior of the premises by a responding officer, there is no evidence, or available evidence, of an emergency or threat of emergency of the type for which the alarm system was designed to give notice. Factors to be considered by a responding officer as to whether the alarm signal was false or not include but are not limited to: whether it was caused by violent conditions of nature or an act of God; whether other extraordinary circumstances existed to cause the alarm to signal; or whether a person or persons lawfully on or at the premises acted or failed to act in any manner which results in the inability of the responding officer to gather evidence or make any inspection, determination, or report as set forth in this chapter.
I. "Holdup alarm" shall mean the deliberate activation of an alarm giving notification of a robbery, attempted robbery or summons police aid for any other perceived life-threatening reasons.
J. "Interconnect" means the connecting of an alarm system, including an automatic dialing device, to a telephone line, either directly or through a mechanical device that utilizes a telephone, for the purpose of using the telephone line to transmit a message upon the activation of the alarm system.
K. "Local alarm system" means any alarm system, which is not monitored, that annunciates an alarm by an internal or external audio or visible device at an alarm site.
L. "Panic alarm" shall mean an audible alarm signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring law enforcement response.
M. "Person" means any individual, partnership, corporation or other legal entity.
N. "Police chief" shall mean the chief of police.
O. "Relaying intermediary" means that portion of an alarm system business which receives or intercepts a signal or signals, indicating the activation of an alarm system and which relays this information to the police department.
P. "Verify" means an attempt by the alarm business, or its representative, to contact the alarm site by telephonic or other electronic means before requesting a police dispatch whether or not actual contact with a person is made, in an attempt to avoid an unnecessary alarm dispatch.

5.13.020 Permit--Required

A. It shall be a violation for a person to operate, or cause to be operated, an alarm system until the established fee for either a residential or commercial alarm system has been paid and a permit has been issued by the city for such system.
B. The police chief shall require that a valid permit be issued for an alarm site before a police officer or other law enforcement official responds, unless the alarm notification is: a duress alarm; a holdup alarm; a panic alarm; or reported to the 911 emergency telephone number or to the police department by any person with specific information indicating that there is possible criminal activity taking place at the alarm site.
C. Any person who previously held a registration for an alarm system under the code, as it existed prior to April 1, 1993, must comply with all provisions of this chapter and apply to obtain a permit.
D. Any outstanding fees or complaints as set forth in Section 5.13.070 must be resolved prior to the issuance of a permit.
E. Persons applying for a permit for an alarm system owned or operated by the city shall not be required to pay the permit fee
F. The permit holder for an alarm system shall keep such permit displayed at the property or location where such alarm system is installed and shall produce such permit for inspection upon the request of any member of the police department or the permit official. A permit holder who has been issued a decal by the city shall clearly write their permit number on the decal and shall conspicuously display the decal with the permit number so that the decal is visible from the front of the building or structure. A permit holder who operates an alarm system in a business shall conspicuously display the permit issued by the city at or near the location of the alarm control panel.
G. All alarm system businesses shall notify new alarm system customers including customers acquired by a conversion of the alarm system of the existence and provisions of this chapter prior to the installation or conversion of the alarm system. Within thirty days after the installation of a new alarm system, or the performance of an alarm system conversion, all alarm system businesses shall provide notice of the installation or the conversion to the permit official on forms provided by the city.
H. An alarm system business shall not install, activate and/or monitor any alarm system unless a valid alarm permit has been issued by the city of El Paso for an alarm site.
I. The issuance of a permit authorizing the use of an alarm system is not intended to nor shall it create a contract, either express or implied, creating a duty or guarantee of response. Any and all liability and consequential damages resulting from the failure to respond to a notification is hereby disclaimed and the city retains immunity from liability and suit based on a decision by the police department not to respond to an activation of a permitted or unpermitted alarm system.

5.13.025 Alarm systems in multiple unit developments and unsold or unleased homes or businesses

A. Each tenant, owner, or occupant of a multiple unit development, including but not limited to an apartment complex, multiple condominium units managed by another, duplexes, shopping mall or strip, or other similar developments, shall obtain a separate

alarm permit from the city for an alarm system that is operated in their unit, whether the alarm system is furnished by themselves; the system is furnished by the owner, manager, or landlord of the unit as an amenity; the system is a multiple location system that is partitioned among several locations that separately or individually have access to use the system within one location or unit; or the system is contracted for by an individual tenant, owner or occupant.

B. If the owner, manager, or landlord contracts with an alarm system business for the installation or operation of the alarm system on behalf of the tenant, owner, or occupant of the unit, the owner, manager, or landlord shall notify the tenant, owner, or occupant of the unit of the existence and provisions of this chapter prior to such time that the tenant, owner or occupant of the unit begins operation of the alarm system.

C. Each owner, manager, or landlord of a multiple unit development must obtain a separate permit to operate an alarm system in any unleased or unsold unit or in any common areas of the development, including but not limited to, common tenant areas, offices, storage areas, and equipment areas.

D. The owner, builder, or developer of an unsold or unleased home or business, including but not limited to newly constructed homes or businesses, must obtain a separate permit for each such home or business to operate an alarm system on the premises.

