



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

DEPARTMENT: Development Services Department
AGENDA DATE: Introduction 10/20/09; Public Hearing 11/10/09
CONTACT PERSON/PHONE: Eduardo Garcia 541-4638
DISTRICT(S) AFFECTED: All Districts

SUBJECT:

An Ordinance to amend Title 19 (Subdivisions), to Amend Various sections thereunder to change the references to the former Planning and Building Permits & Inspections Departments to the Development Services Department, to correctly reference and assign City staff to enforce the code; to correct terminology and reconcile the wording used in Title 19 with similar provisions and references in other code titles so as to be uniform, including the creation of the penalty; to revise definitions so as to be uniform with other code provisions and delete unnecessary definitions; to revise the process for amending the title; and to incorporate the fee reduction incentives previously adopted in Ordinance No. 016878 into the title's current section numbers and to repeal Ordinance No. 016878; The penalty being as provided in section 19.42.070 of the El Paso City Code.

BACKGROUND / DISCUSSION:

See attached Ordinance.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) – Unanimous Approval Recommendation
City Plan Commission (CPC) – Unanimous Approval Recommendation

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Victor Q. Torres
Director, Development Services

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

Development Services Department

Victor Q. Torres – Director

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ORDINANCE NO. _____

AN ORDINANCE TO AMEND TITLE 19 (SUBDIVISIONS), TO AMEND VARIOUS SECTIONS THEREUNDER TO CHANGE THE REFERENCES TO THE FORMER PLANNING AND BUILDING PERMITS & INSPECTIONS DEPARTMENTS TO THE DEVELOPMENT SERVICES DEPARTMENT, TO CORRECTLY REFERENCE AND ASSIGN CITY STAFF TO ENFORCE THE CODE; TO CORRECT TERMINOLOGY AND RECONCILE THE WORDING USED IN TITLE 19 WITH SIMILAR PROVISIONS AND REFERENCES IN OTHER CODE TITLES SO AS TO BE UNIFORM, INCLUDING THE CREATION OF THE PENALTY; TO REVISE DEFINITIONS SO AS TO BE UNIFORM WITH OTHER CODE PROVISIONS AND DELETE UNNECESSARY DEFINITIONS; TO REVISE THE PROCESS FOR AMENDING THE TITLE; AND TO INCORPORATE THE FEE REDUCTION INCENTIVES PREVIOUSLY ADOPTED IN ORDINANCE NO. 016878 INTO THE TITLE'S CURRENT SECTION NUMBERS AND TO REPEAL ORDINANCE NO. 016878; THE PENALTY BEING AS PROVIDED IN SECTION 19.42.070 OF THE EL PASO CITY CODE.

WHEREAS, the structure of the bureaus of the Planning Department and the Building Permits and Inspections Department has been changed to make these units divisions of the Development Services Department; and

WHEREAS, various provisions in the City Code relating to the Planning Department, the Building Permits and Inspections Department, the building official and the department directors need to be amended to reflect the change in structure and titles; and

WHEREAS, it is necessary to clarify and correct several other position titles and definitions in the Subdivision Code in order to completely mesh these provisions with other titles of the City Code; and

WHEREAS, it is appropriate to incorporate the fee reduction incentives for the Tax Increment Reinvestment Zone No. 5 and any Neighborhood Empowerment Zone previously adopted in Ordinance no. 016878 into the current Subdivision Code and its new sections and headings, and repeal Ordinance no. 016878, which had previously established these incentives under the prior code section numbers.

WHEREAS, Chapter 19.43 requires that text amendments to Title 19 be requested by petitioning the Council. The City Council finds that the preparation of this proposed ordinance amendment and its submission to the City Council for consideration and adoption constitutes the required petition under the ordinance.

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

Section 1. That Title 19 (Subdivisions), section 19.01.010 (Authority, Purpose and Applicability), of the El Paso City Code, is amended to change the phrase “department of planning” to “planning division of the development services department”, as used within this section, and the Code Publisher is directed to revise the applicable code provision.

Section 2. That Title 19 (Subdivisions), sections 19.01.050 (Applications and Procedures); 19.03.020 (Application and Procedures); 19.04.020 (Application and Procedures); 19.06.020 (Application and Procedures); 19.07.040 (Amending Plats); 19.26.020 (Infill Development); 19.26.040 (Alternative Subdivision Improvement Design); 19.31.010 (Responsible Official Designated); and 19.37.140 (Certification Regarding Compliance with Plat Requirements), of the El Paso City Code, are amended to change the phrase “planning department” to “planning division of the development services department”, as used within these sections, and the Code Publisher is directed to revise the applicable code provisions.

Section 3. That Title 19 (Subdivisions), sections 19.20.040 (Review by Director of Department of Parks and Recreation); and 19.20.070 (Deed Conveyance), of the El Paso City Code, are amended to change the phrase “planning division” to “planning division of the development services department”, as used within these sections, and the Code Publisher is directed to revise the applicable code provisions.

Section 4. That Title 19 (Subdivisions), section 19.20.030 (Parkland Calculation), of the El Paso City Code, is amended to change the phrase “city planning commission” to “city plan commission”, as used within this section, and the Code Publisher is directed to revise the applicable code provision.

Section 5. That Title 19 (Subdivisions), section 19.37.060 (Application Contents) of the El Paso City Code, is amended to change the phrase “city’s planning division” to “planning division of the development services department”, as used within this section, and the Code Publisher is directed to revise the applicable code provision.

Section 6. That Title 19 (Subdivisions), sections 19.16.010 (Street Lighting Required); 19.16.030 (Custom Lighting); 19.20.100 (Provision for Bonus Reductions for Additional Land or Facilities on New or Existing Public Parklands); and 19.32.010 (Reference to City Charter), of the El Paso City Code, are amended to change the phrase “municipal code” to “city code”, as used within these sections, and the Code Publisher is directed to revise the applicable code provisions.

Section 7. That Title 19 (Subdivisions), sections 19.08.050 C 3 (Inspection and Acceptance of Public Improvements), and 19.37.050 B (Pre-Application Conference and

Vested Rights Waiver), of the El Paso City Code, are amended to change the phrase “he/she” to “he”, as used within these sections, and the Code Publisher is directed to revise the applicable code provisions.

Section 8. That Title 19 (Subdivisions), sections 19.03.020 H (Application and Procedures); 19.04.020 H (Application and Procedures); 19.34.010 (Structure of the Development Coordinating Committee); 19.37.050 B (Pre-Application Conference and Vested Rights Waiver); and 19.50.030 (Definitions), for the definitions of “enforcing officer” and “person”, of the El Paso City Code, are amended to change the phrase “his/her” or the phrase “his or her” to “his”, as used within these sections and definitions, and the Code Publisher is directed to revise the applicable code provisions.

Section 9. That Title 19 (Subdivisions), section 19.46.040 (Processing of Appeals and Decision) of the El Paso City Code, is amended to change the phrase “city engineer subdivision improvement plan engineer” to “subdivision improvement plan engineer”, as used within this section, and the Code Publisher is directed to revise the applicable code provision.

Section 10. That Title 19 (Subdivisions), section 19.01.060, subsection C., (Stages of Plat Approval), of the El Paso City Code, is amended to standardize the references to city staff, to read as follows:

19.01.060, Subsection C, Stages of Plat Approval

C. City Manager or designee. The city manager or designee shall be the responsible official for a plat, and the designated staff in the development services department shall be the initial reviewing officials for a plat application.

1. The city manager or designee, and/or other city staff at the direction of the city manager or designee, shall review all plat applications for completeness (refer to Section 19.37.020) based on a checklist and the administrative submission requirements supplied by the planning division of the development services department.
2. The designated staff shall review all plat applications that are deemed complete for conformance with this title and any other applicable city regulations.

Section 11. That Title 19 (Subdivisions), section 19.08.010, subsection B, (Subdivision Improvement Plans), of the El Paso City Code, is amended to correctly reference Title 19 within the text, to read as follows:

Section 19.08.010, Subsection B, Subdivision Improvement Plans

B. Application Contents. When required by this title either prior to or at the time of submission of an application for final plat approval by the city plan commission or by staff where administrative approval is authorized, the number of sets of subdivision improvement plans required by the DSC shall be submitted to the city manager or designee for review for code compliance. All applications shall be submitted on a form supplied by the development services department with the required information as stated on the application form. The subdivision improvement plans shall be submitted for the entire area covered by the subdivision application, and shall comply with all provisions of this title and the DSC. The final subdivision improvement plans including paving and stormwater engineering shall be submitted in one package and be approved or approved with conditions prior to the final plat recordation in accordance with this ordinance. The subdivider shall provide and the subdivision improvement plans shall contain all applicable improvements required by this title and the DSC, including but not limited to the following details:

1. Grading and slope stabilization as regulated by chapter 18.44;
2. Drainage facilities;
3. Water and wastewater plans, except water and wastewater plans in developments to be served by EPWU, which shall comply with subsection C below;
4. Streets and other rights-of-way (including sidewalks);
5. Bikeway and transit improvements (where applicable);
6. Survey monuments;
7. Street lights;
8. Traffic control signs and traffic signalization; traffic calming devices (where applicable);
9. Landscaping;
10. Curb ramps;
11. Street pavement markings;
12. Parkland and open space; and
13. Provisions for arroyo protection.

It is the developer and his engineer's responsibility to put the plans together into one package and follow-up on their review. The thirty (30) day state of Texas statute for approval of plats only applies to final approval of plats and does not apply to engineering and subdivision improvement plans. Incomplete plans shall be returned to the applicant.

