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

DEPARTMENT: **Department of Transportation**

AGENDA DATE: **Introduction 01/06/2011, Public Hearing 01/18/2011**

CONTACT PERSON NAME AND PHONE NUMBER: Ted Marquez, 621-6750

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

Discussion and Action on an Ordinance Amending Title 12 (Vehicles and Traffic) of the El Paso City Code by adding a new chapter 12.30 (Temporary Traffic Control) requiring a temporary traffic control permit for work performed in the public-right-of-way and other uses of the right-of-way; establishing criteria of the issuance of the permit, bond and insurance requirements and duties and obligations of the permittees; establishing fees and providing for stop work orders and enforcement authority; the penalty being as provided in section 12.30.115 of the El Paso Code.

BACKGROUND / DISCUSSION:

The intent of the proposed ordinance is to improve the coordination of construction activities within the public right-of-way in order to anticipate work sites and potential impacts to the community by requiring an approved temporary traffic control plan through a permit process. The recommended process will formalize the requirements and establish the procedures, fees and penalties.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: R W Cole 12/20/10

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO._____

AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC) OF THE EL PASO CITY CODE BY ADDING A NEW CHAPTER 12.30 (TEMPORARY TRAFFIC CONTROL) REQUIRING A TEMPORARY TRAFFIC CONTROL PERMIT FOR WORK PERFORMED IN THE PUBLIC RIGHT-OF-WAY AND OTHER USES OF THE RIGHT-OF-WAY; ESTABLISHING THE CRITERIA FOR THE ISSUANCE OF THE PERMIT, BOND AND INSURANCE REQUIREMENTS AND DUTIES AND OBLIGATIONS OF PERMITTEES; ESTABLISHING FEES AND PROVIDING FOR STOP WORK ORDERS AND ENFORCEMENT AUTHORITY; THE PENALTY BEING AS PROVIDED IN SECTION 12.30.115 OF THE EL PASO CITY CODE.

WHEREAS, the needs and control of all road users (motorists, bicyclists, and pedestrians) within a public right-of-way through a Temporary Traffic Control Plan is an essential part of any highway construction, utility work, maintenance operations, and the management of traffic incidents; and

WHEREAS, the City Council of the City of El Paso, Texas has determined it necessary to establish guidelines and restrictions that will provide adequate public protection when work or other activity is to be conducted within the City of El Paso public right-of-way; and

WHEREAS, the City of El Paso, Texas has the authority for the implementation and enforcement of needed road user regulations, parking controls, speed zoning, and incident management.

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

Section 1. That Title 12 (Vehicles and Traffic) shall be and hereby is amended to create Chapter 12.30 (Temporary Traffic Control) as follows:

Chapter 12.30 (Temporary Traffic Control)

Section 12.30.010 – Definitions:

A. Permittee – means the governmental entity, utility company, contractor, person or business entity that has received a temporary traffic control permit pursuant to this Chapter.

B. Person – means associations, clubs, societies, firms, contractors, governmental agencies, traffic barrier supply companies, partnerships, corporations, other business entities as well as individuals or groups of individuals.

C. Temporary Traffic Control Plan – means a plan describing temporary traffic control measures to be used for facilitating pedestrian and vehicular users through a work zone or other activity in a public right-of-way.

D. Traffic Engineer shall have the same meaning as found in Section 12.04.190 and shall also include, for purposes of this Chapter, those people designated by the Traffic Engineer.

E. Work – means any activity that requires placement of barriers in the public right of way and/or any construction activities within the public right of way.

Section 12.30.020 – State Manual:

The Manual on Uniformed Traffic Control Devices (MUTCD), Chapter 6 (Temporary Traffic Control), in the version adopted by the Texas Department of Transportation shall govern the operations of all contractors, subcontractors, public utility companies, including, but not limited to the El Paso Public Service Board/El Paso Water Utilities, railroads, State and city agencies and any other person who is engaged in work subject to the MUTCD within the city.

