

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

**DEPARTMENT:** Planning and Economic Development Department

**AGENDA DATE:** Introduction: Feb. 28, 2012  
Public Hearing: March 6, 2012

**CONTACT PERSON/PHONE:** Mathew McElroy, (915) 541-4193

**DISTRICT(S) AFFECTED:** City-wide

**SUBJECT:**

An Ordinance amending Title 15 (Public Services), Chapter 15.08 (Street Rentals) Section 15.08.120 (Special Privilege Licenses and Permits) of the El Paso City Code to amend the staff designated to accept, review, process and approve applications. The penalty being as provided in Chapter 1.08, General Penalty, of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

The City Manager has directed staff in several departments to implement application processing changes and code amendments that are intended to streamline and simplify the land development review process.

Special privilege licenses and permits will no longer be reviewed by the Development Coordinating Committee and will be distributed and reviewed by those departments affected by the proposed license or permit; e.g.; Environmental Services, Health, Sun Metro, etc.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Scheduled for the Development Coordinating Committee on February 22, 2012.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:** Mathew S. McElroy  
Deputy Director-Planning and Economic Development

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**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES), CHAPTER 15.08 (STREET RENTALS) SECTION 15.08.120 (SPECIAL PRIVILEGE LICENSES AND PERMITS) OF THE EL PASO CITY CODE TO AMEND THE STAFF DESIGNATED TO ACCEPT, REVIEW, PROCESS AND APPROVE APPLICATIONS. THE PENALTY BEING AS PROVIDED IN CHAPTER 1.08, GENERAL PENALTY, OF THE EL PASO CITY CODE.**

**WHEREAS**, the right of control, ownership and use of public right of way is held by the City of El Paso; and,

**WHEREAS**, the City may allow the use of public right of way through an ordinance; and,

**WHEREAS**, the City desires to simplify the process of allowing use of the right of way by amending the staff designated to accept, review, process and approve applications;

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

**Section 1.** That Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and Permits), of the El Paso City Code shall be amended as follows:

1. Paragraph A, Subparagraphs 1, 2 and 8, shall be amended as follows:

A. Where applicable. The city may grant a special privilege license or permit for use of public right-of-way for specified uses. For purposes of this section, the term "public right-of-way" means that area within a public street or alley, including the sidewalk, parkway and roadway surface, whether paved or unpaved, and the area within a public easement or right-of-way for drainage or other purposes. Where a use is proposed on public right-of-way designated as a state or federal highway or road, approval from the Texas Department of Transportation shall be required prior to approval of an application for special privilege license by city council or issuance of a permit by the City Manager or designee. Permanent encroachments on state highways are not permitted.

1. Application required. To acquire licenses or permits under this chapter, an applicant must submit an application to the City Manager or designee and follow the procedures prescribed by this section.

a. Only city council may approve a special privilege license under this section, except that re-assignment and renewal of licenses may be done administratively in accordance with the provisions of the license and does not necessitate additional city council action if there are no changes to the term and

conditions.

b. A special privilege permit may be issued by the City Manager or designee. The City Manager or designee may approve a permit under this section without city council action if the specified use conforms to the requirements of this section.

2. The City Manager or designee shall require recording of instruments granting rights under this chapter in the official public records of real property of the county in which the land is situated. Applicant shall pay the recording cost.

8. Before granting or recommending approval of a special privilege license or permit granted under this section, the City Manager or designee may canvass some or all interested city departments, utility agencies, and registered neighborhood associations in the vicinity. Based on comments received, the City Manager or designee may impose or recommend imposing special terms as a condition of approval.

2. Paragraph B, Subparagraph 9, shall be amended as follows:

B. Application requirements for a special privilege license or permit.

9. Upon review and acceptance of the application by the City Manager or designee, the required application fee as authorized by city council resolution shall be paid (fees are non-refundable).