Section 12. That Title 19 (Subdivisions), section 19.08.020, subsection D, (Timing of Public Improvements, Permit Issuance), of the El Paso City Code, is amended to correctly reference Title 19 within the text, to read as follows:

Section 19.08.020, Subsection D, Timing of Public Improvements, Permit Issuance

D. Permit Issuance.

1. **Grading Permits.** Any grading within the corporate limits or within the extraterritorial jurisdiction shall conform to the applicable portions of chapter 18.44 (Grading) of this code. Properties not required to file a subdivision application

pursuant to this title shall only be subject to the requirements of chapter 18.44. Grading permits may be issued on property requiring a subdivision as provided in this title, as follows:

- a. **Clearing and Access Permit.** No clearing and access permit may be issued by the city manager, or designee whether or not the requirements of chapter 18.44 have been satisfied, until preliminary approval on a subdivision application has been granted by the city plan commission or administratively by the city manager, or designee as applicable. The city manager or designee may approve a clearing and access permit prior to preliminary plat approval provided that grading for such access is less than 20 feet in width. No permit is required for surveying and geotechnical work, provided that grading for such access is less than 20 feet in width.
- b. **Pre-final Grading Permit.** No pre-final grading permit may be issued by the city manager, or designee, whether or not the requirements of chapter 18.44 have been satisfied, until preliminary approval on a subdivision application has been granted by the city plan commission or administratively by the city manager or designee as applicable.
- c. **Final Grading Permit.** No final grading permit may be issued by the city manager or designee whether or not the requirements of chapter 18.44 have been satisfied, until final approval on a subdivision application has been granted by the city plan commission or administratively by the city manager, or designee as applicable, or the final subdivision improvement plans have been approved by the city manager or designee.
- d. **Borrow or Waste Permit.** A borrow or waste permit shall be issued by the city manager or designee pursuant to the requirements of chapter 18.44.

2. Building Permits.

- a. **Plat Recordation Prior to Issuance of Permits:** Whenever a subdivision is required by this title, no building permit shall be issued for any lot until the subdivision has been recorded and the requirements of title 18 (Building and Construction) of this code have been satisfied, except on industrial, commercial and multi-family developments, foundation or building permits may be issued by the building official prior to the plat being filed if:
 - i. If more than 50% of the permits have been requested, sufficient security as required by section 19.08.040 must be provided in a form acceptable to the city manager, or designee, and accepted by the city prior to the issuance of foundation or building permits.
 - ii. The final signed copies of the plats for recordation have been recorded or delivered to the city to hold until the agreed upon recording date, along with all fees, certificates and until all other recording requirements have been met.
- b. **Subdivision Improvements Required Prior to Issuance of Permits:** No building or foundation permit shall be issued for any lot, or portion thereof, within the subdivision until such time that the required subdivision improvements serving that lot have been completely installed, inspected, approved and accepted by the city as required in Section 19.08.050 of this title, except as follows:
 - i.. Foundation or building permits for lots within a subdivision may be issued by the building official. If more than 50% of the foundation or building permits

are requested, sufficient security required in section 19.08.040, must be provided in a form acceptable to the city manager, or designee, and accepted by the city.

ii. Under no circumstance will construction be allowed beyond the foundation stage until such time as fully charged fire hydrants and a drivable surface acceptable to the fire marshal have been provided to such site.

3. **Occupancy Permits.** Whenever a subdivision plat is required by this title, no occupancy permit shall be issued for any lot, or portion thereof, within the subdivision until such time that the required subdivision improvements serving that lot have been completely installed and inspected and approved by the city as required in section 19.08.050 of this title or security has been provided in accordance with section 19.08.040. For purposes of this subsection, required subdivision improvements serving a lot shall mean the improvements to the street abutting the lot and extending to the nearest intersecting street outside the subdivision, and any required water, wastewater, drainage, fire protection or other utilities as required by the building official, or designee.

E. Curb and gutter construction may be started prior to approval of all subdivision improvement plans provided the grading and paving plans have been approved and a permit has been issued by the city manager or designee. The risk for starting such construction prior to approval of all subdivision improvement plans shall be borne entirely by the subdivider.

Section 13. That Title 19 (Subdivisions), section 19.15.150, Subsection D, (Private Streets), of the El Paso City Code, is amended to correct subsection numbering and references to Title 19 within the text, to read as follows:

Section 19.15.150, Subsection D, Private Streets

D. **Private Streets, General.** In order to be considered for an exception to allow the construction of private streets, the developer shall meet the requirements set out in this section.

1. **Construction:** All private streets shall be designed, constructed, and maintained to meet city standards. The construction and improvement plans shall be reviewed by the city in the same manner as construction and improvement plans for public infrastructure. The city shall not participate in any portion of the cost of constructing a private street.

2. **Inspection during construction:** All private streets shall be subject to inspections by city staff in the same manner, at the same intervals, as public streets, including the payment of applicable inspection fees. A construction schedule shall be submitted with the construction and improvement plans in order to assist in scheduling the inspections. Failure to pass an inspection and meet city construction standards shall require re-inspection, and re-construction, as necessary. No certificates of occupancy shall be released for structures along a private street until all inspections shall have been completed satisfactorily

3. **Traffic Control Devices:** All private traffic control devices and regulatory signs shall conform to the “Texas Manual of Uniform Traffic Control Devices”, as amended, and to city standards.

4. **Restricted Access:** The subdivision homeowners association shall clearly mark entrances to all private streets with a sign, in accordance with the DSC, placed in a prominent and visible location, indicating that the streets within the subdivision are private, and not maintained nor regularly patrolled by the city. All restricted access entrances shall be manned twenty-four (24) hours every day, or they shall provide a reliable, alternative means of ensuring access into the subdivision by the City, by emergency service providers, and by other utility or public service providers, such as postal carriers and utility companies, with appropriate identification. The method used to ensure city and emergency access into the subdivision shall be approved by the city’s fire department and by any other applicable emergency service providers during the final platting process. Gates on private streets shall provide a traffic queue analysis and provide adequate on-street storage in advance of the gate. If the homeowners association fails to maintain reliable access as required by city codes, the city may enter the private street subdivision and remove any gate or device which is a barrier to access, and bill the expense to the association. If the bill is not paid, the city may file a lien for the expense against any property owned by the association.

