

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

**DEPARTMENT:** Development Services Department-Planning Division

**AGENDA DATE:** Introduction 08-05-08; Public Hearing 08-12-08

**CONTACT PERSON/PHONE:** Mirian Spencer, Planner, (915) 541-4192, spencermd2@elpasotexas.gov

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

An Ordinance granting a Special Privilege to Cinco Puntos Press, permitting the encroachment of canopies along a portion of public rights-of-way located at Lot 1, Block 228 Campbell Addition, City of El Paso, El Paso County, Texas, more commonly known as 701 Texas Avenue. Applicant: Cinco Puntos Press, SPL08-00014 District 8

**BACKGROUND / DISCUSSION:**

See attached information.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

On June 25, 2008 the Development Coordinating Committee recommended approval.

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** Victor Q. Torres Victor Q. Torres

\*\*\*\*\*

**APPROVED FOR AGENDA:**

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

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CITY CLERK DEPT.

**GENERAL INFORMATION:**

**SUBJECT:** Special Privilege SPL08-00014

The Special Privilege will permit the construction of three canopies over the public right-of-way adjacent to 701 Texas Avenue.

The Development Coordinating Committee recommends approval based on and subject to the following:

- Grantee is responsible for restoration of the premises to its original state upon removal of any of the encroachments;
- Grantee is responsible for all maintenance and any damages due to a failure to maintain;
- A five (5) year term with the City having the option to renew for two (2) additional five (5) year terms upon the request of the Grantee;
- Annual consideration of \$100.00
- The City may, upon thirty (30) days written notice, cancel the Special Privilege at no cost to the City and may take possession of the public right-of-way;
- Grantee may cancel the Special Privilege, for any reason, upon thirty (30) days prior written notice to the city, and all rights of the Grantee shall be terminated; and
- Providing liability insurance throughout the term of the license agreement.

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

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO CINCO PUNTOS PRESS, PERMITTING THE ENCROACHMENT OF CANOPIES ALONG A PORTION OF PUBLIC RIGHTS-OF-WAY LOCATED AT LOT 1, BLOCK 228, CAMPBELL ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, MORE COMMONLY KNOWN AS 701 TEXAS AVENUE.

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 Cinco Puntos Press (hereinafter referred to as "Grantee"), for the property located at 701 Texas Avenue:

- 1. This Special Privilege shall be in a form, which is attached hereto and incorporated as Exhibit "A;"
- 2. The Special Privilege is to permit the owner of property located at 701 Texas Avenue, as more particularly described as Lot 1, Block 228, Campbell Addition, City of El Paso, El Paso County, Texas, to encroach onto a portion of public right-of-way with three (3) canopies, as more particularly shown in the attached and incorporated Exhibit "B";
- 3. As consideration for this Special Privilege, Grantee 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 be for a term of five (5) years with two renewal options, each for an additional five (5) year period.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

THE CITY OF EL PASO

ATTEST:

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

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

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

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CITY CLERK DEPT. 1

SPL08-00014



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. Should the Grantee fail to submit such request for the renewal of this Special Privilege to the City as herein required, the Special Privilege will expire upon the expiration date. 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.

**3. CONSIDERATION.** As consideration for this Special Privilege, Grantee shall pay to the City, pursuant to the fee structures set forth in Ordinance 10363, as amended, Section 15.08.120D of the El Paso Municipal Code, Twenty and No/100ths Dollars (\$20.00) per canopy, for a total sum of Sixty and No/100ths Dollars (\$60.00) per year, which shall be due prior to the execution of this Special Privilege by City Council. The advance payment shall be delivered to the Development Services Department. If the Special Privilege is disapproved by the City Council, the Development Services Department shall make full refund of the advance payment within fifteen (15) days of the denial action.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120 of the El Paso Municipal Code. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which could result from a re-computation or assessment of fees pursuant to enactment of future amendments to 15.08.120D. This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with the canopy, and as well as all costs for the restoration of the Premises.

**4. USE OF PROPERTY.** This Special Privilege is granted solely for the encroachment onto public right-of-way with a canopy without signage measuring six feet six inches wide by three feet deep and three feet in height (6.5' x 3' x 3'), onto the Premises, hereinafter called "Structure." Grantee shall not commence construction under this Special Privilege until the Development Services Department – Building Permits and Inspections Division has approved all plans for the construction of the Structure 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 for any reason whatsoever.

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 may impair 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 El Paso 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 rights-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 El Paso City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Development Services Department – Planning Division. 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 City Clerk. 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 any of the encroachments are needed for public use, the City may upon thirty days (30) 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 the Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty days (30) prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee ceases to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fail to correct such defaults within thirty days (30) after written notice to do so; 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 prior written consent of the El Paso City Manager.

**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. Permission to erect signage must be obtained by Grantee pursuant to applicable City Code and ordinance provisions and subject to the restrictions and requirements contained therein.
- 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, maintenance and 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 Premises without first having obtained any required building permits from the City 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 701 Texas Avenue 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 701

Texas Avenue 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: Joyce Wilson, City Manager  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to: City of El Paso  
Attn: City Clerk  
#2 Civic Center Plaza, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-1196

and: Cinco Puntos Press  
Attn: Robert and Lee Byrd  
701 Texas Avenue  
El Paso, Texas 79901

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: Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.
- 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.
- i. The Director of Development Services or that person's designee is the principal City official responsible for the administration of this Special Privilege and Grantee recognizes that questions regarding the

interpretation or application of this ordinance shall be referred to the Director of Development Services or designee.