Section 12.30.030 – Permit Required:

No person shall (1) conduct work within the city right-of-way or (2) otherwise occupy the public right-of-way that impedes or limits the general public from traversing the right-of-way without a traffic control permit issued by the permit official. Permits shall be required in connection with all governmental work, including but not limited to the city (including the El Paso Public Service Board/El Paso Water Utilities), schools, universities, hospitals, water improvement districts, county, state and federal public works projects, all private sector work, and for such events as block parties, parades or other such temporary events that require the use of any portion of the public right-of-way. No permit shall be issued until a temporary traffic control plan is approved by the Traffic Engineer. Denial of a proposed temporary traffic control plan and the requested permit by the Traffic Engineer shall include the grounds for the denial. The issuance of

the permit shall require the Permittee to comply, implement and maintain the temporary traffic control plan.

A. State right-of-Way. When the work proposed is within or adjacent to or impacting a State right-of-way, a copy of a Texas Department of Transportation approved permit to work within or adjacent to or impacting such State right-of-way shall be provided to the Traffic Engineer before a temporary traffic control permit may be issued.

B. El Paso Department of Transportation: All work by contractors under contract with the city, including those performing construction under the direction of the El Paso Department of Transportation, shall obtain a temporary traffic control permit pursuant to the requirements of this section. When the El Paso Department of Transportation uses city employees to perform work, it shall be required to obtain a temporary traffic control permit for restoration of the surface of streets, installation of traffic signalization and all other work within the right-of-way other than work that creates minimal disruption of traffic, such as sign repair and replacement, graffiti removal, patching and sealing the streets, minor operational maintenance and installation and the installation or repair of pavement markings. The fees, bond and insurance requirements of this section shall not apply to the El Paso Department of Transportation but shall be required of its construction contractors.

C. TxDOT. The Texas Department of Transportation and their contractors shall not be subject to the requirements of this Section for work they perform within TxDOT owned right-of-way within the City of El Paso.

D. Parade and Public Assembly Permits and Film Making Permits. Temporary traffic control permits are not required for a filmmaking permit issued pursuant to Chapter 13.30 or for parade permits and public assembly permits issued pursuant to Chapter 13.36.

Section 12.30.040 – Failure to Obtain a Temporary Traffic Control Permit:

A. It shall be a violation of this Chapter for any person to perform any work in the public right-of-way, occupy the public right-of-way, as described in Section 12.30.030, or to place traffic control devices, such as barricades, in the public right-of-way without first obtaining a traffic control permit except as otherwise provided by state statute or City Code. Persons providing traffic control devices shall not place traffic control devices in the

public right-of-way until the person who is performing the work in the public right-of-way has obtained a traffic control permit. Persons providing traffic control services to persons performing work in the right-of-way may obtain the traffic control permit as the agent for the person performing such work provided that they submit written proof of such agency to the Permit Official when applying for a permit.

1. When no traffic control permit has been issued by the city, the Traffic Engineer may stop all work, remove or place traffic control devices and provide such other traffic control as deemed necessary for safety in the public right-of-way. The work at a site where no traffic control permit was obtained may be stopped by the Traffic Engineer until a traffic control permit is issued.

2. If no application is made for a traffic control permit within one city working day after issuance of a stop work order, the city may repair the street if any construction had commenced and remove barricades. The person placing the barriers in the City right-of way and the person performing work in the City right-of way shall be jointly and severally liable to the city for payment of all costs the city incurs in responding to the work site for which no traffic control permit was issued.

B. Nothing in this Chapter shall be construed to prohibit or limit the authority of law enforcement agencies to stop work and control the work site in the event of an emergency or in the course of law enforcement activities.

Section 12.30.050 – Permit Application:

A. Filing an Application. An application for a temporary traffic control permit shall be made in writing on a form prescribed by the permit official at least 48-hour hours before the proposed commencement of work within the public right-of-way.

B. All applications shall be signed by the applicant and be accompanied by payment of the established nonrefundable application fee.

C. Late Application. Notwithstanding the preceding subsection, the permit official may consider an application that is filed in less than 48-hour before the proposed commencement of work if the short notice does not unreasonably hinder the city's review of the application.

