

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

DEPARTMENT: Planning Research & Development

AGENDA DATE: Introduction 05-10-05; Public Hearing 05-24-05

CONTACT PERSON/PHONE: Esther Guerrero, Planning Technician III – 541-4720

DISTRICT(S) AFFECTED: #8

SUBJECT:

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO O.P.E.P. INCORPORATED TO TEMPORARILY CLOSE A PORTION OF OCHOA STREET BETWEEN FIRST AVENUE AND PAISANO DRIVE FOR A "FOAM PARTY MEMORIAL DAY CELEBRATION" ON SUNDAY, MAY 29, 2005 AND MONDAY, MAY 30, 2005. (Fee: \$137.50, SP-05008, District 8)

BACKGROUND / DISCUSSION:

See attached information.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) unanimously recommended approval on April 13, 2005.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: George Sarmiento

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

GENERAL INFORMATION:

SUBJECT: Special Privilege SP-05008

This Special Privilege will permit the temporary closure of a portion of public right-of-way along Ochoa Street between First Avenue and Paisano Drive for a Memorial Day Celebration.

Street closure will be from 6:00 p.m. on Sunday, May 29, 2005 through 5:00 a.m. on Monday, May 30, 2005.

Entertainment will include live music, food, beverage and other event festivities.

As consideration for this Special Privilege License the applicant shall provide prior to City Council action the following:

- Submittal of a detailed traffic control plan to the City Engineering Department-Traffic Division on or before May 13, 2005 and distribution of the approved plan to the City Departments of Police, Fire and Sun Metro no later than May 20, 2005;
- Applicant shall temporarily close premises by using the materials and methods approved by the City Engineering Department-Traffic Division;
- Provide written letters of support of proposed use of public right-of-way from abutting property owners;
- Provide appropriate number of security personnel;
- Provide a twenty (20) foot wide traffic lane for emergency vehicle access on all temporarily closed streets; and
- Coordinate with any applicable City Departments, state or federal agencies to obtain any necessary permits and approvals required for the Event or proposed use of the Premises, including but not limited to, sound amplification and the sale of alcoholic beverages; and
- Providing liability insurance.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO O.P.E.P. INCORPORATED TO TEMPORARILY CLOSE A PORTION OF OCHOA STREET BETWEEN FIRST AVENUE AND PAISANO DRIVE FOR "FOAM PARTY MEMORIAL DAY CELEBRATION" ON SUNDAY, MAY 29, 2005, AND MONDAY, MAY 30, 2005.

WHEREAS, O.P.E.P Incorporated (hereinafter referred to as "Grantee") is sponsoring a "Foam Party Memorial Day Celebration" (hereinafter referred to as "Event"), on Sunday, May 29, 2005, and Sunday, May 30, 2005.

WHEREAS, the Grantee is requesting the use and closure of a portion of public right-of-way on Sunday, May 29, 2005, and Monday, May 30, 2005, in conjunction with the proposed Event.

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

That the Grantee is hereby granted a Special Privilege to temporarily close a portion of the following public right-of-way, as shown within the attached and incorporated Exhibit "A" and hereinafter referred to as "Premises":

Ochoa Street between First Avenue and Paisano Drive from 6:00 p.m. on Sunday, May 29, 2005, through 5:00 a.m. on Monday, May 30, 2005, for a "Foam Party Memorial Day Celebration".

The grant of this Special Privilege is subject to the following conditions:

1. Grantee shall pay for all costs associated with the temporary closing of the Premises. The Premises shall be temporarily closed, by using the materials and methods approved by the City Engineering Department-Traffic Division as outlined in Paragraph 2 of this Special Privilege.

2. Grantee shall submit a detailed traffic control plan to the City Engineering Department-Traffic Division. The City Engineering Department-Traffic Division on or before May 16, 2005, shall approve a detailed traffic control plan. Grantee shall submit copies of the approved detailed traffic control plan to the City Departments of Police, Fire and Sun Metro no later than May 20, 2005. Failure to submit, obtain the approval, or distribute the approved detailed traffic control plan as herein provided shall result in an automatic termination of this Special Privilege.

3. Grantee shall keep open a twenty (20) foot wide traffic lane for emergency vehicle access on all temporarily closed streets and a vertical clearance of not less than thirteen (13) feet six (6) inches. Grantee acknowledges that the temporarily closed Premises must be opened for use by emergency vehicles upon demand by City Police and Fire personnel. Grantee shall ensure that no structures shall be placed within fifteen (15) feet of any fire hydrant, nor directly over any water valve or sanitary sewer manhole in the Premises. In addition, should the City of El Paso for any reason decide that portions of the Premises that have been temporarily closed must be reopened, the Grantee, at no cost to the City, shall immediately after notice from the City Engineering Department-Traffic Division, reopen for public use the temporarily closed Premises.