3. Paragraph C, Subparagraphs 1 and 2, shall be amended as follows:

C. Procedure for a special privilege license. The application and related materials will be distributed by the City Manager or designee to affected city departments, which will make a recommendation for approval or denial of the request.

1. If all of the affected city departments recommend approval of the request, an ordinance shall be prepared which shall contain the recommended terms and conditions of the license and shall state the time for which the license exists. Once the applicant has signed and returned the agreement accompanied by the certificate of insurance as required; the ordinance will be introduced and scheduled for public hearing for city council consideration. When the term of the special privilege license exceeds one year, the total annual fee shall be paid each year on or before the anniversary date of approval. The fee for the first year shall be paid prior to consideration of the request by city council. This fee shall be refunded if the ordinance is not approved.

2. If any of the affected city departments recommend denial of the request, no ordinance will be prepared. The applicant may, in writing, request an appeal to city council by placing an item on the agenda at a regularly scheduled

city council meeting. The appeal must be made within thirty days of the notice of denial by the City Manager or designee. The city council may deny the appeal for a special privilege license or direct the preparation of the ordinance.

4. Paragraph D, Subparagraphs 1, 2, 3, 4 and 5b, shall be amended as follows:

D. Procedure for a special privilege permit.

1. The application and related materials will be distributed by the City Manager or designee to affected city departments, which will make a recommendation for approval or denial of the request.

2. If the City Manager or designee recommends approval of the request, a permit may be issued, provided the use meets the development standards enumerated in this section. Each of the development standards for specified uses ensures that the specified requested use is not inconsistent with and does not unreasonably impair the public use of the right-of-way and mitigates the encroachment onto public right-of-way, provides safety and aesthetics to adjacent uses, and insures compatibility with adjacent structures and uses.

3. If any of the affected city departments recommend denial of the request, no permit shall be issued.

4. Appeal process. If any of the affected city departments deny issuance of the permit, the applicant shall be informed in writing. The applicant may request an appeal to city council of the denial by submitting an appeal request in writing to the City Manager or designee. The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by a fee as authorized by city council the appeal must be made within thirty days of the denial notice. The City Manager or designee shall place the denial request for consideration at city council within thirty days of receiving the appeal request. The city council may deny the appeal for a permit or direct that a permit be granted. As an express condition of the permit, the city council may impose development standards to mitigate the encroachment onto public right-of-way, to provide for safety and aesthetics, or to insure compatibility with adjacent structures and uses.

5. Terms and Conditions—Right of termination reserved by city.

b. Permits may be terminated or revoked at any time by the City Manager or designee for the following reasons: (1) a determination that there is a public need for use of the right-of-way that necessitates terminating the permit because it conflicts with the public need; (2) a determination that the specified use poses a public safety hazard; or (3) a determination that the permit terms and conditions have been violated. The City Manager or designee may require annual renewal of permits and inspections of the permitted use and site.

5. Paragraph F, Subparagraph 1b, shall be amended as follows:

F. Fees.

1. An application processing fee as determined by city council resolution shall accompany all applications for a special privilege license or permit. This fee shall be nonrefundable, regardless of ultimate action by the city council or the City Manager or designee, and shall be in addition to other charges for a particular licensed or permitted use.

b. The fee for the first year shall be paid prior to consideration of the request by city council or issuance of the permit by the City Manager or designee. This fee shall be refunded if the application is not approved.

6. Paragraph I, Subparagraph 3, shall be amended as follows:

I. Additional Requirements for Temporary Street Displays. For purposes of this section, temporary street displays shall include banners, pennants, flags, valances, or other displays constructed of cloth, canvas, vinyl, light fabric, wallboard or other light materials, and installed on street mounting brackets, utility poles, or other fixtures within approved locations of the city. In no case shall temporary street displays be permitted on any city traffic control device. Temporary street displays as herein regulated shall comply with all of the following:

3. Size, Spacing, Clearance and Other Requirements.

a. No more than two temporary street displays shall be permitted within a facing block, except as otherwise recommended by the City Manager or designee. For purposes of this provision, a facing block shall be the right-of-way of a street bounded by the intersection of other streets, or by a combination of streets and public land, railroad rights-of-way, water ways, or any other barrier to the continuity of development,

b. In no case shall a temporary street display be located within one hundred feet of another temporary street display, except as otherwise recommended by the City Manager or designee.

c. The maximum area of a temporary street display shall be two feet and six inches by five feet, or thirteen total square feet. In cases where street mounting brackets are to be installed, the display shall be sized and designed to easily fit and be installed within the street mounting brackets. On double-side mounting brackets, each side shall be permitted a display satisfying the size requirements of this subsection,

d. No display with a clearance less than eleven feet (measured from the bottom of the display), nor a projection of more than four feet, shall encroach over a public right-of-way. An encroachment over the roadway (paved surface) portion of a public right-of-way shall not be permitted.

e. No display for an event or activity shall be maintained for a period exceeding three months, except as otherwise recommended by the City Manager or designee; provided, however, that no display shall be maintained for more than thirty days prior to or after an event or activity,

f. No sign permit shall be required for any authorized temporary street display.

7. Paragraph J, Subparagraphs 1h, 2g and 2i, shall be amended as follows:

J. Banner Programs. A banner program is a group of decorative outdoor informational displays created by an eligible entity that are typically placed, erected, or fastened to street lights and used to enhance the downtown area or other similar areas as set forth in an approved council resolution. Each individual display made part of a banner program ("individual display") shall be constructed of cloth, canvas, vinyl, light fabric, wallboard or other light materials, and shall be installed on street lights, or other approved fixtures within approved locations of the city. In no case shall individual displays made part of a banner program be permitted on any city traffic control device. A banner program as herein regulated shall comply with all of the following:

1. Displays. Each banner program individual display shall relate to the public purpose of the eligible entity and promote activities relating to a municipal purpose and benefit. An individual display may provide for a business or organization sponsor name in an area not to exceed twenty percent of the total display area, provided however, the display shall not otherwise promote commercial ventures, be for political purposes, or contain language or depictions that may disparage the city. Individual displays made part of a banner program are intended to provide notification of the following:

h. Individual displays shall be approved as part of the original special privilege permit as per requirements herein. Additional displays for approved display locations submitted after initial banner program approval shall be reviewed by the traffic engineer or that person's designee for verification of compliance with these requirements. An applicant denied as to newly proposed individual display shall have right to appeal to the City Manager or designee who shall make a final determination on whether proposed replacement displays comply with the requirement of this section.

2. Location. In determining whether to approve a banner program as

well as the specific locations for the individual displays, the City Manager or designee shall approve only upon a finding of compliance with the following factors:

g. Individual display locations have been inspected and found to have no technical, logistical, or safety problem by the utility company if utility poles or other utility fixtures are to be used, or the Director of the Department of Transportation if city fixtures are to be used.

i. The display is authorized subject to reasonable conditions regulating the location, mounting, duration, or manner of display to include provisions for approval of the method of affixing individual displays on city property by the Director of Transportation and removal of individual banners, upon request by the City Manager or designee, should same become worn, broken, or otherwise of no further aesthetic benefit to the area.

8. Paragraph K, Subparagraphs 1a(1), 1c, 1d and 1e, shall be amended as follows:

K. Additional Requirements for Outdoor Patio Cafes

1. Outdoor Patio Cafes. The use of City sidewalks and/or vacated right-of-way for outdoor patio cafes may be granted by permit in the Union Plaza Entertainment Area, defined herein as the area that includes the full right-of-way of San Francisco Street on the north, Durango Street (southbound) on the east, Overland Avenue on the south and Anthony Street on the west and including all of Block 51, Mills Addition and Blocks 160 and 170, Campbell Addition, El Paso, Texas. The City Manager or designee shall have the authority to grant a permit under this subsection. Prior to approval of a permit, the use must comply with the process, procedures and standards specified under this subsection. The use of city right-of-way within the Union Plaza Entertainment Area without a permit or a special privilege granted under Chapter 15.08 is a violation of Chapter 15.08.

a. Filing Application.