D. Application form. The application and accompanying documentation shall include the following:

1. Name, address, telephone numbers and e-mail address of the contractor, the person or people in charge of the work or activity within the public right-of-way and the name and contact person for the barricade company responsible for traffic set up.
2. Location where the barricades will be placed, including the street address of the property or adjacent property.
3. Description of work or activity in the city right-of-way.
4. Duration and schedule of work or activity in the city right-of-way.
5. Type of closure needed.
6. The traffic control plan.
7. Certificates of insurance and permit bond.

Section 12.30.060 - Permit Bond and Insurance Required:

A. Bond Requirements. Except as provided in subsection 12.30.060 D hereafter, no traffic control permit shall be issued under this Chapter to any person applying for a traffic control permit until such applicant has filed with the Traffic Engineer a bond in the amount of fifty thousand dollars ($50,000.00), signed by a surety company authorized to do business in Texas. The city shall be named as the obligee under such bond. The bond shall provide that the principal and its agents, employees, and subcontractors shall comply with all provisions of this Chapter, that the principal shall pay all damages which are sustained by the city and which are caused by failure of the principal, its agents, employees or subcontractors to comply with the provisions of this Chapter, and that the principal shall indemnify the city against claims arising out of such failure to comply. The surety shall be acceptable to the city as to solvency and such surety shall be listed on the current Department of the Treasury's Listing of Approved Sureties, Department Circular 570, United States Department of the Treasury or its successor publication, ("Circular 570"). If the city becomes dissatisfied that the surety is solvent or the surety is no longer included in Circular 570, the Traffic Engineer may require a bond from another surety listed in Circular 570. Permit applicants who have provided a bond to the city pursuant to the requirements of a Chapter of the City Code other than this Chapter that meets all of the requirements established in this Chapter shall not be required to obtain an additional bond but are required to provide a copy of such bond,

provided that such bond specifically includes coverage for the permit or permits issued pursuant to this Chapter. Permittees who have multiple temporary traffic control permits are required to provide only one current valid bond for all such permits but may be required to provide a copy of the current bond with each application for a temporary traffic control permit.

B. Insurance requirements. Except as provided in subsection 12.30.060 D hereafter, no permit applicant shall be issued a permit until the applicant presents evidence satisfactory to the Traffic Engineer that the applicant meets the following minimum insurance requirements:

1. The applicant shall procure and shall maintain during the term of the permit such Commercial General Liability, Property Damage Liability and Vehicle Liability Insurance, naming the Permittee and any subcontractor performing work associated with the Permit as insured, co-insured or additional insured for claims for damages for personal injury, including accidental death, as well as from claims for property damage that may arise from work associated with the permit.
2. Minimum limits of liability and coverage shall be $250,000 for bodily injury liability, including death, for each person and $500,000 in the aggregate and $100,000 for property damage for each occurrence and $100,000 in the aggregate. Permit applicants that are governmental entities may comply with the insurance requirements of this section by providing certification that they are self-insured.
3. Such insurance shall be written by an accredited insurance company under the supervision of the Board of Insurance Commissioners of the state of Texas. Evidence of compliance with these insurance requirements shall be considered as having been met when copy of the insurance policy or a certificate of insurance has been filed with and approved by the Traffic Engineer. Such policy shall include an endorsement that the City is named as an additional insured to the full amount of the policy limits and that Traffic Engineer shall be notified at least thirty days in advance in the event the policy or policies are canceled and ten days in advance for non-payment of policy premiums. The required endorsement shall be provided to the Traffic Engineer. The permittee shall maintain said insurance with a solvent insurance company authorized to do business in

Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Permittee, his officers, agents, servants or employees. Failure to keep the policy in full force and effect throughout the term of the permit shall be grounds for cancellation of the permit.

4. Permit applicants who have provided certificates of insurance to the city pursuant to the requirements of a Chapter of the City Code other than this Chapter that meet all of the requirements established in this Chapter shall not be required to obtain an additional insurance but are required to provide such certificates of insurance showing present coverage as required in this Chapter. Permittees who have multiple temporary traffic control permits are required to provide only one current valid certificate of insurance for all such permits but may be required to provide a copy of the current certificate of insurance with each application for a temporary traffic control permit.