4. Grantee shall be permitted to use the Premises for the Event purposes, including but not limited to all of the following: food and retail vending, entertainment staging, booths, event displays, public gathering areas (table and seating), and other festival-related activities.

5. Grantee shall not use any portions of other City public rights-of-way or City-owned property, without the express written consent of the City or an official authorized to grant such approval.

6. The City assumes no responsibility for maintenance of the Premises during the temporary closing by the Grantee.

7. The Premises shall be used by the Grantee solely for the Event purposes.

8. As an express condition of this Special Privilege, Grantee shall meet and coordinate emergency access for the Event, including but not limited to, first-aid stations, emergency response, and manned security, with the City Departments of Fire and Police prior to start of event. In addition, Grantee shall complete all of the following:

a. Provide satisfactory written proof to the Planning, Research and Development Department, that the property owners and tenants within and adjacent to the Premises have no objections to the temporary closing;

b. Obtain any permission, permit, license or lease to utilize any portion of City facilities used in connection with the Event prior to the use of the Premises;

c. Coordinate with any applicable City Departments, state or federal agencies to obtain any necessary permits and approvals required for the Event or proposed

use of the Premises, including but not limited to, sound amplification and the sale of alcoholic beverages;

d. Provide sufficient refuse containers within the Premises for the litter generated by participants and patrons of the Event. After the Event has ended, Grantee, at no cost to the City, shall clean up all litter and debris within the Premises, leaving the public rights-of-way in a clean and orderly condition;

e. No equipment, tables, booths, electrical lines, or other structures shall be placed within fifteen (15) feet of any connections to sprinkler systems, water hydrants, water valves, and sanitary sewer manholes on or near the Premises;

No equipment, tables, booths, electrical lines, or other structures shall be placed in such a manner that access is obstructed to any entrance or exit of any adjacent business.

9. The Grantee assumes full responsibility for the planning, coordination, management and production of the Event. Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between the City and the Grantee, and the Grantee shall be deemed at all times to be an independent contractor. The grant of this Special Privilege shall in no way be construed as co-sponsorship of the Event.

10. Grantee expressly agrees that should any improvements, within the Premises, including but not limited to landscape planters, plants, street paving, or traffic identification signs and devices, be destroyed or damaged during the Event, Grantee shall replace or repair such improvements at Grantee's sole expense, and at no cost to the City.

11. As consideration for this Special Privilege, Grantee shall pay the City the a total sum of One Hundred Thirty Seven and 50/100 Dollars (\$137.50), which shall be due prior to the execution of this Special Privilege by the El Paso City Council. The advance payment shall be in the form of a cashier's check delivered to the office of the Planning, Research and Development Department for remittance to the office of the City Comptroller. If the Special Privilege is disapproved by the City Council, the office of the City Comptroller shall make a full refund of the payment within fifteen (15) days of the denial action.

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.

12. Upon termination of this Special Privilege, the grant hereof shall cease, any property of the Grantee situated upon the Premises shall be removed by the Grantee without cost or expense to the City, and the Premises shall be restored to its original condition.

13. Grantee agrees to indemnify and hold the City harmless from any claims for injury, death, loss or damage of any kind or character, and by whomsoever suffered or asserted, occasioned by or in connection with the temporary closing of the Premises by Grantee, its agents, servants or employees or any organizations contracted by the Grantee either while the Event is in progress or as the result of the temporary closing of the Premises.

Grantee shall, prior to execution of this Special Privilege by the El Paso City Council, provide public liability insurance for personal injuries and death growing out of any one (1) 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 (1) 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 (1) accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured. Grantee shall file a copy of the policy or certificate of insurance with the City Clerk, the Planning, Research and Development Department and the City Attorney prior to City Council enactment of the Special Privilege.

14. This Special Privilege is subject to the governmental powers of the City.

15. This Special Privilege shall not take effect unless Grantee files 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 Grantee

warrants to City that Grantee is a duly authorized and existing corporation, that Grantee is qualified to do business in the State of Texas, that 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 Grantee is authorized to do so. Upon the City's request, Grantee shall provide evidence satisfactory to the City confirming these representations.

PASSED AND APPROVED this 24th day of MAY, 2005.

THE CITY OF EL PASO

ATTEST:

Joe Wardy
Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Matt Watson
Assistant City Attorney
Doc No. 12003

George G. Sarmiento, AICP, Director
Planning, Research and Development
Department

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this _____ day of _____, 2005.

GRANTEE:

O.P.E.P. INCORPORATED

By: _____

(printed name/title)

(Signatures continue on following page)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this _____ day of _____,
2005, by _____ as _____, on behalf of
O.P.E.P. Incorporated (Grantee).

Notary Public, State of Texas

Notary's Printed or Typed Name:

My Commission Expires:
