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ORDINANCE NO.: 019267

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSES AND PERMIT REGULATIONS) TO CREATE CHAPTER 5.18 (CONVENIENCE STORE REGULATION) AND SUBSECTIONS THEREUNDER IN THE EL PASO CITY CODE RELATING TO THE REGISTRATION OF AND SAFETY AND PREVENTION REQUIREMENTS FOR CONVENIENCE STORES WITHIN CITY OF EL PASO; THE PENALTY AS PROVIDED IN SECTION 5.18.080 OF THE EL PASO CITY CODE

WHEREAS, the City of El Paso has had 1,775 beer runs in 2018, 1,817 beer runs in 2019, and 1,786 beer runs in 2020, totaling 5,378 over the three-year time frame; and

WHEREAS, the El Paso Police Department officers spend approximately 1 hour and 49 minutes responding to beer runs and completing the initial patrol investigation; and

WHEREAS, the El Paso Police Department officers spend approximately 3 hours and 34 minutes to complete their criminal investigation on beer runs; and

WHEREAS, the City Council finds that convenience stores, as a category of businesses, are frequently targets of criminal activities; and

WHEREAS, the City of El Paso desires to prevent crime, the escalation of crime, and increase the successful prosecution of crimes that occur in convenience stores within the city limits; and

WHEREAS, the City of El Paso has determined that convenience store owners play a key role in promoting safety in their establishments, in addition to a responsibility to both the community and their employees to ensure safety in their establishments; and

WHEREAS, training employees in safety procedures, posting notice of crime-prevention strategies in use, increasing visibility, and utilizing safety devices and measures can increase the safety of store employees and customers; and

WHEREAS, the registration of convenience stores with the City of El Paso would facilitate the application and enforcement of this ordinance and other laws; and

WHEREAS, the requirement of surveillance camera systems and other safety measures would reduce the occurrence of crime, prevent the escalation of crime, and increase the successful prosecution of crime that occurs in convenience stores in the city; and

WHEREAS, the City Council finds that the regulation of convenience stores as outlined in this ordinance will protect the health, safety, and welfare of the citizens of the City of El Paso by reducing crime in convenience stores.

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

Section 1. That Chapter 5.18 (Convenience Store Regulation) of the El Paso City Code be created as follows.

Section 2. That the subsections of Chapter 5.18 (Convenience Store Regulation) be created as follows:

TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS)

Chapter 18 Convenience Store Regulation

Section 5.18.010	Purpose
Section 5.18.020	Definition
Section 5.18.030	Registration of Convenience Stores and Fees
Section 5.18.040	Issuance, Denial, and Display of Registration
Section 5.18.050	Suspension and Revocation of Registration
Section 5.18.060	Expiration and Renewal of Registration
Section 5.18.070	Appeal
Section 5.18.080	Enforcement, Violations, and Penalties
Section 5.18.090	Requirements for Convenience Stores
Section 5.18.110	Severability

Section 5.18.010 Purpose

A. The purpose of this chapter is to protect the health, safety, and welfare of the citizens of the City of El Paso by reducing the occurrence of crime, preventing the escalation of crime, and increasing the successful prosecution of crime that occurs in convenience stores within the city limits. To this end, this chapter establishes a registration program for convenience stores and provides requirements relating to surveillance camera systems, video recording and storage systems, alarm systems, drop safes, security signs, height markers, protection of inventory, store visibility, safety training programs, and prosecution statements and trespass affidavits.

Section 5.18.020 Definitions

As used in this chapter, the following words or terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

A. **"Convenience goods"** means basic food, beverage, household, and pharmaceutical items.

B. **"Convenience store"** means any business with extended hours and convenient location that is primarily engaged in the retail sale of convenience goods and gasoline, designed to accommodate a large volume of stop and go traffic. Convenience store does not include

any business where there is no retail floor space accessible to the public even if gasoline is sold.

C. **"Days"** means calendar days.

D. **"Drop safe"** means a cash management device where money can be deposited without the depositor having access to contents.

E. **"Employee"** means any person, whether or not the person is designated as an employee, contract employee, agent or otherwise, who renders any service whatsoever to the customers of a convenience store, works in or about a convenience store or who conducts any business in a convenience store and who receives or has the expectation of receiving any compensation, monetary wages, commissions or profits from the convenience store. By way of example, rather than limitation, the term includes the owner, other management personnel, clerks, and cashiers. Employee does not include a person exclusively on the premises for the limited purpose of providing janitorial, repair or maintenance services for the premises or for the delivery of convenience goods by a vendor or distributor to the premises.

F. **"Height marker"** means a measuring strip that may be attached on or near a doorframe of a convenience store to aid in identifying the height of a person suspected of committing a crime.

G. **"Manager"** means the person designated by the owner to be responsible for the daily operation of a convenience store. Managers shall be designated in the registration application filed under this chapter.

H. **"Owner"** means the person or persons who hold title to or leases property for the purpose of operating a convenience store, including any lien holder or any other person with a financial interest in the store.

I. **"Person"** means any individual, corporation, organization, partnership, association, or any other legal entity.

J. **"Registered agent"** means the person identified by the owner of a convenience store in the registration filed pursuant to this chapter that is authorized to receive on behalf of the owner any legal process and/or notice required or provided for in this chapter.

Section 5.18.030 Registration of Convenience Stores and Fees

A. No person shall operate or cause to be operated a convenience store without a valid certificate of registration issued by the El Paso Police Department. A separate certificate of registration is required for each physically separate convenience store located within city limits.

B. The owner shall pay to the City all established fees for the registration provided in accordance with this chapter.

C. To obtain a valid certificate of registration for a convenience store and a registration compliance decal, the owner of the store must apply on the form provided by the El Paso Police Department. The application must contain all of the following information:

1. The name, street address, mailing address, telephone number, and facsimile number of the convenience store. The use of a public or private post office box or similar address shall not be sufficient for the purposes of complying with this subsection.

2. The name, residential address, telephone number, and e-mail address of the owner of the convenience store. If the owner is a corporation, whether foreign or domestic, the name of the registered agent of the owner, business address, telephone number, facsimile number, and e-mail address of the registered agent. The address information shall include the street name and number, office or suite number if a business address, the city, state, and zip code. The use of a public or private post office box or similar address shall not be sufficient for the purposes of complying with this subsection.

3. The nature and extent of the owner's interest in the property. If there is more than one owner, lien holder or other persons with a financial interest in the convenience store, then the name, residential address, and telephone number of each such person as well as the nature and extent of such person's interest in the property. The use of a public or private post office box or similar address shall not be sufficient for the purposes of complying with this subsection.

4. The name, street address, mailing address, telephone number, facsimile number, and e-mail address of the current manager of the convenience store. The use of a public or private post office box or similar address shall not be sufficient for the purposes of complying with this subsection.

5. The name, address, telephone number, and e-mail address of a person or persons who can be contacted 24 hours a day, 7 days a week, in the event of an emergency condition involving the convenience store.

6. Such additional information as the applicant desires to include or that the Chief of Police deems necessary to aid in the determination of whether the requested registration should be granted.

D. Any change in the ownership of a convenience store, including but not limited to the sale of the convenience store or any ownership interest therein, shall require the purchaser or transferee to obtain a new registration issued by the El Paso Police Department within thirty (30) days of the effective date of ownership change.

1. The prior owner, lien holder, or any other person with a financial interest shall advise the El Paso Police Department, in writing, that he or she no longer holds any ownership interest in the property within ten (10) days of the effective date of ownership change.

E. Any change in the manager or registered agent shall require the owner to update the information provided to the El Paso Police Department on the registration application form within ten (10) business days of the effective date of said change.

F. Any owner of a newly constructed or established convenience store shall comply with the provisions of this section not later than the thirtieth (30th) day following completion of construction or new opening of the convenience store, whichever occurs first.

G. A certificate of registration for a convenience store is not transferable.

Section 5.18.040 Issuance, Denial, and Display of Registration

A. Upon the filing of a completed application for the registration of a convenience store, the El Paso Police Department shall issue the owner of the convenience store a certificate of registration along with a registration compliance decal.

B. If the Chief of Police, Code Director or his designee determines that the application for registration is incomplete or contains a false statement as to a material matter in the application, then the application shall be denied. If an application for registration of a convenience store is denied, then the Chief of Police or his designee shall deliver written notice to the owner or registered agent that the application is denied, including the reason for the denial and a statement informing the owner of the right of appeal.

C. The certificate of registration, if granted, shall state on its face the name and address of the convenience store, the name of the owner(s) or registered agent, the name of the manager, and the expiration date. The certificate of registration shall be posted in a conspicuous place accessible at all times to the public. The registration compliance decal must be continuously and conspicuously displayed above the main public entrance door to the convenience store and in a manner as to not obstruct the view into the store.

D. Any El Paso Police officer, code enforcement officer, inspector or designated inspector of the city shall be authorized to make inspections of the establishment and issue citations or notice of violation to any person found to be in violation of this chapter.

Section 5.18.050 Suspension and Revocation of Registration

A. The Chief of Police, Code Director, or his designee shall issue a notice of suspension for a convenience store if he or his designee determines that:

1. The owner failed to comply with any provision of this chapter; or

2. The owner made a false statement as to a material fact in the application or in a hearing concerning the certificate of registration.

3. The Chief of Police, Code Director, or his designee may suspend a certificate of registration for up to sixty (60) calendar days.

B. The Chief of Police, Code Director, inspector or his designee shall revoke a certificate of registration for a convenience store if he or his designee determines that:

1. The owner failed to comply with any provision of this chapter; or

2. The owner made a false statement as to a material fact in the application or in a hearing concerning the certificate of registration.

3. The City may revoke the Certificate of Registration when more than three (3) violations have been documented during the term of the certificate.

C. Before issuing a suspension or revoking a certificate of registration, the Chief of Police, Code Director, inspector or his designee shall deliver written notice by personal delivery or certified mail to the owner or registered agent that the certificate of registration is being considered for suspension or revocation. The notice must include the reason for the proposed suspension or revocation, corrective action the owner must take to prevent the suspension or revocation, and a statement that the owner has twenty-one (21) days after the date of delivery to comply with the notice.

1. If, after twenty-one (21) days from the date the notice is delivered, the owner has not complied with the notice, the Chief of Police, Code Director, inspector or his designee shall suspend or revoke the certificate of registration and deliver written notice of the suspension or revocation to the registered agent. The notice must include the reason for the suspension or revocation, the date the action was ordered, and a statement informing the owner of the right to appeal.

Section 5.18.060 Expiration and Renewal of Registration

A. A certificate of registration for a convenience store expires one (1) year after the date of issuance.

B. A certificate of registration may be renewed by making application in accordance with this chapter. An owner shall apply for renewal at least thirty (30) days before the expiration of the certificate of registration.

Section 5.18.070 Appeal

A. When the Chief of Police, Code Director, inspector or his designee issues a written notice of intent to deny, suspend, revoke, or deny renewal of a certificate of registration, the Chief of Police or his

designee shall immediately send such notice to the owner or registered agent 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 El Paso Police Department for the owner.

B. The owner or registered agent who has been served with a denial, suspension, or revocation notice may appeal the Chief of Police or his designee's action to the City Manager or his designee within ten (10) days of receiving such notice. Said appeal shall also include a written rebuttal.

C. An administrative hearing shall be held no later than thirty (30) days after an appeal is received by the City Manager or his designee. All documents relevant to the certificate of registration shall be forwarded to the City Manager or his designee. The City Manager or his designee shall review all relevant documents, the appellant's appeal, and written rebuttal. The City Manager or his designee may allow the appellant to make an oral argument, present evidence and witnesses, and submit additional rebuttal evidence.