E. For purposes of assessing civil penalties and enforcing this chapter, the person in an occupied, leased, or purchased unit is responsible for compliance with this chapter and for payment of civil penalties for excess false alarm notifications emitted from an alarm system in their unit and the owner, manager, or landlord is responsible for compliance with this chapter and for payment of civil penalties for excess false alarm notifications emitted from an alarm system in unleased or unsold units and in any common areas. The owner, builder, or developer of an unsold or unleased home or business is responsible for compliance with this chapter and for payment of civil penalties for excess false alarm notifications emitted from an alarm system on the premises.

5.13.030 Application

The application for the permit required by this chapter shall be made in writing to the permit official. The application may be made by the applicant or by any other person, including an alarm system business, with authorization from the applicant. Such application shall be made on a form designated by the city for that purpose and shall set forth:

A. The name, address and telephone number of the applicant;

B. If the applicant is a legal entity, the names and addresses of the corporate officers, partners or other persons legally responsible for the entity and the applicant must provide written authorization from the entity permitting the individual to sign and submit the application on behalf of the entity;

C. The name, address and telephone number of the persons in operational control of the property, if other than the applicant or if the applicant is a legal entity;

D. The street address of the property on which the alarm system is to be installed and operated;

E. Any business name used for the premises on which the alarm system is to be installed and operated;
F. The name, address and telephone number of the alarm system business, if any, that installed, services or monitors the alarm system or responds to the alarm system and the name, make, model or series number of the alarm system;
G. 1. The names and telephone numbers of two persons, one of whom does not reside at the address of the permit location, or of an alarm business, which are able to and have agreed:
a. To receive notification at any time,
b. To come to the alarm site within one hour after receiving a request from a member of the police department to do so, and
c. To grant access to the alarm site and to deactivate the alarm system if such becomes necessary,
2. Whenever a permit holder, person, or alarm system business listed in this section is unwilling or unable to perform the duties set out, the permit holder shall immediately amend such application setting forth the names and telephone numbers of two persons or an alarm system business willing to perform the duties as listed in this section. Amendments shall be made in person to the permit official or by sending written notice to the permit official.
3. The failure of a permit holder, person, or alarm company to respond under subsection G.1. of this section or noncompliance with subsection G.2. of this section may be cause for the revocation of the permit under this chapter, in addition to any penalties provided under this chapter;
H. The permit holder must notify the permit official in writing of any change of the information required in the application for registration within twenty days of such change. A person who continues to operate an alarm system without providing changes to the information required under this sub-section commits an offense;
I. No permit shall be issued to any applicant who fails to furnish the information required by this section.

5.13.040 Permit term

Permits issued pursuant to this chapter shall expire three years from the date of issuance, unless otherwise suspended or revoked.

5.13.050 Permit renewal

If, thirty days prior to the expiration of the permit, there are no outstanding violations, citations, or fees owed to the city by the permit holder which are directly related to the permit, the permit may be renewed for a period of three years upon the filing of a new application and payment of the established renewal fee.

5.13.060 Alarm user awareness class

The police chief may create and implement an alarm user awareness class that may be attended by alarm users. The class shall inform alarm users of the problems created by false alarms and teach alarm users how to avoid generating false alarms.

5.13.070 False alarm penalties

Alarm systems owned or operated by the city shall not be assessed penalties for false alarms. All other permit holders or any other persons in control of an alarm system shall pay a false alarm civil penalty in accordance with Section 214.197, Local Government Code or its successor, for the signaling of a false alarm if at least three other false alarms have occurred during the preceding 12-month period. The amount of the penalty for the signaling of a false alarm shall be $50 if the location has had more than three but fewer than six other false alarms in the preceding 12-month period; $75, if the location has had more than five but fewer than eight other false alarms in the preceding 12-month period; or $100, if the location has had eight or more other false alarms in the preceding 12-month period. The police chief shall notify the permit holder or other person in control of the alarm system that the alarm site has exceeded three false alarm notifications in the preceding twelve-month period. The notice shall be made in writing and shall contain a statement that the permit holder may, at his or her election, attend an alarm user awareness class as set forth in Section 5.13.060 of this chapter. If the permit holder completes the alarm user awareness class within thirty days of the date of the notice or completes the next available alarm user awareness class, whichever occurs first, no penalty shall be accessed. Otherwise, the permit holder or other person in control of the alarm system shall pay the assessed penalty.

5.13.080 Automatic dialing devices—Prohibited

It is unlawful for any person to program an automatic dialing device to select any telephone line into the police department.

5.13.090 Direct alarm reporting--Automatic alarm notification prohibited

An alarm system, other than an alarm system in a financial institution, which transmits automatic alarm notifications directly to the communications center of the police department or the 911 District shall be prohibited.
A. A financial institution required to have an alarm system pursuant to the provisions of the Bank Protection Act of 1968 (12 U.S.C., Section 1882) may install, with the permission of the chief of police and the 911 District, a signal line directly to the police department or the 911 District for the purpose of reporting burglaries and robberies.
B. The financial institution shall pay the established annual fee for each indicator. The police chief shall have the right, at reasonable times and upon oral notice, to inspect the alarm system at the alarm site and require necessary repairs or improvements. If the police chief finds that the alarm system continually fails to operate or be operated to his satisfaction, he may terminate the privilege to have equipment and indicators in the

communications center of the police department or the 911 Distict and require prompt removal of same at the expense of the financial institution.
C. The financial institution, at its expense, shall make arrangements to provide service for the alarm system at the instance of the financial institution or the chief of police on a twenty-four-hour basis, seven days a week. In no event shall the city become liable for service charges for repairs and maintenance of any such signaling device.
D. The financial institution may cancel its agreement with the city at any time by giving the city written notice through the chief of police, whereupon such institution, at its expense shall have its equipment and indicators promptly removed from the monitor panel in the communications center or the 911 District.
E. The police chief has the right to require any change, modernization or consolidation of alarm signaling equipment that he deems advisable. In no event shall the city become liable for charges for such changes.
F. Instead of a direct line, a financial institution may instead choose to report burglaries and robberies by transmission through an alarm reporting service using a telephone number designated by the chief of police.

5.13.100 Revocation--Procedure

A. The police chief may revoke an alarm permit or registration if it is determined that:
1. There is a false statement of a material matter in the application for a permit or registration;
2. The permit or registration holder has violated any part of this chapter or has failed to comply with or maintain any and all of the requirements applicable to the issuance of the permit as set forth in Section 5.13.030 of this chapter;
3. The permit or registration holder, or any other person in control of an alarm system has failed to pay a civil penalty assessed under Section 5.13.070 of this chapter within ninety days after a bill for the assessment was issued;
4. Eight or more false alarm notifications have been emitted from the alarm site during the preceding twelve-month period;
5. Five or more false alarm notifications have been emitted from the alarm site during the preceding twelve-month period which were emitted because of mechanical malfunction or faulty equipment; or
6. The person operating the permit holds a registration issued under provisions of the prior city code and has not applied to obtain a new permit as required under this chapter.
B. Prior to taking action to revoke a permit, the police chief shall mail written notice of the grounds of such revocation to the permit holder. The permit holder may appeal the revocation of the permit pursuant to section 5.01.090 of this code.
C. A permit or registration holder or other person commits an offense if he operates an alarm system during the period in which the alarm permit or registration is revoked.

5.13.110 Revocation--Discontinuation of service

In the event that the police chief revokes an alarm permit in accordance with the provisions of this chapter for the reason stated in Section 5.13.100A5 of the city code, the police chief may further order the alarm system business to discontinue the service from such alarm system for such time as the permit for such system remains revoked. Notice of an order under this section shall be sent to the alarm system business by certified mail. The alarm system business shall comply with the order and discontinue alarm service within twenty-four hours after receipt of the notice.

5.13.120 Appeal from assessment of civil penalty

A. A permit holder or other person assessed a civil penalty may appeal the assessment of a civil penalty by requesting a hearing to be held before a hearing officer in municipal court.
B. The request for an appeal must be made in writing and delivered to the clerk of the municipal court not more than ten days after the bill for the assessment of the civil penalty is issued. A copy of the written appeal shall be sent by the appealing party to the police chief.
C. A hearing officer shall, as soon as practicable, hear such appeal, after reasonable notice to the appealing party and to the police chief.
D. The appealing party and the police chief shall have opportunities to present evidence and make argument on their behalf. The formal rules of evidence do not apply to an appeal under this section.
E. A hearing officer shall make his ruling on the basis of substantial evidence presented at the hearing. A hearing officer shall affirm, reverse or modify the assessment of the civil penalty, except, that a hearing officer may not reduce or increase the amount designated in Section 5.13.070 for a civil penalty that is assessed for a false alarm notification determined by a hearing officer to have occurred. The decision of a hearing officer is final.

5.13.130 Reinstatement of permit

Except as provided in subsection B of this section:
A. A permit holder or other person whose alarm permit or registration has been revoked may be issued a new permit provided that all outstanding civil penalties assessed under this chapter for which a bill has been issued have been paid and the person:
1. Meets the qualifications of an applicant;
2. Submits an updated application and pays the established permit fee; and
3. Pays, or otherwise resolves, all complaints in municipal court issued to the person under this chapter.
B. The reinstatement of a permit may be refused if the police chief determines that the system proposed to be used or persons responsible for the alarm system under the reinstated permit have a history of unreliability. Factors to be used in determining a history of unreliability shall include:
1. Ten or more false alarm notifications in the thirty-day period prior to the revocation of

the permit; or
2. Two or more incidents of failure of the permit holder or alarm service business to respond to false alarm notifications by the police department in the thirty-day period prior to the revocation of the permit; or
3. Two or more incidents of continuing alarm system operation during the period in which the permit was revoked; or
4. Failure to provide proof that an alarm system business has properly serviced the system and corrected any deficiencies.
C. An appeal of the decision of the police chief to refuse to reinstate a permit under subsection B of this section may be made to a hearing officer in the same manner as an appeal from the assessment of a civil penalty in Section 5.13.120. A hearing officer shall affirm or reverse the decision of the police chief. The decision of a hearing officer is final.

5.13.140 Proper alarm system operation and maintenance

A. A permit holder or other person in control of an alarm system or premises in which an alarm system is operated:
1. Shall maintain premises containing an alarm system in a manner that insures proper operation of the alarm system;
2. Shall maintain the alarm system in a manner that will minimize false alarm notifications;
3. Shall not manually activate an alarm for any reason other than for an occurrence of an event as set forth in Section 5.13.010A of this chapter.
B. A permit holder or person in control of an alarm system shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm audible on the exterior of the alarm site will be actuated for no longer than ten minutes after being activated. It shall be a violation for an alarm signal to sound at an alarm site continuously for more than fifteen minutes.