5. **Waiver of Services:** Certain city services may not be provided for private street subdivisions, including street maintenance, routine law enforcement patrols, enforcement of traffic and parking regulations, preparation of accident reports, and payment of costs for street lighting. A note as to waiver of services may be required on the face of the plat.

6. **Street lighting:** Street lighting as required by this title shall be entirely at the expense of the developer and subsequent property owners. Decorative poles or alternative spacing may be approved by the city manager or designee, following a recommendation by the DSC, who shall make such recommendation based on the lighting type, the lumens necessary to effectuate safe traffic and pedestrian travel, and a finding that the proposed lighting plan provides as well or better for the health, safety and welfare of the future residents of the private street subdivisions.

7. **Maintenance.** The developer shall provide for the establishment of a homeowners or property owners association, in covenants, conditions, and restrictions (CCRs), to assume the obligation of perpetual maintenance of private streets and other improvements held privately, including a mandatory assessment for such private streets and improvements to be placed on all property owners within the subdivision, allowance for city staff to inspect the streets to assure they are being maintained to city standards, hold harmless provisions as required in subsection 9, and providing for notice to the city attorney and city manager of any amendments to these relevant sections. The city shall be a necessary party for the amendment of any portions of the CCRs dealing with these requirements. The proposed CCRs shall be submitted for review by the city attorney at the time of filing the preliminary plat. The city attorney shall review the CCRs to ensure that the requirements of this section are met, and shall submit recommended changes to the developer, who shall incorporate such changes. Absence of city attorney approval of the CCRs shall require the denial of the exception for private streets.

8. Petition to Convert to Public Streets: A property owners association may petition the city to accept private streets and any associated property as public streets and right-of-way upon written notice to all association members, and the favorable vote of a majority of the membership, or as required in the CCRs. A dedication instrument shall also be submitted, and shall be reviewed and the final form approved by the city attorney prior to submission of this request to city council.

The city shall not be required to accept any private streets for public dedication and maintenance. The staff shall review the request and make a recommendation to CPC, who shall forward a recommendation to city council. City council shall make their decision based on the public health, safety and welfare considerations of the streets. As a condition of accepting the dedication and maintenance of private streets, the city may impose a requirement for repairs and improvements at private expense prior to acceptance, enter into an agreement for an assessment or pro-rata sharing of costs for repairs or improvements prior to acceptance, or other legal or equitable options to ensure that the streets being accepted are not a liability to the city. The city shall be the sole judge of the nature and extent of repairs or improvements needed. The city may also require, at the sole expense of the association's or property owner's expense, the removal of any guard houses, access control devices, landscaping or other amenities located within the streets or common areas prior to city acceptance.

9. Hold Harmless: The property owners association, as owner of the private streets and appurtenances, shall release, indemnify, defend and hold harmless the city, any other governmental entity, and any public utility entity for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury (including death) arising from the condition of the private streets, out of any use of access gates or cross arms, or out of any use of the subdivision by the city or governmental or utility entity.

Section 14. That Title 19 (Subdivisions), section 19.26.050 (Form Based/Smart Code Subdivisions), of the El Paso City Code, is amended to reconcile the provisions of this Title with the references to the provisions of Title 21 as now adopted, to read as follows:

Section 19.26.050 Form Based/Smart Code Subdivisions

A. Standards – In cases where the applicant for subdivision approval is currently zoned in a smart code district as set forth in title 21 of the city code, the applicant must comply with the standards set forth in section 19.26.050, the design standards for construction of title 19 and the standards set forth in title 21, smart code. Where the standards conflict, the standards set forth in the smart code provisions prevail. Applicants whose property is zoned in a smart code district are required to utilize the following standards contained in Title 21, Smart Code, Tables:

Table 3A – Vehicular Lane Dimensions; 3B – Vehicular Lane and Parking Assemblies

Table 4A – Public Frontages - General

Table 4C – Thoroughfare Assemblies

Table 17 – Turning Radius

Table 13 – Civic Spaces

B. Applicability of Form Based and Smart Code Provision

1. **Subdivision with Smart Code Zoning In Place:** In cases where the applicant for subdivision approval is currently zoned in a smart code district as set forth in title 21 of the city code, then where such provisions conflict with provisions contained in Section 19.26.050 and the design standards for construction, the smart code provisions shall prevail, otherwise, the standards set forth in section 19.26.050 and the design standards for construction shall apply.
2. **Properties Seeking Zoning Approval:** In unplatted properties in which the applicant is seeking zoning approval for districts set forth in the form based/smart code section of title 21 of the city code, and is proposing to use form based code/smart code standards in their plat and subdivision improvement drawings, then the applicant shall utilize the form based code/smart code standards set forth in title 21, smart code, section 19.26.010, and the design standards for construction.