D. The City Manager or his designee shall issue a written decision to the parties within ten (10) days of the hearing. If the decision is to deny, suspend, revoke, or not renew the certificate of registration, the decision shall become effective on the thirtieth (30th) day after it is rendered. If the decision is that no grounds exist for denial, revocation, denial of renewal, or denial of renewal, the City Manager or his designee shall, contemporaneously with the issuance of the decision, order the Chief of Police to immediately issue a certificate of registration.

Section 5.18.080 Enforcement, Violations, and Penalties

A. The Chief of Police, Code Director, inspector or their designee shall implement and enforce this chapter. The Chief of Police may by written order establish such rules, regulations or procedures, not inconsistent with this chapter, as he determines are necessary to discharge any duty under or to affect the policy of this chapter.

B. It shall be unlawful for any person to operate or cause to be operated a convenience store without a valid certificate of registration as required by this chapter. A person who violates any provision of this chapter, or who fails to perform an act required of the person by this chapter, shall be guilty of a Class C misdemeanor. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

C. An offense under this chapter is punishable by a fine of no more than $500.

D. The penalties provided above are in addition to any other enforcement remedies that the City of El Paso may have under city ordinance or state law.

Section 5.18.090 Requirements for Convenience Stores

A. Surveillance Camera Systems, Recordings, and Storage. The owner shall provide, maintain, and operate at least four (4) color digital high-resolution surveillance cameras with a minimum resolution of two (2) mega pixels, a minimum aspect ratio of 1920 horizontal pixels by 1080 vertical pixels, and a minimum frame rate of 15 frames per second. A fifth (5) camera is required if the store is equipped with an additional entrance

and exit. The owner shall also provide one or more digital video recording devices (NVR/DVR) in a secure location in the convenience store in compliance with this subsection.

1. The position of the first camera must have an overall view of the counter/register area and the other camera a view of the main entrance and exit area. The position of the second camera at the entrance and exit area must be done in a way to provide a clear and identifiable full frame view of the face of each individual filmed entering or exiting the main public entrance or exit of the store. The third camera should capture the exterior front of the business, to include parking lot area. The fourth camera should cover the sales floor leading to the beer coolers.

2. Each camera shall accurately display the date and time of the recording. Owner should review accuracy of the date and time on a regular basis or upon a system change.

3. The coverage areas of both cameras must remain unobstructed by any display, sign, or other items at all times.

4. Each camera must be operating and capable of recording at all times, including hours when the store is not open for business. Each camera must be operated in a fixed position and not in a panning motion.

5. A sign both in English and Spanish stating "STORE IS UNDER CAMERA SURVEILLANCE," in letters at least two (2) inches high must be posted at each public entrance and exit of the convenience store and must be readable from inside and outside the store.

6. The video recording devices must be designed, equipped, and operated at a minimum to digitally record images and video from the surveillance cameras every time motion occurs in the convenience store, whether or not the store is open for business.

7. The owner or manager shall have the capability to provide the El Paso Police Department's initial responding patrol officer with digital color images and video recordings in connection with any crime investigation at or near the convenience store within fifteen (15) minutes of the officer's dispatched arrival and within forty-eight (48) hours if requested by a detective.

8. All digital color images and video recordings must be stored and maintained for at least thirty (30) days.

B. Property Inspections. An owner or manager shall permit, at reasonable times upon request, representatives of the El Paso Police Department to inspect the interior and exterior of the

convenience store, including but not limited to surveillance camera systems, for the purpose of ensuring compliance with this chapter.

1. An owner or manager commits an offense if, either personally or through an agent or employee, the owner or manager refuses to permit a lawful inspection of the convenience store as required by this section.

C. Alarm System. An owner shall provide, maintain, and operate an alarm system in the convenience store in compliance with Chapter 5.13 Security Alarm Systems of the El Paso City Code and with this section. This system shall, at a minimum, include a panic button located within reach of the cash register and out of view of the customer. Such panic button will generate an alarm signal indicating a hold-up or other life-threatening emergency requiring an emergency response. A convenience store shall have posted at all public entrances and exits signs or decals both in English and Spanish indicating that a security alarm system is in use.