(1) An application for the use of city sidewalks and/or right-of-way that has been vacated to vehicular use for an outdoor patio cafe in the Union Plaza Entertainment Area shall be made in writing on a form prescribed by the City Manager or designee and submitted for review and approval by City Manager or designee.

c. Prior to the issuance of a permit, the City Manager or designee shall distribute a copy of each application received for their review and comment to the following:

(1) Affected city departments, and

(2) Affected utility franchise holders.

d. Approval or Denial of Permit. The City Manager or designee shall approve or deny an application within thirty business days of receipt of a complete application. An application shall be approved if it complies with the standards set forth in this chapter and is recommended for approval by the affected city departments and utility franchise holders. A notice of denial shall clearly set forth the grounds upon which the application was denied. If approved, the permit shall be for a term of one year.

e. Appeals. The decision of the City Manager or designee may be appealed to city council. The appeal shall be based upon alleged misapplication of the standards for approval of the permit or application. An appeal shall not be used as a means of amending, varying or otherwise altering the standards of this Section. Prior to the filing of any petition for declaratory judgment or other judicial determination pursuant to subsection b of this section, the applicant shall appeal the decision of the City Manager or designee to the city council.

(1) Within ten business days from the date of notification of the final decision on the application or permit, the applicant may submit a written appeal to the City Manager or designee. The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by a fee as authorized by city council. An appeal by an applicant shall be accompanied by a copy of the application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.

(2) Within 30 calendar days of receipt of the appeal, the City Manager or designee shall place the appeal on the city council agenda. All documents submitted by the appellant shall be provided to city council along with any documentation the City Manager or designee deems relevant for city council to consider in rendering a decision.

(3) City council's decision to deny the appeal or to grant the appeal and grant a permit shall be based solely on the standards set forth in this chapter.

9. Paragraph L, Subparagraphs 1, 2 and 4, shall be amended as follows:

L. A temporary street closure exceeding twenty-four hours, for less than a one year term, or for less than twenty-four hours when the proposed closure is adjacent to property zoned for commercial use, or for periods less than thirty days, shall comply with the following:

1. An application for a special privilege permit is submitted to the City Manager or designee in accordance with Section D and E. One application may be submitted to allow for uses of city right-of-way for multiple days up to a period not to exceed one year, provided that the nature of the use is the same, and the duration of each use is less than thirty days; except that for events involving the closure of city streets a separate application shall be required for each event.

2. Time for filing application. An application for the temporary use of city right-of-way for less than thirty days shall be made in writing on a form prescribed by the City Manager or designee at least thirty days before the commencement of the event, but not more than one year in advance of the event.

4. Approval or Denial of Application.

a. The City Manager or designee shall approve or deny an application within thirty days of receipt of a complete application. A notice of denial shall clearly set forth the grounds upon which the application was denied.

b. Where the city determines that the length of an event will result in the substantial interruption of the movement of traffic, the City Manager or designee when issuing the approval, may modify and change the time of the event.

c. The City Manager or designee or other affected city departments may attach reasonable conditions to approval of any application as may be appropriate within the spirit and intent of this Section.

**Section 2.** Except as herein amended, Title 15, Public Services, of the El Paso City Code shall remain in full force and effect.

**PASSED AND APPROVED this \_\_\_\_\_ of \_\_\_\_\_ 2012**

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

SIGNATURES CONTINUE ON FOLLOWING PAGE

**APPROVED AS TO CONTENT:**

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Mathew McElroy,  
Deputy Director  
Planning & Economic Development

**APPROVED AS TO FORM:**

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Lupe Cuellar  
Assistant City Attorney

**ORDINANCE NO.** \_\_\_\_\_