Section 15. That Title 19 (Subdivisions), section 19.31.040 (Deputy Director – Building Permits & Inspections), of the El Paso City Code, is amended to correctly reference the building official and read as follows:

Section 19.31.040 Building Official

Responsible Official and Initial Decision-Maker. The building official is the responsible official for and shall initially decide the following types of applications:

- A. Application for a building permit; and
- B. Application for a certificate of occupancy.

Section 16. That Title 19 (Subdivisions), section 19.31.060 (Development Services Director), of the El Paso City Code, is amended to correctly state the title of the director and references to Title 19 within the text, to read as follows:

Section 19.31.060 Director of the Development Services Department

Initial Decision-Maker. The director of the development services department or designee or the city manager's designee is the initial decision-maker for any appeal for which a subordinate city staff person was the initial decision-maker, subject to further appeal as provided for in this title. He is also the initial decision maker for the following:

- A. Application for approval of construction and engineering plans, and all related construction management tasks, including without limitation, approval of contracts for public improvements;
- B. Application for a site preparation permit;
- C. Appeal of a decision on any application for which the director is the responsible official;
- D. Alternative subdivision designs, exception or waiver petition for any application for which the subdivision improvement plan engineer is the responsible official;

- E. Vested rights petition for any decision where the subdivision improvement plan engineer is the responsible official for the application for which the vested rights petition is submitted; and
- F. Petition for relief from a dedication or construction requirement in accordance with chapter 19.46 and other provisions of this title.

Section 17. That Title 19 (Subdivisions), section 19.33.010 (Authority for Amendments to this Chapter), of the El Paso City Code, is amended to revise the voting process for amending Title 19 so as to be uniform with all other ordinance voting processes, to read as follows:

Section 19.33.010 Authority for Amendments to this Title

The city council shall have all powers and authority derived from the state constitution and laws, the city charter, and as specifically described in this section. In addition, they may from time to time amend, supplement, or change by ordinance the text of this title, on the city's initiative or upon a request for a text amendment, following review and recommendation by the city plan commission.

Section 18. That Title 19 (Subdivisions), section 19.37.070 (Application Fees), of the El Paso City Code, is amended to incorporate the fee reduction incentives previously adopted in Ordinance No. 016878, to read as follows:

Section 19.37.070 Application Fees

A. Every application shall be accompanied by the prescribed fees in the amounts established and set forth in the annual budget resolution of the city or other appropriate fee schedule prepared and adopted by the city council. The prescribed fees shall not be refundable and shall be submitted no later than the date an application is determined to be complete. The fee schedule may be amended from time to time by resolution of the city council.

B. The fees required by this title pertaining to properties located within the boundaries of the Tax Increment Financing Zone No. 5, and any neighborhood empowerment zone which may be designated by a resolution of the city council, shall be reduced by one hundred percent (100%) for the period from May 12, 2008 through August 31, 2008; reduced by eighty percent (80%) for the period from September 1, 2008 through August 31, 2009; reduced by sixty percent (60%) for the period from September 1, 2009 through August 31, 2010; reduced by forty percent (40%) for the period from September 1, 2010 through August 31, 2011; and reduced by twenty percent (20%) for the period from September 1, 2011 through August 31, 2012.

Section 19. That Title 19 (Subdivisions), section 19.42.010 (Enforcement Activities), of the El Paso City Code, is amended to reconcile the provisions stating the authority for enforcement with other Code provisions so as to be more uniform, to read as follows:

Section 19.42.010 Enforcement Activities

Employees of the development services department and other enforcing officers as defined or designated by the city manager, constitute authorized officials under this title, and are authorized to issue municipal court citations for violations of this article and to bring to the attention of the city attorney, and any other appropriate authority, any violations or lack of compliance with these regulations. Any department, agency, employee or authorized official of the city having information regarding an alleged violation to this title, shall report that information to the director of the development services department or designee or other department designated by the city manager to assist in the enforcement of these requirements.

Section 20. That Title 19 (Subdivisions), section 19.42.020 (Right to Enter), of the El Paso City Code, is amended to reconcile the provisions stating the authority for enforcement with other Code provisions so as to be more uniform, to read as follows:

Section 19.42.020 Right to Enter

An authorized official with enforcement authority shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this title. Submittal of any application that authorizes construction of structures or improvements shall be construed as a grant of authority to the responsible official to enter on land subject to the application for purposes of enforcing the approved permit.

Section 21. That Title 19 (Subdivisions), section 19.42.040 (Stop Work Orders), of the El Paso City Code, is amended to reconcile the provisions stating the authority for enforcement with other Code provisions so as to be more uniform, to read as follows

Section 19.42.040 Stop Work Orders

A. Whenever any construction or development activity is being done contrary to any term, condition or requirements of an approved application and/or this title, the director of the development services department, the building official, or the chief building inspector of the building permits and inspections division may order the work stopped by notice in writing, served on the property owner or authorized agent. Notice shall be given before the order shall be effective, except when the order states that it is effective immediately as being necessary to protect and preserve the public health, safety, or general welfare. Any person thereafter shall cease and desist from further development or construction material to the alleged noncompliance, until corrected by compliance and authorized by the director

of the development services department, the building official or the chief building inspector of the building permits and inspections division to proceed with the work. This prohibition shall extend throughout any appeal period.