5.13.150 Manual reset required

A. A permit holder or person in control of an alarm system which utilizes equipment that is capable of being adjusted so that the mechanism, upon activation, will not make or transmit another alarm signal from the alarm or a separate zone therein without first being manually reset, shall adjust or cause the system to be adjusted so that it will not make or transmit another alarm signal from the alarm or a separate zone therein that triggered a false alarm without first being manually reset.
B. No person, on or after July 1, 1996, shall install on premises located in the city an alarm system or replacement equipment which controls the system for an existing alarm system that does not utilize equipment that is capable of being adjusted so that the mechanism, upon activation, will not make or transmit another alarm signal from the alarm or a separate zone therein without first being manually reset.

5.13.160 Reporting of alarm signals

A. A permit holder or person in control of an alarm system shall not allow alarm signals to be reported through a relaying intermediary that does not comply with the requirements of this chapter or that is not licensed by the Texas Board of Private Investigators and Private Security Agencies, as may be required.
B. Before requesting a police response to an alarm signal, an alarm business must attempt to verify every alarm signal except for an alarm signal authorized under Section 5.13.090 of this chapter, an alarm signal emitted from a certified UL system, or an alarm signal emitted from an alarm system owned or operated by the city. If there is no response or confirmation in the initial verification attempt, an alarm business or its representative, shall make a second verification attempt to the alarm site and/or alarm user to determine whether an alarm signal is valid before requesting law enforcement dispatch.
C. An alarm notification may be canceled by the alarm system business by notice to the police department within four minutes of the alarm notification or prior to the arrival of a police officer at the scene of the alarm site, whichever occurs first, and the police department shall accept such cancellation of an alarm notification and a false alarm will be avoided.

5.13.170 Alarm dispatch records

A. The police department and the officer responding to a dispatch resulting from an alarm notification shall record or cause to be recorded such information as necessary to permit the police chief to maintain records, including but not limited to the following information:
1. Identification of the alarm site;
2. Date, dispatch received time and arrival time;
3. Weather conditions;
4. Name of permit holder's representative on premises, if any.
B. The responding officer shall indicate or cause to be indicated on a record the presence or absence of factors indicating whether the notification was caused by a criminal offense.
C. A copy of the record, as recorded at the alarm site by the responding officer, shall be left at the alarm site whenever possible. Otherwise, all records relating to the response shall be available upon written request, as permitted under the Texas Public Information Act, through the police department identification and records section.
D. In the event that a person or persons lawfully on the premises act or fail to act in any manner which results in the inability of the responding officer to make any inspection, determination, or report as set forth in this chapter, the officer shall make a determination that the alarm was false and shall note such determination on a record. In such an event, the officer shall not be required to leave a copy of the record at the alarm site.

5.13.180 Penalties

A. Any permit holder or other person who violates any provision of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in Chapter 1.08 of this code by a fine not to exceed five hundred dollars. Each day the violation occurs shall constitute a separate offense.
B. Each permit holder and each person having control over property on which an alarm system is installed has an affirmative duty to comply with all provisions of this chapter, and it shall not be a defense to prosecution of such a person that he was acting without a culpable mental state.

5.13.190 Severability

That the terms and provisions of the ordinances codified in this chapter are severable. If any provision, including inter alia any exception, defense, subsection, part, phrase, term, or word, or the application thereof to any person or circumstance is held invalid or unconstitutional by valid judgment or decree of a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this chapter and such remaining portions shall remain in full force and effect.

CHAPTER 5.14 SIGN CONTRACTOR LICENSE

5.14.010 Sign Contractor License

A. Licenses
1. License Required.
a. Except as provided herein, no person shall engage in the business of erecting, installing, servicing or maintaining signs for sale, rental or leasing purposes, and no permit shall be issued for the erection, construction or demolition of a sign, until such person shall have paid the established fee for that particular sign classification and received from the permit official a license to conduct such work.
2. Exemptions. Compliance with this section shall not be required in the following instances:
a. If the type of sign installed is exempt from the applicable provisions of Title 20 (Zoning) and does not require a permit prior to installation;
b. Electrical sign contractor licensed by the state and the sign installed requires electricity as a source of energy or in the operation of the sign; provided, that all electrical work shall be in compliance with Title 18 (Building and Construction) of the El Paso City Code. A copy of the state license shall be provided to the city.
3. Term. All licenses issued pursuant to this chapter shall continue in full force for one year from the date of issuance, and may be renewed annually thereafter upon payment of the established renewal fee unless the license has been suspended or revoked.
4. Renewal Date. A person licensed under this chapter must renew his license within thirty days prior to the expiration of their license or the license shall automatically expire and a new license shall be required prior to completing any work to which this chapter is applicable.