D. Drop Safes. An owner shall provide and maintain a drop safe on the premises of the convenience store to keep the amount of cash available to employees to a minimum. A drop safe must be bolted to the floor of the convenience store. A convenience store shall have posted at all public entrances and exits signs or decals in English and Spanish indicating that employees cannot open the safe and that employees have minimum cash on hand.

E. Security Signs. An owner shall provide, post, and maintain security signs in the convenience store. Signs stating in both English and Spanish, "NO SOLICITATION" and "NO TRESPASSING," in letters at least two (2) inches high must be posted at each public entrance and exit of the convenience store. The signs may contain additional language as required by law and must be in a format approved by the Chief of Police.

F. Height Markers. Convenience stores shall install two height markers at the entry and exit doors of the business to aid in the estimation of an individual's height. These markers will be multi-colored to designate different heights. The markers must be visible and not obstructed by any display or other such covering.

G. Protection of Inventory. An owner, manager, or employee of a convenience store shall secure, lock, block, or otherwise mark off goods and inventory not available for sale in such a manner that customers cannot access such items while the store is open for business. When it is not logistically possible to secure and lock the goods or inventory, the owner or operator of a convenience store will block, cover, or mark off goods and inventory not available for sale in such a manner that customers cannot purchase such items while the store is open for business.

H. Store Visibility. The owner or manager shall provide for and maintain an unobstructed line of sight allowing a clear view of and from the cash register and sales transaction area through all windows and public access doors. Such windows and doors must be clear of

all items that would obstruct a clear view, including but not limited to tinting, signage, advertisements, shelving, and merchandise.

I. Employee Safety Training and Telephone Access. An owner shall ensure that safety training is provided for and completed by employees of the convenience store. Each employee of a convenience store shall annually complete a safety-training program approved by the Chief of Police or his designee. The safety training program must include, but is not limited to, the following subjects: (1) Texas Penal Code in reference to Theft and Robbery chapters, (2) basic safety awareness tactics, (3) mental preparation when dealing with a theft, (4) operation of security devices, (5) knowledge of this Chapter and how it pertains to their duties as a store employee, and (6) knowledge of store policies and training requirements.

1. Each employee shall annually complete the online safety-training program and test provided by the El Paso Police Department. New employees shall complete the training and test within ten (10) days after beginning employment with the convenience store.

2. Each employee shall sign a statement indicating the date, time, and place of completion of the safety training program. Copies of each employee's statements must be maintained on file in the convenience store for as long as the employee is employed by the convenience store. The statements must be made available to the Chief of Police or any other peace officer immediately upon request.

3. Telephone access must be provided at each convenience store for use by employees.

J. Trespass Affidavits and Prosecution Statement. An owner of a convenience store shall execute a trespass affidavit, and statement of prosecution on a form provided by the El Paso Police Department, that authorizes the El Paso Police Department to enforce, on behalf of the owner, all applicable trespass laws on the premises of the convenience store. A true and correct copy of the trespass affidavit must be posted at the convenience store in a manner and location so that it is clearly visible to the public at all times.

Section 5.18.110 Severability.

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

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

Section 3. Except as expressly amended herein, all other provisions of Title 5 (Business Licenses and Permit Regulations) of the El Paso City Code shall remain in full force and effect.

Section 4. Title 5, Chapter 5.18 Convenience Store Regulation shall take effect June 7, 2022.

PASSED AND APPROVED this 7th **day of** December**, 2021.**

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura Prine
City Clerk

APPROVED AS TO FORM:

Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:

A/C Victor Larios
for Greg Allen
Chief of Police

Ordinance No. 019267

21-1026-11785/PL#1129931v.2/Convenience Stores ORD/EG

For questions regarding the ordinance, please reach out to the El Paso Police Department.

Available contacts are:

- Asst. Chief Victor Zarur - 1515@elpasotexas.gov
- Ofc. Aundrea Rodriguez - 3161@elpasotexas.gov
- Ofc. Pamela Smith - 2963@elpasotexas.gov
- Mr. Jimmy Smith - smithJM@elpasotexas.gov
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