B. The owner or authorized agent may appeal the stop work order by giving written notice to the deputy director – planning and submitting a completed form as may be required by the city. The city plan commission shall meet to consider the appeal within fifteen calendar days after the date the completed application for appeal is received by the secretary of the commission.

C. The city plan commission shall reach a decision without unreasonable or unnecessary delay. A copy of the decision shall be delivered by certified mail or personal delivery to the applicant. The decision of the city plan commission shall be final, but as may be provided by law, be adjudicated in a court of competent jurisdiction.

D. The director of the development services, the building official or the chief building inspector of the building permits and inspections division may require the placement of temporary erosion control, drainage protection or other measures by the owner or appellant in order to protect the site and the community resources during the appeal period or any subsequent litigation.

E. The application for each appeal must be signed and be accompanied by payment of a nonrefundable application fee in the amount established by appropriate resolution of the city council.

Section 22. That Title 19 (Subdivisions), section 19.42.070, Subsection A (Fines and Penalties), of the El Paso City Code, is amended to reconcile the provisions stating the penalty for a violation with other Code provisions so as to be more uniform, to read as follows:

Section 19.42.070, Subsection A, Fines and Penalties

A. Violations of provisions of this title or failure to comply with any of its requirements shall constitute a misdemeanor and punished by a fine not to exceed two thousand dollars. Any person who violates this title or fails to comply with any of its requirements shall upon conviction thereof be fined in accordance the law and this code.

Section 23. That Title 19 (Subdivisions), Chapter 19.43 (Text Amendments), of the El Paso City Code, be deleted in its entirety, as the provisions contained in the sections thereunder are provided for in state law, the city charter and Chapter 2.08 of the City Code.

Section 24. That Title 19 (Subdivisions), section 19.50.020 (Definitions in Other Locations within this Chapter), of the El Paso City Code, is amended to correctly reference Title 19 within the text, to read as follows:

Section 19.50.020 Definitions in Other Locations within this Title

For the purpose of this title, certain terms and words are to be used and interpreted as defined within the articles or sections of this title wherein they apply to certain regulations. These sections include but are not limited to “subdivision ordinance, dormant projects,” specifically within section 19.47.080

Section 25. That Title 19 (Subdivisions), section 19.50.030 (Definitions), of the El Paso City Code, is amended in part to amend only the definitions as set forth below, to reconcile the definitions with other amendments made herein, to define the building official, to correctly reference the drainage design manual within the definition of the term “stormwater”, and to correctly reference code titles within the text, to read as follows for those definitions set forth below:

Section 19.50.030 Definitions

“Building code” means all regulations adopted by the city through the adoption of the various international building codes and titles 17 and 18 of the city code.

“Building official” means the building official shall be the person identified or designated pursuant to chapter 18.02 of this Code and is the individual who ensures compliance with the building codes of the city of El Paso, Texas, and with any applicable regulations within this title. This definition also includes any designee of the building official.

“Building permit” means an instrument in writing signed by the building official or other designated responsible official authorizing described construction on a particular lot.

“Certificate of occupancy” means a written instrument executed by the building official authorizing a described use of a lot or building as set forth in the building code and in this title.

“Code” means the adopted code of ordinances of the city of El Paso titled “the El Paso city code”.

“Complete application means an application that meets the standards of this title and has been deemed complete by the city in accordance with section 19.37.020 of this title and the Texas Local Government Code, chapter 245, or successor statute.

"Design standards for construction, El Paso (DSC)" means the detailed specifications, procedures and standards approved administratively for the purpose of regulating the design and construction of specified improvements. The DSC also includes checklists and application forms for approvals required by this title. The El Paso design standards for construction are incorporated by reference to this title and are found in the office of the subdivision improvement plan engineer or on the web.

“Director” means the director of the development services department of the city, or his authorized designee, who may also be referred to as the development services director.

“Extraterritorial jurisdiction (ETJ) means the unincorporated area, not a part of any other municipality, which is contiguous to the corporate limits of the city of El Paso, the outer limits of which are measured from the extremities of the corporate limits of the city outward for the distance of five (5) miles as stipulated in chapter 42 of the Texas Local Government Code and in which area the city may regulate subdivisions and enjoin violation of certain provisions of this title.

“Public utility” as defined in the zoning ordinance, means a closely regulated enterprise existing under the provisions of chapter 402 of the Texas Local Government Code or of title 32, chapter 10 of the Texas Revised Civil Statutes, which provides to the public a utility service deemed necessary for the public health, safety and general welfare. For purposes of this title, a municipality owning or operating a public utility system or an entity with a franchise with the city or the state to provide a public utility system shall be considered a public utility.

“Right-of-way” (“ROW”) means property that is publicly owned or upon which a governmental entity has an express or implied property interest (e.g. fee title, easement, etc.) held for a public purpose. Examples of such public purpose include, by way of example and not limitation, highways, streets, sidewalks, drainage facilities, sewerage and water facilities.