**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 not take effect unless Grantee files his written acceptance with the Development Services Department prior to its passage and approval by the El Paso City Council. If Grantee accepts the terms and conditions of this Special Privilege as a irrevocable trust, each of the persons accepting on behalf of such Grantee warrant 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.

*(Signatures on following page)*

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

Joyce Wilson  
City Manager

APPROVED AS TO FORM:

[Signature]  
Lupe Cuellar  
Assistant City Attorney

APPROVED AS TO CONTENT:

[Signature]  
Mathew S. McElroy, Deputy Director  
Development Services Department

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this  
23rd day of July, 2008.

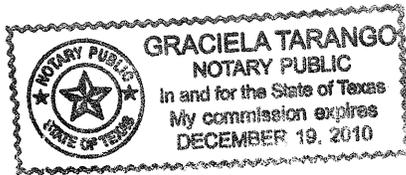
GRANTEE: CINCO PUNTOS PRESS

By: [Signature]  
LEE BYRDS, PRES.  
(Printed Name and Title)

ACKNOWLEDGEMENT

THE STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument is acknowledged before me on this 23 day of July,  
2008, by Lee Merrill Byrd, on behalf of CINCO PUNTOS PRESS.



[Signature]  
Notary Public, State of Texas  
GRACIELA TARANGO  
Notary's Printed or Typed Name:  
December 19, 2010

My Commission Expires: December 19, 2010

CITY CLERK DEPT  
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SPL08-00014

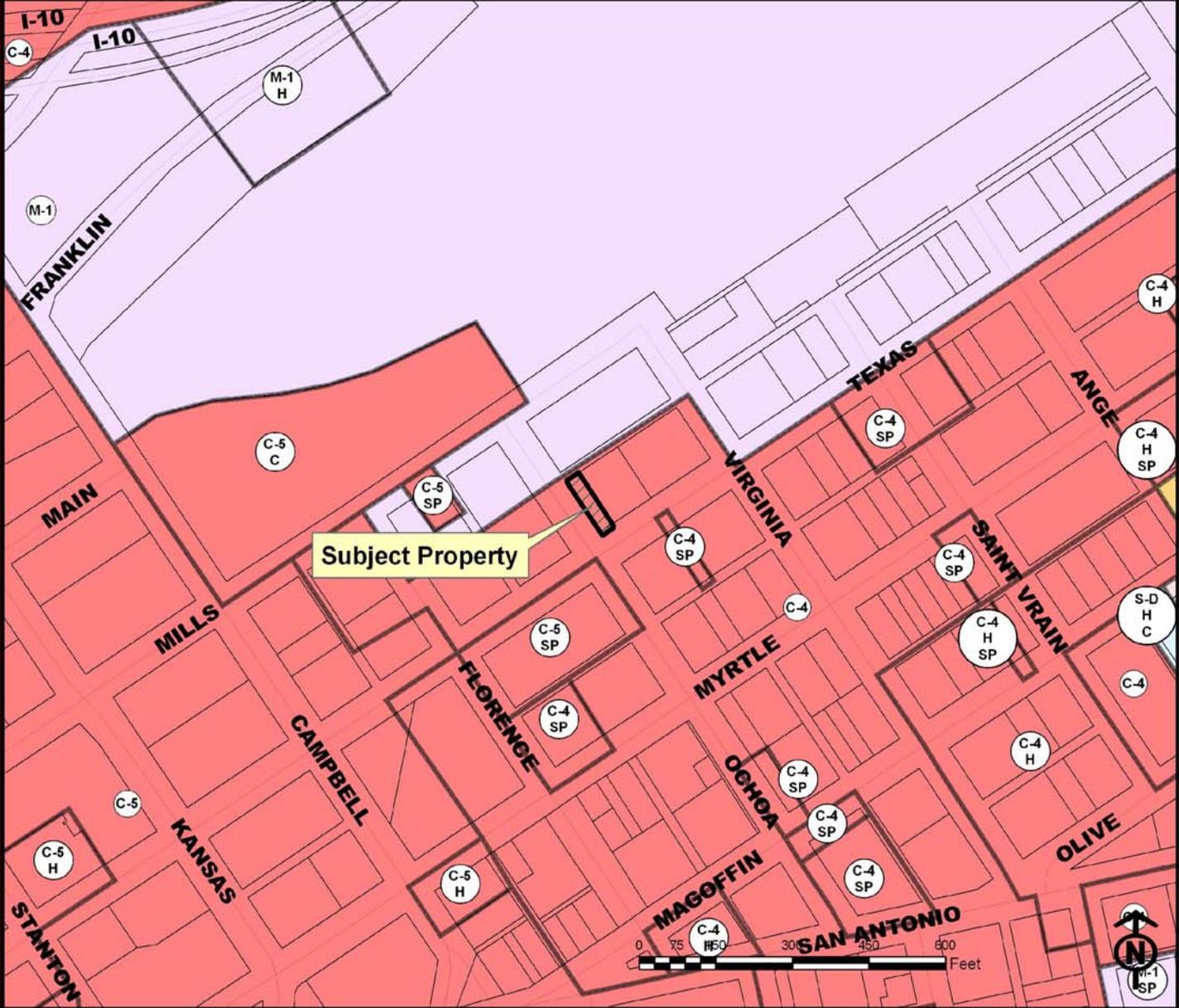


**Exhibit "B"**  
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Location Map

SPL08-00014



Aerial

SPL08-00014