5. License Fees. There shall also be established fees for businesses engaged in painting signs and for the issuance of a duplicate license for one lost, destroyed or mutilated.
6. License Numbers. Each recipient of a license shall have painted, or placed, using a permanent type decal, within forty-eight hours after receipt of the license, the license number in a prominent position on all company vehicles used on job sites, as well as on all signs installed, erected or serviced by the licensee.
7. Suspension or Revocation of License.
a. The permit official may suspend or revoke the license and permit privileges of a person, or request the suspension of a state licensed electrical sign contractor after determining that the person is guilty of:
i. Fraud or deceit in obtaining a license under this chapter;
ii. Allowing a person other than the licensee who obtained the sign permit, or an employee acting under the direct supervision of that person, to perform work for which that permit is required;
iii. Gross negligence, incompetency, or misconduct in the performance of sign work;
iv. Intentionally making a false or misleading material statement on the application for a sign installation permit, sign license application or to support the zoning administrator's determination that a particular sign is a nonconforming sign;
v. Installing, moving, or structurally altering or repairing a sign in violation of this chapter; or
vi. Failing to maintain the insurance required by this chapter.
b. A licensee may appeal the permit official's decision to revoke or suspend the licensee's license to the City Manager pursuant to 5.01.090 of this code.
c. A person whose license is revoked may not apply for a license for a period of one year after the revocation.
d. Operating While Suspended or Revoked. It is unlawful for any person whose license has been suspended or revoked by the permit official to engage in, construct, install or otherwise attempt any work regarding signs for which a permit is required under Title 20 (Zoning) of this code.
8. Insurance and Indemnification Requirements.
a. Prior to the issuance of a license all persons applying for a license shall agree to indemnify and hold harmless the city, its members, agents, officers and employees, their successors and assigns, individually or collectively, from and against all liability for any fines, claims, suits, demands, action or causes of action of any kind and nature including, but not limited to, personal injury or death, and property damage, in any way arising out of or resulting from any activity or operation of the licensee. The licensee shall pay all expenses incurred in defending against any such claims made against the city; however, the license holder shall not be liable for any injury, damage, or loss caused by the sole negligence or willful misconduct of the city, its agents or employees. The licensee and the city shall give prompt and timely notice of any claim made, or suit initiated which in any way affects or might affect either party.
b. The licensee shall procure and maintain at his own expense, the following types and amounts of insurance:

Minimum limits of liability and coverage shall be the required statutory amount for worker's compensation; $250,000 for bodily injury liability, including death, for each person; and $500,000 in the aggregate; and $100,000 for property damage for each occurrence; and $100,000 in the aggregate. Permit and license applicants that are governmental entities may comply with the insurance requirements of this section by providing certification that they are self-insured.

c. In addition, the insurance policy shall state that the city shall:

i. Be named as additional insured/or insured, as its interest may appear;

ii. Be provided with a waiver of subrogation;

iii. Be provided with thirty days advance notice, in writing, of cancellation or material change;

iv. Be provided with certificates of insurance evidencing the required insurance types and amounts, prior to the commencement of the city's fiscal year. Notices and certificates of insurance shall be provided to the permit official.

d. Should a person holding a license sever employment connections with a firm which is jointly covered by the same insurance, a new certificate showing proper coverage will be required of both parties prior to either party receiving a new or renewal license.

e. If the insurance is canceled or renewed at periods other than the annual license renewal date, new evidence to show that the licensee is maintaining proper coverage shall be furnished to the city.

9. Bond Required.

a. No person shall erect, install or maintain any sign within the city, for which a permit is required, until such person has filed with the building official a bond in the sum of twenty five thousand dollars. The licensee shall provide the bond annually to the city no later than thirty days prior to the expiration of the bond currently in force. Such bond shall ensure the full and faithful compliance by the licensee of all the covenants, terms, and conditions of the construction codes of the city and the laws of the state; and provide for the indemnification of the city for any and all damages or liabilities that may accrue to or against the city by reason of erection, maintenance, demolition, repair, removal or defects in or collapse of any sign erected by or under the direction of such person; and further provide for the indemnification of any person who shall, upon public property of the city, incur damages for which the person erecting such sign is liable by reason of the erection, maintenance, demolition, repair, removal or defects in or collapse of any such sign. Persons, who erect, install or maintain and small businesses engaged only in sign painting shall be exempt from bonding provisions.

b. Bond Recovery and Disposition. The building official shall report each violation of this chapter to the city attorney who shall immediately make demand on the compliance bond holder and his sureties for the amount of liability for each offense. Should the compliance bond holder default, the city attorney may file suit upon the bond or seek any other lawful remedy for recovery of any amount due the city.

10. Enforcement—Penalty.

a. Civil and Criminal Penalties. The city manager and 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.
11. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

CHAPTER 5.15 VENDORS AND SOLICITORS

5.15.010 - Definitions

The following definitions apply to this chapter:

A. "Itinerant" means nonresident, and applies to any person engaging in the business of being a vendor or solicitor as herein defined, who does not reside in the City of El Paso.

B. "Merchandise" is to be construed broadly and includes but is not limited to any and all articles or objects of trade or commerce, goods, commodities, products, wares, money or any personal property to be sold, exhibited or offered for sale.

C. "Reside" means having dwelled continually within the City of El Paso for at least the thirty consecutive days immediately preceding the date of application for a license, or having owned, rented or leased a dwelling within the city during that period of time.

D. "Solicitor" means any person who shall solicit or accept orders for or subscriptions to any book, magazine or periodical, or for any merchandise when delivery is to be made in the future.

E. "Temporary" means any act of vending or soliciting transacted or conducted in the city upon premises for which definite arrangements have not been made in writing for the hire, rental or lease of such premises for at least three months for the

purpose of transacting or conducting such business of vending or soliciting.

F. "Vendor" means any person who engages in a temporary business in the city of selling, exhibiting or offering for sale any merchandise, including:

1. Ay person who engages in such business upon or from a truck or other vehicle within the limits of the city; or

2. Any person who hires, rents, leases or occupies any room or space in any building, structure, enclosure, vacant lot or any other property whatsoever in the city, in, through or from which any merchandise may be sold, offered or exhibited for sale; or

3. Any person who carries any merchandise with him, whether such merchandise is carried on foot or motor vehicle, or other conveyance whatsoever, from place to place, or from house to house, within the city, exhibiting or offering his own or his principal's merchandise for sale, and who then and there sells and delivers it to other persons or dealers;

4. Any person who engages in the business of buying, selling or exchanging money for profit.

5.15.020 - License—Required

No person shall engage in, transact or conduct the business or occupation of a vendor or solicitor, as herein defined, either as principal or as agent, servant or employee of any other person, without first having obtained a license therefor, unless such person is exempt, under the provisions of this chapter, from having to obtain such a license.

5.15.030 - License—Application—Revocation for failure to make required reports

A. As a prerequisite to obtaining the license herein required, every person engaging in the business of vendor or solicitor shall make application upon a blank or form to be furnished by the permit official, wherein the applicant shall give the following information:

1. Name, residence and business addresses, and length of occupancy of each;

2. Character or merchandise to be offered for sale;

3. Applicant's last business occupation, last place of residence, and license number and place of issuance or license of motor vehicle, if any, used in applicant's business;

4. Acceptable personal identification, such as a driver's license, birth certificate or passport;

5. Proof that the applicant has received or has applied for a Texas limited sales

and use tax permit;

6. Any other pertinent information deemed necessary by the permit official.

B. With respect to itinerant vendors and itinerant solicitors, the permit official shall refer the application to the chief of police. The chief of police may require any such applicant to be fingerprinted and to make periodic reports of his whereabouts and activities to the extent the chief of police deems it necessary to protect the public from any abuse of the privileges granted under this ordinance. After conducting a hearing, the chief of police may revoke the license of any person who fails to make reports as required by the chief of police under this provision.

5.15.040 - License fees

Every person, before engaging in the business of vending or soliciting in the city, shall pay, in advance, to the permit official, an annual city license fee as follows:

A. For every itinerant vendor or itinerant solicitor, one hundred dollars per year;

B. For every vendor or solicitor who uses any private motor vehicle as a means of conveyance for his merchandise or as a means of transportation for the purpose of engaging in business, seventy dollars per year;

C. For every person who engages in the business of buying, selling or exchanging money for profit, one hundred seventy dollars per year;

D. For every other person, forty dollars per year.

5.15.050 - License—Issuance—Contents—Display—Nontransferable

Upon payment of the license fee as herein provided, the permit official shall issue and deliver to such vendor or solicitor a license which shall show the date of issuance, the name, occupation, place of residence of licensee and fee paid therefore, and the licensee shall carry his license with him and shall exhibit the same whenever requested by any inspector, police officer or other officer authorized by law to make inspections and arrests under this chapter. No license issued hereunder shall be transferable.

5.15.060 - License—Term

Licenses issued under this chapter shall expire one year from the date of issuance.

5.15.070 - License—Temporary—Fee—Term

A. A temporary license or receipt may be issued to any itinerant vendor or solicitor who engages in the business of a vendor or solicitor, as herein defined, within the city, during a time when he would be unable to apply for a Texas limited sales and use tax permit as required by Section 5.15.030(A)(5).

1. Such a temporary license or receipt shall be valid for not more than two

consecutive days;

2. The fee for a temporary license as herein provided shall be twenty dollars;

3. An itinerant vendor shall be eligible for a temporary license under this section only once without obtaining the Texas limited sales and use tax permit.

B. All other licensing provisions found in this chapter shall remain in full force and effect and apply equally to those doing business with a temporary license or receipt.

5.15.080 - 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.

5.15.090 - Exemptions

This chapter shall not apply to:

A. Any person (to include, but not limited to, farmers, vendors, peddlers, hucksters, whether on foot or from a vehicle) who distributes, transports or sells only foods or beverages, provided such person shall pay the license fee and comply with all applicable provisions set forth in Chapter 9.12 of this Code;

B. The distribution or sale of newspapers, pamphlets, handbills or other written or printed matter sold or distributed for the purpose of disseminating news, information or religious materials;

C. Any nonprofit or charitable organization; or any person participating in an exhibition or event sponsored by a nonprofit or charitable organization; provided, that the organization obtain the approval of the permit official;

D. Any person who has obtained a permit under the provisions of Chapter 5.03, Charitable Solicitations;

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;

F. An ordinary commercial traveler who sells or exhibits for sale merchandise to parties engaged in the business of buying and selling and dealing in such merchandise;

G. Farmers or their employees who produce and sell farm products, poultry, stock or agricultural products in their natural state;

H. Anyone engaged wholly in interstate commerce, or anyone whose operations form an integral part of interstate commerce and upon whom the provisions of this chapter would impose a direct and unlawful burden with respect to such operations;

I. Any person residing in the city who does not regularly engage in the business of vending or soliciting and who, on five or less days during the course of any calendar year, transacts sales of used merchandise which had previously been obtained for domestic or personal use, provided that such person, upon the request of the permit official, shall sign a statement verifying that:

1. Such person is not in the business of vending or soliciting, and

2. Such person has not and will not transact sales under this section on more than five days during the course of the current calendar year;

J. Nothing contained in this Section 5.15.090 shall be construed to relieve any person of any City Charter or ordinance requirement, including but not limited to the requirements of Chapter 9.12 (Food and Food Handling Establishments), or Chapter 13.20 (Miscellaneous Street and Sidewalk Use Regulations).

5.15.095 - Where vending or soliciting may be conducted within the city

A. Vending or soliciting conducted within the city shall be on premises which are zoned for retail sales, including the renting, leasing or occupying of any room or space in any building, structure, enclosure, vacant lot or any other property in the city.

B. Any person engaging in the business of being a vendor or solicitor within the city shall not exhibit and offer his own or his principal's merchandise for sale in violation of Section 13.20.040 of the city code.

5.15.100 - Violation—Penalty

Any person violating any of the provisions of this chapter shall upon conviction be punished by a fine not to exceed two hundred dollars as provided in Sections 1.08.010 through 1.08.030, and each separate act of vending or soliciting shall be a separate offense.

CHAPTER 5.16 DISTRIBUTION OF LITERATURE, SOLICITATION OF DONATIONS AND OTHER REGULATED ACTIVITIES AT THE EL PASO ZOO

5.16.010 - Purpose

It is the purpose of this title:

A. To assure the fair use of the public areas at the El Paso Zoo by persons seeking to exercise constitutional freedom of expression and for religious organizations to proselytize or solicit funds;

B. To permit equitable access among persons and groups desiring to exercise such constitutional freedoms;

C. To restrict such activities to public areas of the El Paso Zoo, which do not include areas within the zoo perimeter fence and wall;

D. To prevent interference with patrons and other users of the zoo; to allow full access to zoo facilities and free passage among those facilities and to ensure the free and orderly flow of pedestrian traffic into, throughout and out of the zoo premises;

E. To discourage interference with zoo patrons who are required to wait in lines.

5.16.020 - Definitions

Notwithstanding anything to the contrary set forth elsewhere in this title, the following definitions shall apply for the purpose of this section:

A. "Director" means the director of the El Paso Zoo or his designee.

B. "Permittee" means a person or organization conducting regulated activities pursuant to a permit duly issued under this chapter.

C. "Public areas" means those portions of the zoo outside the perimeter fence directly in front of the main zoo entrance which permits generally unrestricted access.

D. "Regulated activities" means those activities by persons or organizations desiring to exercise constitutionally protected rights of free speech and expression and freedom of religion, for which a permit is required under this chapter, namely:

1. Religious or other proselytism;

2. Solicitation and acceptance of donations;

3. Distribution of handbills, tracts and other literature.

E. "Zoo" means the area of the El Paso Zoo located at 4001 E. Paisano, El Paso, Texas.

5.16.030 - Conduct of regulated activities

The conduct of regulated activities pursuant to this chapter will be permitted in the following manner in the public areas of the zoo:

A. No individual shall be approached by more than one distributor or solicitor at a time;

B. No distributor or solicitor shall make noise or create any disturbance which will interfere with the ability of the public to hear public address announcements nor shall any distributor or solicitor shout at any person. The use of sound or voice amplification apparatus is prohibited;

C. To ensure the efficient and orderly use of the zoo for its primary purpose and to assure equal opportunity for freedom of expression, not more than a total of two persons shall be permitted to engage in regulated activities in the zoo at the same time;

D. No regulated activity shall interfere with the free passage of the public into and out of the zoo;

E. No signs, placards or other materials shall be affixed to zoo buildings, fences or walls;

F. No leaflets or other written materials shall be distributed by leaving them unattended;

G. No person shall engage in regulated activities under this chapter except in one of the designated areas indicated on Exhibit A and no more than one person shall be in a designated area at any given time;

H. No person engaging in regulated activities under this chapter shall, by word or gesture or otherwise, harass or threaten any other persons or in any way obstruct, delay or interfere with the free movement of any other person or seek to coerce or physically disturb or touch any other person without that person's permission; or hamper or impede or interfere with the conduct of any authorized business at the zoo;

I. Engaging in regulated activities under this chapter in any location other than one assigned in a permit issued by the zoo director is prohibited.

5.16.040 - Permit requirement

It is unlawful for any person or organization to engage in any regulated activities under this chapter without first obtaining a written permit from the director. For the purposes of obtaining such a permit a written application on a form prescribed by and provided by the city must be filed with the director. The filing of such application is required in order that adequate precautions may be taken by the director to protect the public health, safety and

order and to ensure the efficient and orderly use of zoo property for its primary purpose and to ensure equal opportunity for freedom of expression. The application shall:

A. Contain the full name, mailing address and telephone number of the applicant;

B. If the applicant is an organization, contain the full name, mailing address and telephone number of a person acting for the organization and responsible for the proposed activities;

C. State the purpose or subject of the proposed activity;

D. Contain a description of the proposed activities and type of communication to be involved;

E. State the desired date or dates, hours and location of such activities. Requested locations shall be one of the locations indicated on Exhibit A attached to the ordinance codified in this chapter, and adopted by reference. Where more than one applicant requests the same location or locations the assigned location will be based upon the drawing of lots;

F. State the number of persons and their names who propose to participate in such activities during the permit period;

G. If the applicant is a person or organization which solicits or accepts alms or gifts by representing or claiming that any charitable, patriotic, fraternal or philanthropic organization is to receive a benefit therefrom, have attached a copy of the charitable solicitation permit under Chapter 5.03 of this Code or evidence that the person or organization is exempt therefrom;

H. State any additional information requested by the director and reasonably necessary for a fair determination as to whether a permit shall issue.

5.16.050 - Issuance of permits

A. Applications for permits under this chapter must be submitted between the hours of eight a.m. and five p.m., Tuesday through Thursday of each week at the zoo administration office, or at such other place designated by the director. A maximum of two permits will be issued for a total of two persons, inclusive of all permits. Where more than one applicant requests a permit, permits will be granted to insure that each applicant is authorized to have at least one person authorized to engage in regulated activities for the applicant, subject to the overall maximum of two persons during any permit period.

B. The number of persons authorized to engage in regulated activities under a permit will be allocated as follows:

1. One applicant, any number up to a maximum of four;

2. Two applicants, a maximum of two per permit;

3. More than two applicants, all applicants present at the time and place assigned for issuance of permits will draw lots in a manner to be determined by the director. A permit will be issued to each of the two successful applicants authorizing one person per permit.

C. Permits will be issued every Monday at ten a.m. in the zoo administration office, or at such other place designated by the director. An applicant or its representative must be present to receive a permit. Permits issued will be valid for a one-week period beginning at nine-thirty a.m. each Tuesday and ending at five p.m. the following Monday.

D. The permit issued by the director shall set forth the number of persons authorized by the permit, the activities which are permitted, the permitted time and duration of the activities and the location or locations at which the activities may be conducted. All persons engaging in regulated activities under this chapter must be authorized representatives of a permittee and such persons must register in advance with the director. The provisions of Section 5.16.030 of this chapter shall be considered to be incorporated into, and made a part of, the terms and conditions of any permit issued under this chapter.

E. Permits shall not be valid and shall not be issued to any applicant for days on which the public areas at the zoo must be used for special functions.

5.16.060 - Late applications

In an emergency and for good cause stated in the application, a person or organization may file an application later than Thursday of each week, to engage in regulated activities. Except for the time of filing, the application must comply with all other applicable requirements of this chapter. The director will issue a permit based on the standards set forth in this section if:

A. The late filing was not due to lack of diligence on the part of the applicant;

B. The filing does not unreasonably prejudice the city in preparing for the proposed activity;

C. No applicant who has filed in a timely manner will be displaced by the granting of a late-filed application.

5.16.070 - Denial of permit

A. A permit applicant denied a permit by the director shall be furnished a written statement at the time of denial, indicating the reason or reasons the permit was denied. The applicant has five business days after receipt of the notice of denial to file with the city clerk a written protest to the denial. A copy of the written protest shall also be sent to the director.

B. The city council shall conduct a hearing and make a determination on the matter. The council shall, as soon as practicable, hear such protest, after reasonable notice to the

protesting party and the director. The appealing party and the director shall have the opportunity to present evidence and to make argument. The formal rules of evidence shall not apply to the hearing and the city council shall make its ruling on the basis of a preponderance of the evidence presented at the hearing. The city council shall sustain, reverse or modify the action of the director and certify its action to the director.

C. If the city council sustains all or part of the zoo director's action in denying the permit, the permit applicant has five business days after action by the city council to file a written protest to the council's action with the city clerk.

D. Upon receipt of such written protest the city shall, within ten business days, apply to either the U.S. District Court for the Western District of Texas or the district courts for the county, for a judicial determination as to whether the action of the city council was proper, naming the applicant a party defendant. The city shall make every reasonable effort to have the issue heard on its merits without delay, and as soon as legally possible. The burden of showing that the action of the city council was proper shall rest on the city.

E. If the issue for judicial determination is not heard within fifteen days from the date the complaint (or petition) is filed, then an interim permit shall be deemed issued under this section by operation of law, except where denial of the permit is based on the provisions of Section 5.16.030(C) of this chapter. Any interim permit under this subsection shall be subject to the same restrictions and obligations under which any permit under this chapter is issued.

5.16.080 - Suspension or revocation

A. The permit of any person or organization who violates the terms of a permit issued under this chapter may be suspended or revoked by the director, after reasonable notice and an opportunity to be heard. The permittee shall have an opportunity to present evidence and to make argument. The formal rules of evidence shall not apply and the director shall make his decision on the basis of a preponderance of the evidence.

B. Any person who is authorized to engage in regulated activities under this chapter on behalf of a permittee may have his or her permission to engage in regulated activities suspended or revoked by the director in accordance with the procedures set forth in Section 5.16.080(A).

C. A person or organization may appeal a suspension or revocation of a permit or the suspension or revocation of the permission of a person to engage in regulated activities on behalf of a permittee, if such person or organization requests an appeal in writing, delivered to the city clerk not more than ten business days after notice of the suspension or revocation is received. A copy of the appeal shall also be furnished to the director. If the appeal is from a suspension, receipt of a written appeal by the city clerk will toll the period of suspension until the appeal is heard and decided by the city council.

D. The city council shall conduct the hearing and make the final determination on the matter. The council shall, as soon as practicable, hear such appeal, after reasonable notice

to the appealing party and the director. The appealing party and the director shall have the opportunity to present evidence and to make argument. The formal rules of evidence shall not apply and the city council shall make its ruling on the basis of a preponderance of the evidence. The city council shall sustain, reverse or modify the action of the director and certify its action to the director. The decision of the city council is final.

5.16.090 - Violation—Penalty

Any person who violates any provision of this chapter or who intentionally violates the terms of a permit issued to engage in regulated activities at the El Paso International Zoo shall be guilty of a misdemeanor and is punishable as provided in Sections 1.08.010 through 1.08.030 of this Code.

Section 2. The effective date of this ordinance shall be February 29, 2012. This ordinance shall be applicable to all permit and license applications received on or after that date.

PASSED AND APPROVED this _____ day of _____, 2011.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
for R. Alan Shubert, P.E.
City Engineer