

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

**DEPARTMENT:** Development Services / Planning Division  
**AGENDA DATE:** Introduction 04/07/09: Public Hearing 04/14/09  
**CONTACT PERSON/PHONE:** Esther Guerrero, Planner – 541-4720  
**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

An ordinance granting a Special Privilege to Ascension Lutheran Church permitting the encroachment of a single directional sign onto a portion of public right-of-way at Ojo De Agua Drive. SPL09-00005 (District 1)

**BACKGROUND / DISCUSSION:**

A Special Privilege License was previously granted by Ordinance No. 15669 on January 13, 2004 to Ascension Lutheran Church (applicant) permitting the installation of a single directional sign measuring approximately 20" x 30" on the northeast portion of Ojo De Agua Drive where it meets with Loma De Cristo Drive. The applicant was granted a five year term with the option to renew for an additional five years but failed to submit their request three months prior to the expiration date of January 13, 2009.

Therefore, the applicant was required to submit a new application. If granted, the applicant will receive a term of five years with the City Manager having the authority to extend the License for one additional five year term.

**PRIOR COUNCIL ACTION:**

**AMOUNT AND SOURCE OF FUNDING:**

**BOARD / COMMISSION ACTION:**

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

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

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

**DEPARTMENT HEAD:** \_\_\_\_\_  
Mathew McElroy, Deputy Director of Planning

**APPROVED FOR AGENDA:**

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

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO ASCENSION LUTHERAN CHURCH PERMITTING THE ENCROACHMENT OF A SINGLE DIRECTIONAL SIGN ONTO A PORTION OF PUBLIC RIGHT-OF-WAY AT OJO DE AGUA DRIVE.**

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

That the City Manager be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to ASCENSION LUTHERAN CHURCH:

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A";
2. The Special Privilege is to permit ASCENSION LUTHERAN CHURCH, owner of property located at 6520 Loma De Cristo Drive, to place one (1) directional sign onto City right-of-way at the northeast portion of Ojo De Agua Drive where it meets with Loma De Cristo Drive as more particularly shown in the attached and incorporated Exhibit "B";
3. As consideration for this Special Privilege, ASCENSION LUTHERAN CHURCH shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A", subject to the terms and conditions of this ordinance and Special Privilege; and
4. This Special Privilege shall last a term of five (5) years. The City Manager has the authority to extend the Special Privilege for one additional five (5) year term under the same terms and conditions.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ **2009.**

**THE CITY OF EL PASO**

**ATTEST:**

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

\_\_\_\_\_  
John Cook  
Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Development Services

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

**EXHIBIT "A"**  
**SPECIAL PRIVILEGE**

**THIS SPECIAL PRIVILEGE**, made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF EL PASO, hereinafter called "City", and ASCENSION LUTHERAN CHURCH, Owner, hereinafter called "Grantee".

**WHEREAS**, Grantee owns the property located at 6520 Loma De Cristo Drive in the City of El Paso, El Paso County, Texas; and

**WHEREAS**, Grantee has requested permission from the City to place one (1) directional sign measuring twenty inches by thirty inches (20" x 30") onto a portion of public right-of-way at Ojo De Agua Drive; and

**WHEREAS**, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1.     **DESCRIPTION.**     The City hereby grants a Special Privilege to Grantee to encroach no more than twenty four inches by thirty six inches (24" x 36") with one (1) directional sign onto public right-of-way at the northeast portion of Ojo De Agua Drive where it meets with Loma De Cristo Drive in El Paso County, El Paso, Texas, as shown in Exhibit "B", which is attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "Premises".

2.     **TERM.**The term of this Special Privilege shall be for five (5) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee. If the Grantee wishes the City to renew this Special Privilege, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. This Special Privilege shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantee as herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this

Special Privilege. The City Manager has the authority to grant one extension, under the same terms and conditions.

3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City, pursuant to the fee structures set forth in section 15.08.120.D., the sum of Three Hundred Thirty and No/100 Dollars (\$330.00) per year, for a total sum of One Thousand Six Hundred and 50/100 Dollars (\$1,650.00). This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with the directional sign, as well as all costs for the restoration of the Premises.

The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable ordinances and regulations.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment onto public right-of-way with one (1) directional sign measuring approximately twenty inches by thirty inches (20" x 30") and encroaching no more than twenty four inches by thirty six inches (24" x 36") onto the Premises, hereinafter called "Structure". Grantee shall not install the sign under this Special Privilege until the Development Services and Traffic Engineering Departments have approved the plans of the Structure and exact proposed location as appropriate under the applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance of the Structure.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair of the Structure.

5. IMPROPER USE. This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the City Council.

6. REPAIRS. Grantee shall keep the property, Structure and Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special

Privilege. Grantee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. INDEMNITY. As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. LIABILITY INSURANCE. Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee 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 Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured to the full amount of the policy limits.

No special privilege license shall be granted by City Council until the Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, Financial Services-Capital Assets Division and the Development Services Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the Financial Services-Capital Assets Division. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

9. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which the Structure is encroaching is needed for public use, the City may upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty (30) days prior written notice to the City, and all rights of Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee shall cease to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of their obligations under this Special Privilege and fails to correct such defaults within thirty (30) days after written notice to do so has been sent; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, the encroaching Structure shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

10. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. ASSIGNMENT. Grantee shall not assign this Special Privilege without the prior written consent of the El Paso City Council.

12. MISCELLANEOUS.

a. **SIGNS:** This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein.

b. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.

c. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the Structure, as well as Grantee's use of the Premises, except as specifically provided by the grant of

this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structure without first having obtained any required sign permits from the Development Services Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

d. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns. This Special Privilege is a restriction, condition and covenant running with the property known as 6520 Loma De Cristo Drive and a charge and servitude thereon, and shall bind the Grantee and his successors in title. Any further lease or conveyance of this property known as 6520 Loma De Cristo Drive shall contain this restriction, condition and covenant and shall embody this Special Privilege by express reference.

e. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso  
Attn: Financial Services-Capital Assets Division  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to:

City of El Paso  
Attn: Development Services Department  
#2 Civic Center Plaza, 2nd Floor  
El Paso, Texas 79901-1196

and:

Ascension Lutheran Church  
6520 Loma De Cristo Drive  
El Paso, TX 79912

Or to such other address as the parties may designate to each other in writing from time to time.

f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

g. SEVERABILITY: The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

h. **LAW GOVERNING:** The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

13. **RESTRICTIONS AND RESERVATIONS:** This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. **EFFECTIVE DATE:** This Special Privilege shall be null and void unless signed by Grantee within thirty (30) days after its passage and approval by City Council. This Special Privilege shall not take effect unless Grantee shall, within thirty days (30) after its passage and approval, file its written acceptance with the City Clerk. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrants to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce Wilson, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Development Services Department

**ACCEPTANCE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE**



SPL09-00005