5. Self – insurance. A Permittee may satisfy the vehicle insurance requirements of this section by providing the city with a current "Self-insurance Certificate" issued by the Texas Department of Public Safety or its successor agency. A Permittee may satisfy the worker's compensation insurance requirements of this section by providing the City with a current "Certificate of Authority to Self-insure" issued by the Texas Department of Insurance, Division of Worker's Compensation or its successor agency.

C. Temporary Events: Those traffic control permits issued for temporary events where construction work is not conducted within the right-of-way, such as a block party, film making or parade, shall be exempt from the requirements in this section concerning bonds and insurance coverage but shall meet requirements for bonds and insurance as may exist under other applicable provisions of the City Code.

D. Traffic control permits shall be required in connection with all City (including El Paso Public Service Board/El Paso Water Utilities), county, state or federal public works projects provided that no permit fee or bond shall be required for such projects. Permit applicants that are governmental entities and are self-insured may comply with the insurance requirements of this Section by providing certification that they are self-insured.

Section 12.30.070 – Permit Fees

The following fees are established and shall be charged:

A. Temporary traffic control permit fees. A fee for temporary traffic control permits shall be charged at the time the application for the permit is submitted. The permit fees shall be based on the duration of the permit with fees for permits based on the number of days for which the permit was issued. No permit shall be issued for a period longer than 6 months. Permittees requiring additional time beyond the term of the permit shall apply for a new permit and shall pay the permit fee applicable to the new permit.

B. Exemptions: City departments, public utilities with city or state franchises for use of the right-of-way and state agencies and any construction contractor under contract with the city, such public utilities or an agency of the state shall be exempt from paying the fees authorized under this section. Those traffic control permits issued for temporary events where construction work is not conducted within the right-of-way, such as a block party, film making or parade, shall be exempt from the fee requirements in this section but shall meet the applicable fee requirements under other provisions of the City Code.

Section 12.30.080 – Approval or Denial of Temporary Traffic Control Plan

A. The Permit Official shall approve or deny a completed application within one city working day of the Permit Official's receipt of the completed application for permit. A notice of denial shall clearly set forth the grounds upon which the permit was denied and, when applicable, shall contain measures by which the applicant may cure any defects in the application or otherwise procure a permit.

B. The permit official may attach reasonable conditions to any permit approval as may be appropriate to address the purpose for which this Chapter has been adopted, including but not limited to requirements concerning notification of lane closure to affected property owners and occupants, access to adjacent property and advance notice of lane closures.

Section 12.30.090 – Duties of Permittee

The permittee shall conform to the regulations as defined in the MUTCD, Chapter 6, or as the Traffic Engineer indicates on the approved temporary traffic control plan.

Section 12.30.100 – Hours of Work

A. Work Restrictions during Peak Hours:

1. When construction is required that will block one or more lanes of an arterial roadway, the hours of operation shall be limited on weekdays to avoid conflict with peak hour traffic movements. Such work on weekdays is prohibited from 6:00 a.m. to 9 a.m. and 4:00 p.m. to 6:30 p.m. and any other peak hour traffic periods designated by the Traffic Engineer.

B. Exemptions:

2. Projects with a work duration as defined in Section 6G.02 of the MUTCD as intermediate-term stationary and long-term stationary may be exempt from the peak hour work restrictions.

3. Traffic Engineer may exempt work from the peak hour restrictions on a case-by-case basis for projects described in subsection B.1 and for other projects based on the nature of the construction and traffic volume in the area of the construction.

Section 12.30.110 – Emergencies

An emergency exists when rapid deterioration of the roadway or infrastructure within the city's right of way occurs and such deterioration, left uncorrected, is causing or will cause further damages within the right of way to the extent that the public welfare and safety will be adversely affected. When an emergency occurs that requires total or partial road closures on a roadway no permit shall be required prior to beginning work needed to respond to the emergency. The Traffic Engineer shall be notified of the emergency as soon as possible. The limitations on hours of work in this Chapter shall not apply to work required in response to an emergency. Every effort should be made to make repairs as soon as possible and a traffic control plan shall be submitted with an application for a permit during regular city working hours before the close of business on the next city business day after the day the emergency occurred.