“Stormwater” means the surface drainage runoff or flow created from any form of precipitation accumulation including rain, snow, sleet and/or hail that exceeds the interception by vegetation and infiltration into the soil. The following definitions are applicable to the management of stormwater and apply to any stormwater requirement contained in this ordinance, in chapter 19.19, stormwater or in the DSC. All other definitions shall be in accordance with article 6.

1. Applicant: A person submitting a post-development stormwater management application and plan for approval.
2. Channel: A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.
3. Drainage design manual (DDS): The detailed specifications, procedures and standards approved by resolution of the city council for the purpose of regulating the design and construction of specified stormwater and drainage improvements.
4. Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters;
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
5. Floodplain manager: The Texas licensed professional engineer designated by the city manager as the responsible official and initial decision-maker to administer and implement the provisions of chapter 18.60 of this code and other appropriate sections of 44 CFR (National Flood Insurance Program regulations) pertaining to floodplain management.
6. Inspection and maintenance agreement: A written agreement providing for the long-term inspection and maintenance of storm water management facilities and practices on a site or with respect to a land development project, which when properly recorded in

the deed records constitutes a restriction to a site or other land involved in a land development project.

7. Non-point source pollution: A form of water pollution that does not originate from a discrete point such as a sewage treatment plant or industrial discharge, but involves the transport of pollutants such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria, organic materials and other contaminants from land to surface water and groundwater via mechanisms such as precipitation, stormwater runoff, and leaching. Non-point source pollution is a by-product of land use practices such as agricultural, mining, construction, subsurface disposal and urban runoff sources.

8. Nonstructural stormwater management practice or nonstructural practice: Any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits, and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depressions, and vegetated channels.

9. Post-development: The time period, or the conditions that may reasonably be expected or anticipated to exist, after completion of the land development activity on a site as the context may require.

10. Pre-development: The time period, or the conditions that exist, on a site prior to the commencement of a land development project and at the time that plans for the land development of a site are approved by the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

11. Redevelopment: A land development project on a previously developed site, but excludes ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements which do not materially increase or concentrate stormwater runoff, or cause additional non-point source pollution.

12. Runoff: Stormwater runoff.

13. Site: The parcel of land being developed, or the portion thereof on which the land development project is located.

14. Stormwater management: The collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner intended to prevent increased flood damage, stream bank channel erosion, habitat degradation and water quality degradation, and to enhance and promote the public health, safety and general welfare.

15. Stormwater administrator: The person designated by the city manager to be the responsible official and initial decision maker for applications pertaining to drainage plans and other drainage decisions as may be required in Title 18, Building and Construction and Section 19.19, Storm Water Management Requirements.

16. Stormwater management facility: Any infrastructure that controls or conveys stormwater runoff.

17. Stormwater management measure: Any stormwater management facility or nonstructural stormwater practice.

18. Stormwater management plan: A document describing how existing runoff characteristics will be affected by a land development project and containing measures for complying with the provisions of this ordinance.

19. Stormwater management system: The entire set of structural and nonstructural stormwater management facilities and practices that are used to capture, convey and control the quantity and quality of the stormwater runoff from a site.

20. Stormwater runoff: The flow of surface water resulting from precipitation.

21. Structural stormwater control: A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow of such runoff.

“Subdivider” means any person or any agent of the person, who either directly or indirectly, divides or proposes to divide land, so as to constitute a subdivision, as that term is defined in this title. In any event, the term “subdivider” is restricted to include only the owner, equitable owner or authorized agent of the owner or equitable owner of land to be subdivided. The term “developer” shall also mean subdivider when the context of such use relates to a subdivision or other division of land.

“Subdivision improvement plan engineer” means the director of the development services department or designee or city manager’s designee who shall furnish or cause to be furnished required assistance, approval of construction drawings as to compliance with city codes, inspection and acceptance of public improvements in the administration of this title.

“Vested right” means a right of an applicant in accordance with Chapter 245 of the Texas Local Government Code, as amended, requiring the city to review and decide the application under standards in effect prior to the effective date of the standards of this title and/or of any subsequent amendments.

“Zoning ordinance” means title 20 of the city code. Definitions referred to in this ordinance are located in chapter 20.02 of this code.

Section 26. That Title 19 (Subdivisions), section 19.50.030 (Definitions), of the El Paso City Code, is amended in part to delete the definition of “City Secretary” and to delete the notation regarding “Public Right-of-Way”.

Section 27. That Title 19 (Subdivisions), be amended to change the references to the title (which is referred to as the chapter) to state the term “title”, by amending the following sections to change the word “chapter” to “title”, as used within these sections, and the Code Publisher is directed to revise the applicable code provisions:

In Article 1: Sections: 19.01.010 B, C, and D (Authority, Purpose and Applicability); 19.01.030 (Exemptions); 19.01.040 B (Time for Decision on Plats and Land Studies); 19.01.050 (Applications and Procedures); 19.02.010 B (Purpose, Applicability, and Effect); 19.02.040 (Criteria for Approval); 19.02.060 (Remainder Tracts); 19.03.010 (Purpose, Exceptions and Effect); 19.03.030 (Decision); 19.04.010 (Purpose, Applicability, Exceptions and Effect); 19.04.020 (Application and Procedures); 19.04.030 (Decision); 19.04.040 (Criteria for Approval); 19.04.050 (Revisions to Final Plat); 19.06.010 (Purpose,

Applicability and Effect); 19.06.040 (Criteria for Approval); 19.08.010 A, H and J (Subdivision Improvement Plans); 19.08.040 (Security for completion of Improvements); 19.08.050 B 1 and C 2 (Inspection and Acceptance of Public Improvements).

In Article 2: Sections: 19.09.010 (General Policy); 19.11.020 B 2 b and D 2 (Water and Wastewater Service); 19.11.030 B 5 (Lot Requirements - Extra-Territorial Jurisdiction); 19.12.010 B 3 (Water Extension and Installation); 19.13.010 B 4 (Wastewater Extension and Installation); 19.14.010 A 5 (Utility Connection); 19.15.020 B (Subdivider Responsibility); 19.15.030 (a) (Street/Thoroughfare Escrow Policies and Procedures); 19.15.060 F 3 (Street Standards); 19.18.010 B (Purpose and Applicability); 19.19.040 C (Stormwater Management Inspection and Maintenance Agreements for Private Facilities); 19.20.020 D (Dedication Required); 19.20.030 B 2 a 12 (Parkland Calculation); 19.20.050 A 7 and B 2 (Standards for Deeded Parkland); 19.20.100 E (Provision for Bonus Reductions for Additional Land or Facilities on New or Existing Public Parklands); 19.20.130 A 3 and C (Applicability); 19.21.010 C 9 (Purpose and Applicability); 19.21.030 C (Sidewalk Requirements for New Streets); 19.23.010 B 3 (General); 19.24.010 A (Applicability); 19.24.020 (Procedure and Requirements); 19.24.030 A 3 (Development Standards); 19.26.010 (Purpose); 19.26.020 B (Infill Development); 19.26.060 C (Approval).

In Article 2: Table 19.18-2 D (Required Minimum Acceptable Level-of-Service (Intersections)).

In Article 3: Sections: 19.30.010 (Source of Authority); 19.30.020 (Implied Authority); 19.30.030 B (Effect of City Approval); 19.30.040 (Conflict in Authority); 19.31.010 (Responsible Official Designated); 19.31.020 B (Deputy Director -Planning); 19.31.030 A 6 and B (Subdivision Improvement Plan Engineer); 19.31.090 (Other City Officials); 19.33.020 B (Authority for Deciding Appeals and Relief Petitions); 19.34.010 (Structure of the Development coordinating Committee).

In Article 4: Sections: 19.37.020 A and B (Application Completeness and Expiration); 19.37.040 (Official Application Date); 19.37.080 (Modification of Applications); 19.37.090 (Action by Responsible Official); 19.37.100 (Exemption Determination); 19.37.120 (Decision); 19.37.130 (Conditions); 19.37.140 D (Certification Regarding Compliance with Plat Requirements); 19.38.010 (Published Notice for Replats); 19.38.020 (Personal Notice for Replats); 19.39.010 (Setting of the Hearing); 19.40.010 (Amendments and Revisions to Approval); 19.41.010 (Time of Expiration); 19.41.030 (Extension Procedures); 19.41.040 (Reinstatement); 19.41.060 (Expiration for Projects Commenced On or After September 1, 2005); 19.42.050 (Court Actions); 19.42.060 (Civil Court Actions); 19.42.080 B and D (Review of Prior Plat Approval).

In Article 5: Sections: 19.45.010 (Appeals, Purpose Applicability and Effect); 19.45.030 (Processing of Appeal and Decision); 19.45.050 (Expiration and Extension); 19.46.020 (Purpose, Applicability and Effect); 19.46.040 D and H (Processing of Appeals and Decision); 19.47.030 (Processing of Petitions and Decision); 19.48.010 A (Purpose, Applicability and Effect); 19.48.030 A and D (Criteria for Approval).

In Article 6: To amend the initial phrase preceding the definitions to state: “As used in this title:”.

Such amendment does not include changing or eliminating the word “chapter” when that word references provisions in state law or provisions contained in other titles of the El Paso city code.

Section 28. That Ordinance No. 016878, titled “An ordinance amending Title 19 (Subdivisions) of the El Paso City Code, by amending four chapters thereunder, to provide for a reduction of the fees for applications regarding subdivisions, dedication and vacation of certain public rights-of-way and easements, and vacation of recorded subdivisions, pertaining to properties located within the tax increment reinvestment zone No. 5 and any neighborhood empowerment zone through August 31, 2012” be repealed in its entirety.

Section 29. Except as herein amended, Title 19 of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS _____ day of _____ 2009.

CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Elaine S. Hengen
Senior Assistant City Attorney

Victor Q. Torres, Director
Development Services Department

**DEVELOPMENT SERVICES
PLANNING DIVISION**

MEMORANDUM

DATE: October 12, 2009

TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager

FROM: Eduardo Garcia, Lead Planner

SUBJECT: **Title 19 Amendments to references**

The City Plan Commission (CPC) on October 8, 2009 **recommended approval of the amendments to Title 19.**

The CPC determined that the Title 19 Amendments protects the best interest, health, safety and welfare of the public in general; and that the Amendments will have no effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.



Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson