

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

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2019 AUG 13 PM4:59

DEPARTMENT: ENVIRONMENTAL SERVICES

AGENDA DATE: Introduction: August 20, 2019
Public Hearing: September 3, 2019

CONTACT PERSON: ELLEN A. SMYTH, P.E., DIRECTOR, ESD
212-6060

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DISTRICT (S) AFFECTED: All

STRATEGIC GOAL: Goal 1.6: Provide business friendly permitting and inspection process

SUBJECT: An Ordinance amending Chapters 5.01 (General), 5.02 (Alcoholic Beverages), 5.03 (Amplified Sound Permit), 5.04 (Flea Market Operator), 5.05 (Public Swimming Pool Licenses), 5.06 (Home Occupation License), 5.07 (Boarding Home Facilities), 5.08 (Laundries), 5.09 (Sexually Oriented Businesses), and 5.10 (Tattoo and Body Art Studio Registration and Artist License) of Title 5 (Business License and Permit Regulations) of the El Paso City Code to allow additional designated City employees to enforce Title 5 and conduct corresponding inspections and investigations.

BACKGROUND / DISCUSSION:

Effective Fiscal Year 2020, Code Compliance Officers and Inspectors from the Planning and Inspections Dept. (PID) will be transferred to the Environmental Services Department in an effort to consolidate operations for City employees responsible for enforcing the El Paso City Code. This Property Maintenance and Zoning (PMZ) team (formerly the Building Safety enforcement team) will be responsible for enforcing multiple titles in the City Code, including Title 5 – Business License and Permit Regulations.

Title 5 currently has numerous references in its chapters to specific departments, officials and directors who are granted authority to investigate and enforce per the respective chapters. In an effort to accommodate the shift of PMZ staff from PID to ESD and to streamline and provide consistency within Title 5, revisions to the ordinance are proposed. To achieve this, the definition of "city official" will be added, which is defined as "any director or official designated by the City Manager to enforce provisions of this Title, which includes but is not limited to a permit official, building official, and fire official."

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

Ellen Smyth, P.E.

August 12, 2019

Name

Signature

Date

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.01 (GENERAL); CHAPTER 5.02 (ALCOHOLIC BEVERAGES); CHAPTER 5.03 (AMPLIFIED SOUND PERMIT); CHAPTER 5.04 (FLEA MARKET OPERATOR); CHAPTER 5.05 (PUBLIC SWIMMING POOL LICENSES); CHAPTER 5.06 (HOME OCCUPATION LICENSE); CHAPTER 5.07 (BOARDING HOME FACILITIES); CHAPTER 5.08 (LAUNDRIES); CHAPTER 5.09 (SEXUALLY ORIENTED BUSINESSES); AND CHAPTER 5.10 (TATTOO AND BODY ART STUDIO REGISTRATION AND ARTIST LICENSE) OF THE EL PASO CITY CODE TO ALLOW ADDITIONAL DESIGNATED CITY EMPLOYEES TO ENFORCE TITLE 5 AND CONDUCT CORRESPONDING INSPECTIONS AND INVESTIGATIONS, THE PENALTY BEING AS PROVIDED IN SECTION 5.01.100 (VIOLATION, PENALTY); SECTION 5.02.170 (VIOLATIONS AND PENALTIES); SECTION 5.03.130 (VIOLATION); SECTION 5.04.010 (FLEA MARKET OPERATOR LICENSE PROVISIONS), PARAGRAPH C (ENFORCEMENT-PENALTY); SECTION 5.05.160 (VIOLATIONS AND PENALTIES); SECTION 5.06.020 (HOME OCCUPATION LICENSE PROVISIONS), PARAGRAPH G (ENFORCEMENT-PENALTY); SECTION 5.07.150 (OFFENSES AND CRIMINAL PENALTIES); SECTION 5.09.150 (PENALTIES AND ENFORCEMENT); SECTION 5.10.180 (VIOLATION AND PENALTIES), RESPECTIVELY, OF THE EL PASO CITY CODE.

WHEREAS, Title 5 of the El Paso City Code relates to the regulation of various licenses and permits that are currently enforced by different city Departments; and

WHEREAS, the City of El Paso now wishes to authorize additional designated City Employees to enforce Title 5 and conduct corresponding inspections and investigations.

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

Section 1. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.005 be added and read as follows:

5.01.005- City official.

For purposes of Title 5 of this Code, the term "City official" is defined as any director or official designated by the City Manager to enforce provisions of this Title, which includes but is not limited to a permit official, building official, and fire official.

Section 2. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.010 (Permit official) be amended to read as follows:

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.

Section 3. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.080 (Enforcement and collection) be amended to read as follows:

5.01.080 - Enforcement and collection.

- A. Any peace officer, code enforcement officer, and inspector designated by the City 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 designee to enter property for the purpose of making inspection, the designee shall have recourse to every remedy provided by law to secure entry, including judicial warrant.
- B. Any peace officer, code enforcement officer, and inspector designated by the appropriate City 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 authorize additional City employees to issue citations to any person found to be in violation of Title 5 of this Code.
- D. 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.

Section 4. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.090 (License/Permit-Appeal of denial, suspension or revocation), Subsection B be amended to read as follows:

5.01.090 - License/Permit—Appeal of denial, suspension or revocation.

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

Section 5. That Title 5 (Business License and Permit Regulations), Chapter 5.02 (Alcoholic Beverages), Section 5.02.070 (Certification of compliance with city requirements for application to the Texas Alcoholic Beverage Commission), Subsections C& D be amended to read as follows:

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

- C. The permit official shall forward copies of the completed and verified application to the appropriate city officials.

- D. Each City official receiving a copy of the application under subsection C. shall require that a proper investigation and inspection be conducted 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, the City 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.

Section 6. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.040 (Permit application processing), Subsection B (Notification), Paragraphs 3 and 4 be amended to read as follows:

5.03.040 - Permit application processing.

B. Notification

3. On behalf of the applicant, the permit official shall notify every abutting residential property owner and any other residential property owner(s) within a one hundred fifty-foot radius, measured from the center point of the outdoor area of the establishment, for the purpose of securing a written response from each notified property owner. Each notification shall provide recipients with pertinent information regarding his or her opportunity to contest an application. The written response to an opportunity to contest shall allow a person to submit evidence and specific reasons why the issuance of the permit would be detrimental to the community.
4. When an establishment is located in a mixed use building, the permit official shall issue written notice of intent to acquire a permit to the building owner.

Section 7. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.090 (Suspension and revocation), Subsection F be amended to read as follows:

5.03.090 - Suspension and revocation.

- F. The permit official may allow a permit holder the option of submitting a compliance plan addressing the specific issues of the establishment's noncompliance in lieu of suspension or revocation. In order to avail itself of this option, the permit holder must submit within ten calendar days of the notice of suspension or revocation a plan to mitigate the issues specified in the city's notice. The compliance plan must address each issue specified in the notice and state a date certain for expected compliance. The establishment shall cease the outdoor amplification of sound until compliance is confirmed by the permit official. A permit official shall have fourteen calendar days to review the proposed compliance plan and provide notice to the establishment indicating whether the compliance plan is approved, denied or requires revision. Failure to comply by the

terms of an approved compliance plan may result in the suspension or revocation of the establishment's permit subject to the provisions set forth in Section 5.03.090 of this Code.

Section 8. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.110 (Permit standards), Subsection E be amended to read as follows:

5.03.110 - Permit standards.

- E. A copy of the sound impact plan must be maintained at the establishment and made available to any person authorized by the chapter to enforce the permit requirements, this includes but is not limited to designated peace officers, code enforcement officers, and inspectors.

Section 9. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.120 (Enforcement) be amended to read as follows:

5.03.120 - Enforcement.

In addition to the requirements set forth in Section 5.01.080 of the El Paso City Code, the permit official as well as any designated peace officer, code enforcement officer and inspector of the city shall be authorized to make inspections of the establishment and issue citations to any person found to be in violation of this chapter. If the owner or permit holder of such establishment shall refuse to permit the permit official, or designee to enter the establishment for the purpose of making the inspection, the permit official, designated peace officer, code enforcement officer or inspector shall have recourse to every remedy provided by law to secure entry, including judicial warrant.

Section 10. That Title 5 (Business License and Permit Regulations), Chapter 5.04 (Flea Market Operator), Section 5.04.010 (Flea market operator license provisions), Subsection C (Enforcement-Penalty), Paragraph 1 is amended to read as follows:

5.04.010 - Flea market operator license provisions.

C. Enforcement—Penalty.

1. Civil and criminal penalties. The permit official and designated City officials 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.

Section 11. That Title 5 (Business License and Permit Regulations), Chapter 5.05 (Public Swimming Pool Licenses), Section 5.05.020 (Definitions), Subsections B & C be amended to read as follows:

5.05.020 - Definitions.

- B. "Department" means the department designated by the City Manager to administer the provisions of this Chapter.
- C. "Director" means the City official of the department designated by the City Manager to enforce the provisions of this Chapter.

Section 12. That Title 5 (Business License and Permit Regulations), Chapter 5.05 (Public Swimming Pool Licenses), Section 5.05.150 (Enforcement authority) be amended to read as follows:

5.05.150 - Enforcement authority.

The director, permit official and designated City officials shall be authorized to administer and enforce the provisions of this chapter and Chapter 9.48.

Section 13. That Title 5 (Business License and Permit Regulations), Chapter 5.06 (Home Occupation License), Section 5.06.020 (Home occupation license provisions), Subsection G (Enforcement-Penalty), Paragraph 1 (Penalties) is amended to read as follows:

5.06.020 - Home occupation license provisions.

G. Enforcement—Penalty.

- 1. Penalties. The permit official and designated City officials 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 hereby declared to be a nuisance.

Section 14. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.010 (Definitions) is amended to read as follows:

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. "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.
7. 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.

8. "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.
9. "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.
10. "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.
11. "Resident" means a person who is residing in a boarding home facility.

Section 15. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.020 (Permit required and fee), Subsections A & C are amended to read as follows:

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 permit official is the responsible agent 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.
- C. Boarding home owners/operators must provide to the permit official 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.

Section 16. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.030 (Inspections) be amended to read as follows:

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 permit official prior to the issuance of a permit. The following inspections are required:

1. Annual fire inspection by the fire official.
2. Annual kitchen inspection by the department of public health or other City department responsible for enforcing food safety requirements of the El Paso City Code;
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.

Section 17. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.040 (Construction/remodeling), Subsection A be amended to read as follows:

5.07.040 - Construction/remodeling.

- A. Each owner/operator of a boarding home facility must ensure each 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.

Section 18. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.120 (Inspection) be amended to read as follows:

5.07.120 - Inspection.

Any designated peace officer, code enforcement officer, and inspector 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.

Section 19. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.130 (Required reports to the health and human services commission) be amended to read as follows:

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 permit official shall submit a report to the State of Texas 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.

Section 20. Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.140 (Appeal Process for denial, revocation, suspension or denial for renewal of permit) be amended to read as follows:

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

- A. A boarding home facility owner/operator 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 appropriate City official shall notify the permit official of a boarding home facility owner/operator's failure to comply with any of the provisions of this chapter. The permit 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 City official shall keep the permit official informed as to the compliance/non compliance with the notice of violation. If the violations have not been cured within thirty (30) days, the permit 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 city manager or designated deputy city manager, 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 permit official.

Section 21. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.010 (Definitions) is amended to read as follows:

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 City official of the department designated by the City Manager to enforce this Chapter.

"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.

Section 22. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.020 (License-Required-Application-Investigation-Issuance), Subsection C is amended to read as follows:

5.08.020 - License—Required—Application—Investigation—Issuance.

- 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. The director 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 (30) 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.

Section 23. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.030 (License-Denial-Suspension-Revocation) is amended to read as follows:

5.08.030 - License—Denial—Suspension—Revocation.

The permit official, upon consultation with the appropriate City official, 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 Section 5.01.090 of this Code.

Section 24. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.170 (Inspections) is amended to read as follows:

5.08.170 - Inspections.

It shall be the duty of the director and he is authorized and empowered to designate peace officers, code enforcement officers and inspectors 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.

Section 25. That Title 5 (Business License and Permit Regulations), Chapter 5.09 (Sexually Oriented Businesses), Section 5.09.020 (Definitions) is amended to read as follows:

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.

"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.

Section 26. That Title 5 (Business License and Permit Regulations), Chapter 5.09 (Sexually Oriented Businesses), Section 5.09.060 (Inspection) is amended to read as follows:

5.09.060 - Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the permit official, designated peace officers, code enforcement officers and inspectors from time to time on an occasional basis, onto 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.

Section 27. That Title 5 (Business License and Permit Regulations), Chapter 5.09 (Sexually Oriented Businesses), Section 5.09.100 (Hearing; denial, revocation and suspension; appeal) is amended to read as follows:

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 permit official 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 City official: 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.

Section 28. That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License), Section 5.10.020 (Definitions), Subsections E & F is amended to read as follows:

5.10.020 - Definitions.

- E. "Department" means the department designated by the City Manager to administer the provisions of this Chapter.
- F. "Director" means the City official designated by the City Manager to enforce the provisions of this Chapter.

Section 29: That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License), Section 5.10.110 (Enforcement authority) is amended to read as follows:

5.10.110 - Enforcement authority.

The permit official and the director and their designees or any duly authorized representative, including but not limited to a designated peace officer, code enforcement officer and inspector, shall be authorized to administer and enforce the provisions of this chapter and to issue citations to any person violating the provisions of this chapter.

Section 30: That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License), Section 5.10.160 (Appeals) is amended to read as follows:

5.10.160 - Appeals.

The right to appeal a registration or license denial, suspension or revocation shall be in accordance with Chapter 5.01.090 of the City Code.

Section 31: Title 5 (Business License and Permit Regulations) amendments shall take effect on September 1, 2019.

Section 32: Except as herein amended, Title 5 (Business License and Permit Regulations) shall remain in full force and effect.

PASSED AND APPROVED THIS ____ day of 2019.

CITY OF EL PASO


Dee Margo
Mayor

CITY OF EL PASO

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Ana Schumacher
Assistant City Attorney

Ellen A. Smyth, P.E., Director of
Department of Environmental Services

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.01 (GENERAL); CHAPTER 5.02 (ALCOHOLIC BEVERAGES); CHAPTER 5.03 (AMPLIFIED SOUND PERMIT); CHAPTER 5.04 (FLEA MARKET OPERATOR); CHAPTER 5.05 (PUBLIC SWIMMING POOL LICENSES); CHAPTER 5.06 (HOME OCCUPATION LICENSE); CHAPTER 5.07 (BOARDING HOME FACILITIES); CHAPTER 5.08 (LAUNDRIES); CHAPTER 5.09 (SEXUALLY ORIENTED BUSINESSES); AND CHAPTER 5.10 (TATTOO AND BODY ART STUDIO REGISTRATION AND ARTIST LICENSE) OF THE EL PASO CITY CODE TO ALLOW ADDITIONAL DESIGNATED CITY EMPLOYEES TO ENFORCE TITLE 5 AND CONDUCT CORRESPONDING INSPECTIONS AND INVESTIGATIONS, THE PENALTY BEING AS PROVIDED IN SECTION 5.01.100 (VIOLATION, PENALTY); SECTION 5.02.170 (VIOLATIONS AND PENALTIES); SECTION 5.03.130 (VIOLATION); SECTION 5.04.010 (FLEA MARKET OPERATOR LICENSE PROVISIONS), PARAGRAPH C (ENFORCEMENT-PENALTY); SECTION 5.05.160 (VIOLATIONS AND PENALTIES); SECTION 5.06.020 (HOME OCCUPATION LICENSE PROVISIONS), PARAGRAPH G (ENFORCEMENT-PENALTY); SECTION 5.07.150 (OFFENSES AND CRIMINAL PENALTIES); SECTION 5.09.150 (PENALTIES AND ENFORCEMENT); SECTION 5.10.180 (VIOLATION AND PENALTIES), RESPECTIVELY, OF THE EL PASO CITY CODE.

WHEREAS, Title 5 of the El Paso City Code relates to the regulation of various licenses and permits that are currently enforced by different city Departments; and

WHEREAS, the City of El Paso now wishes to authorize additional designated City Employees to enforce Title 5 and conduct corresponding inspections and investigations.

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

Section 1. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.005 be added and read as follows:

5.01.005- City official.

For purposes of Title 5 of this Code, the term "City official" is defined as any director or official designated by the City Manager to enforce provisions of this Title, which includes but is not limited to a permit official, building official, and fire official.

Section 2. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.010 (Permit official) be amended to read as follows:

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-City officials with authority to issue, deny, suspend or revoke licenses or permits.

Any reference to the permit official or other ~~city~~-City official with authority to enforce the terms of this title, shall also include that person's designee.

Section 3. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.080 (Enforcement and collection) be amended to read as follows:

5.01.080 - Enforcement and collection.

- A. ~~The permit official~~Any peace officer, code enforcement officer, and inspector designated by the City 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 designee~~ to enter property for the purpose of making inspection, the ~~permit official~~designee shall have recourse to every remedy provided by law to secure entry, including judicial warrant.
- B. ~~The~~Any permit officialpeace officer, code enforcement officer, and inspector designated by the appropriate City 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.~~
- ~~DC.~~ Specific chapters under Title 5 of this Code may ~~designate~~authorize additional ~~city~~-City officials~~employees~~ authority to issue citations to any person found to be in violation of Title 5 of this Code.
- ~~ED.~~ The ~~city~~-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.

Section 4. That Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Section 5.01.090 (License/Permit-Appeal of denial, suspension or revocation), Subsection B be amended to read as follows:

5.01.090 - License/Permit—Appeal of denial, suspension or revocation.

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

Section 5. That Title 5 (Business License and Permit Regulations), Chapter 5.02 (Alcoholic Beverages), Section 5.02.070 (Certification of compliance with city requirements for application to the Texas Alcoholic Beverage Commission), Subsections C& D be amended to read as follows:

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

- C. The permit official shall forward copies of the completed and verified application to the ~~building office, the fire chief and the director of the department of public health~~ appropriate City officials.
- D. Each ~~city~~-City official receiving a copy of the application under subsection C, shall ~~instruct a peace officer, code enforcement officer or inspector to require that a proper~~ undertake the investigation and inspections be conducted 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, the City 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.

Section 6. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.040 (Permit application processing), Subsection B (Notification), Paragraphs 3 and 4 be amended to read as follows:

5.03.040 - Permit application processing.

B. Notification

- 3. On behalf of the applicant, the ~~city~~-permit official shall notify every abutting residential property owner and any other residential property owner(s) within a one hundred fifty-foot radius, measured from the center point of the outdoor area of the establishment, for the purpose of securing a written response from each notified property owner. Each notification shall provide recipients with pertinent information regarding his or her opportunity to contest an application. The written response to an opportunity to contest shall allow a person to submit evidence and specific reasons why the issuance of the permit would be detrimental to the community.
- 4. When an establishment is located in a mixed use building, the ~~city~~-permit ~~office~~official shall issue written notice of intent to acquire a permit to the building owner.

Section 7. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.090 (Suspension and revocation), Subsection F be amended to read as follows:

5.03.090 - Suspension and revocation.

- F. The ~~city-permit official~~ may allow a permit holder the option of submitting a compliance plan addressing the specific issues of the establishment's noncompliance in lieu of suspension or revocation. In order to avail itself of this option, the permit holder must submit within ten calendar days of the notice of suspension or revocation a plan to mitigate the issues specified in the city's notice. The compliance plan must address each issue specified in the notice and state a date certain for expected compliance. The establishment shall cease the outdoor amplification of sound until compliance is confirmed by the permit official. A permit official shall have fourteen calendar days to review the proposed compliance plan and provide notice to the establishment indicating whether the compliance plan is approved, denied or requires revision. Failure to comply by the terms of an approved compliance plan may result in the suspension or revocation of the establishment's permit subject to the provisions set forth in Section 5.03.090 of this Code.

Section 8. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.110 (Permit standards), Subsection E be amended to read as follows:

5.03.110 - Permit standards.

- E. A copy of the sound impact plan must be maintained at the establishment and made available to any person authorized by the chapter to enforce the permit requirements, ~~this includes but is not limited to designated peace officers, code enforcement officers, and inspectors.~~

Section 9. That Title 5 (Business License and Permit Regulations), Chapter 5.03 (Amplified Sound Permit), Section 5.03.120 (Enforcement) be amended to read as follows:

5.03.120 - Enforcement.

In addition to the requirements set forth in Section 5.01.080 of the El Paso City Code, the permit official as well as any ~~designated peace officer, code enforcement officer or and inspector~~ of the city shall be authorized to make inspections of the establishment and issue citations to any person found to be in violation of this chapter. If the owner or permit holder of such establishment shall refuse to permit the permit official, ~~designated peace officer code enforcement officer or inspector or designee~~ to enter the establishment for the purpose of making the inspection, the permit official, ~~or peace designated peace officer, code enforcement officer or inspector~~ shall have recourse to every remedy provided by law to secure entry, including judicial warrant.

Section 10. That Title 5 (Business License and Permit Regulations), Chapter 5.04 (Flea Market Operator), Section 5.04.010 (Flea market operator license provisions), Subsection C (Enforcement-Penalty), Paragraph 1 is amended to read as follows:

5.04.010 - Flea market operator license provisions.

C. Enforcement—Penalty.

1. Civil and criminal penalties. The ~~city manager~~permit official and ~~his designated designees~~City officials, 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.

Section 11. That Title 5 (Business License and Permit Regulations), Chapter 5.05 (Public Swimming Pool Licenses), Section 5.05.020 (Definitions), Subsections B & C be amended to read as follows:

5.05.020 - Definitions.

- B. "Department" means the department designated by the City Manager to administer the provisions of this Chapter of environmental services.
- C. "Director" means the City official of the department designated by the City Manager to enforce the provisions of this Chapter, ~~director of the department of environmental services, or designee.~~

Section 12. That Title 5 (Business License and Permit Regulations), Chapter 5.05 (Public Swimming Pool Licenses), Section 5.05.150 (Enforcement authority) be amended to read as follows:

5.05.150 - Enforcement authority.

The ~~director, permit official and designated City official~~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.

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Section 13. That Title 5 (Business License and Permit Regulations), Chapter 5.06 (Home Occupation License), Section 5.06.020 (Home occupation license provisions), Subsection G (Enforcement-Penalty), Paragraph 1 (Penalties) is amended to read as follows:

5.06.020 - Home occupation license provisions.

G. Enforcement—Penalty.

1. Penalties. The ~~permit official and designated City official~~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 hereby declared to be a nuisance.

Section 14. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.010 (Definitions) is amended to read as follows:

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, environmental services department and other enforcing officers as defined or designated by the city manager, which include but are not limited to~~

~~designated peace officers, code enforcement officers and inspectors that are authorized to enforce provisions of this chapter.~~

76. "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.

87. 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.

98. "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.

109. "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.

~~4410.~~ "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.

~~4211.~~ "Resident" means a person who is residing in a boarding home facility.

Section 15. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.020 (Permit required and fee), Subsections A & C are amended to read as follows:

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~~ permit official is the responsible ~~agency agent~~ 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.
- C. Boarding home owners/operators must provide to the ~~building permits and inspections division~~ permit official 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.

Section 16. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.030 (Inspections) be amended to read as follows:

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~~ permit official 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 department of public health or other City department responsible for enforcing food safety requirements of the El Paso City Code~~.

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.

Section 17. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.040 (Construction/remodeling), Subsection A be amended to read as follows:

5.07.040 - Construction/remodeling.

- A. Each owner/operator of a boarding home facility must ensure ~~the each~~ 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.

Section 18. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.120 (Inspection) be amended to read as follows:

5.07.120 - Inspection.

~~Any designated peace officer, code enforcement officer, and inspector~~~~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.

Section 19. That Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.130 (Required reports to the health and human services commission) be amended to read as follows:

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~~~~permit official~~ shall submit a report to ~~the State of Texas~~ ~~h~~Health and ~~h~~Human ~~s~~Services ~~e~~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.

Section 20. Title 5 (Business License and Permit Regulations), Chapter 5.07 (Boarding Home Facilities), Section 5.07.140 (Appeal Process for denial, revocation, suspension or denial for renewal of permit) be amended to read as follows:

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 appropriate enforcement City~~ official shall notify the ~~building permit~~ official of a boarding home facility owner/operator's failure to comply with any of the provisions of this chapter. The ~~building permit~~ 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 City~~ official shall keep the ~~building permit~~ 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 permit~~ 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 ~~city manager or designated deputy city manager 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 permit~~ official.

Section 21. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.010 (Definitions) is amended to read as follows:

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 ~~designated by the City Manager to enforce this Chapter 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.

Section 22. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.020 (License-Required-Application-Investigation-Issuance), Subsection C is amended to read as follows:

5.08.020 - License—Required—Application—Investigation—Issuance.

- 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-director~~ 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 ~~(30)~~ 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.

Section 23. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.030 (License-Denial-Suspension-Revocation) is amended to read as follows:

5.08.030 - License—Denial—Suspension—Revocation.

The permit official, upon consultation with the ~~director~~ appropriate City official, 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 Section 5.01.090 of this Code.

Section 24. That Title 5 (Business License and Permit Regulations), Chapter 5.08 (Laundries), Section 5.08.170 (Inspections) is amended to read as follows:

5.08.170 - Inspections.

It shall be the duty of the director and he is authorized and empowered to designate peace officers, code enforcement officers, and inspectors 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.

Section 25. That Title 5 (Business License and Permit Regulations), Chapter 5.09 (Sexually Oriented Businesses), Section 5.09.020 (Definitions) is amended to read as follows:

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.

Section 26. That Title 5 (Business License and Permit Regulations), Chapter 5.09 (Sexually Oriented Businesses), Section 5.09.060 (Inspection) is amended to read as follows:

5.09.060 - Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the permit official, ~~designated peace officers, code enforcement officers and inspectors~~ 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.

Section 27. That Title 5 (Business License and Permit Regulations), Chapter 5.09 (Sexually Oriented Businesses), Section 5.09.100 (Hearing; denial, revocation and suspension; appeal) is amended to read as follows:

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~~ permit official 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~~ City official. 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.

Section 28: That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License), Section 5.10.020 (Definitions), Subsections E & F is amended to read as follows:

5.10.020 - Definitions.

- E. "Department" means the department ~~designated by the City Manager to administer the provisions of this Chapter of environmental services.~~
- F. "Director" means the ~~City official designated by the City Manager to enforce the provisions of this Chapter, director of the department of environmental services or designee.~~

Section 29: That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License), Section 5.10.110 (Enforcement authority) is amended to read as follows:

5.10.110 - Enforcement authority.

The permit official and the director ~~of the department of environmental services and their designees or any duly authorized representative, including but not limited to a designated peace officer, code enforcement officer or and~~ inspector, shall be authorized to administer and enforce the provisions of this chapter and to issue citations to any person violating the provisions of this chapter.

Section 30: That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License), Section 5.10.160 (Appeals) is amended to read as follows:

5.10.160 - Appeals.

The right to appeal a registration or license denial, suspension or revocation shall be in accordance with Chapter 5.01.090 of the City Code. ~~A hearing held by the director pursuant to Section 5.10.150 3, 4 or 5 shall be held in the same manner, provided however, such hearing shall be heard by the director.~~

Section 31: Title 5 (Business License and Permit Regulations) amendments shall take effect on September 1, 2019.

Section 32: Except as herein amended, Title 5 (Business License and Permit Regulations) shall remain in full force and effect.

PASSED AND APPROVED THIS ____ day of 2019.

CITY OF EL PASO

Dee Margo
Mayor

CITY OF EL PASO

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Ana Schumacher
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth, P.E., Director of
Department of Environmental Services