Section 12.30.120 – Correction of Violations, removal of traffic control devices, fees.

A. Violation of any regulation contained in the MUTCD or pursuant to the requirements of the city approved temporary traffic control plan or permit requirements shall be corrected by permittee within two hours after receipt of written notice from the Traffic Engineer or his duly authorized representative that a violation exits.

B. When the correction of violations is not made within the two hours specified in Subsection A and the city must take action to correct the violation, the city is authorized to

charge fees as established related to traffic control and the placement of traffic control devices by the city.

C. Whenever a violation of this Chapter occurs, the city shall be entitled to correct the existing deficiencies upon the failure on the part of the permittee to correct any such violation within the two-hour period described in this Section. Permittee shall pay the city for its costs of correcting the deficiencies within ten city working days of receiving an itemized statement for such costs.

D. Fees. When barricades or other traffic control devices are left within vehicular travel lanes or sidewalk area of a public right-of-way beyond the period authorized by a traffic control permit, the city is authorized to remove such traffic control devices and charge the established noncompliance correction fee and a lane/sidewalk rental fee. The permittee shall pay to the city all costs of removal and storage of traffic control devices. The city shall be entitled to use or sell such traffic control devices that are not claimed and/or when the removal and storage costs are not paid within ninety days from the date of removal by the city. If the Traffic Engineer knows the identity of the owner of the traffic control device, he shall give such owner written notice of the removal of the traffic control device, the fees owed and where the traffic control device may be obtained. The owner of the traffic control devices shall be allowed to obtain the traffic control devices before disposition of such devices by the city if payment to the city of the fees required in this Section is made within the time limits established herein. Traffic control devices left in the public right of way that are not within an approved permit area or otherwise authorized by the city in writing may be removed by the city and the provisions of this Section shall apply to such traffic control devices.

Section 12.30.130 Stop Work Order.

The Traffic Engineer may order a cessation of work for which the traffic control permit was issued when the permittee fails to comply with the requirements of the permit and traffic plan or when there is an imminent hazard. The stop work order shall continue in effect until the noncompliance is corrected by the permittee. Stop work orders shall not be subject to the two-hour correction period established in Section 12.30.120. The Traffic Engineer may order the removal, relocation or addition of traffic control devices during the time of the

stop work order as needed to protect traffic from work accomplished to the time of the issuance of the stop work order.

Section 12.30.140 – Nonconforming devices:

A. No person shall place, maintain, or display upon or in view of any construction site, any temporary traffic control devices that the Traffic Engineer determines are substandard, damaged, worn out, faded, or otherwise nonconforming.

B. The City shall be entitled to issue a notice of violation by red-tagging any temporary traffic control device which is in violation of this Section, and such violation shall be corrected within four-hours by the violator after receipt of notice of the red tag.

Section 12.30.150 - Interference with traffic control devices:

It shall be a violation for any person to alter, deface, injure, damage or remove any traffic control devices, including but not limited to barricades or signs or warning signs that have been placed upon or in the area of temporary traffic control or detour or construction zone, provided that the City and permittee may move, relocate and repair traffic control devices in accordance with the permit or the direction of the permit official, the Traffic Engineer or a police officer.

Section 12.30.160 Violation

It shall be a violation for any person to work in the public right of way without a permit, except as provided in Section 12.30.110 (emergencies), fail to comply with a traffic control plan, work in violation of a stop work order, use nonconforming devices or devices that have received a red tag or to work in the public right of way during hours that are prohibited by this Chapter and in the traffic control plan unless such work is specifically excluded from the provisions of this Chapter. Any person who violates a provision of this chapter shall, upon conviction, be guilty of a misdemeanor and punished by a fine not to exceed five hundred dollars. Each day the violation occurs shall constitute a separate offense.

Section 12.30.170 - Enforcement Authority

The Permit Official shall have authority to enforce this Chapter.

Section 2. Except as expressly herein amended, Title 12 (Vehicles and Traffic) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED THIS ____ DAY OF_____, 2011.

THE CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

Ted Marquez, P.E.
Deputy Director of Transportation