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

DEPARTMENT: **Engineering, Traffic Division**

AGENDA DATE: **Introduction August 18, 2009,**
Public Hearing August 25, 2009

CONTACT PERSON/PHONE: **Kimberly Forsyth, Senior Planner, Traffic Division – 541-4165**

DISTRICT(S) AFFECTED: **All Districts**

SUBJECT:

An Ordinance amending Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privileges) of the El Paso City Code to amend the procedures for use of public right of way granted by special privilege license and permits, the penalty as provided for in Section 15.08.125 of the El Paso City Code

BACKGROUND / DISCUSSION:

A special privilege license, granted by the City Council, is required per Title 15 to permit the use of public right-of-way such as a street or sidewalk for a private purpose or event. The special privilege function is currently housed in the Development Services Department and is scheduled to be transferred to the Engineering Department effective September 1, 2009. This ordinance amendment will transfer the function responsibility and allow for increased use of administrative approval of temporary and removable encroachments through permits granted by the City Engineer. Special privilege fees currently listed in Title 15 have been removed and will be incorporated into Schedule C with other City fees.

NOTE: Approval of a special privilege by the City does not guarantee that the Texas Alcoholic Beverage Commission (TABC) will grant permission for the sale and/or service of alcoholic beverages in the area covered by the special privilege. The TABC reviews the applications separately and determines what, if any, additional measures are necessary to comply with their policies and procedures.

PRIOR COUNCIL ACTION:

Approval of a Title 15 amendment on July 24, 2007 to allow for administrative approval of special privileges for temporary events such as street closures and festivals.

Approval of a Title 15 amendment on July 28, 2009, to allow for administrative approval of special privileges for outdoor patio cafes in the Union Plaza Entertainment Area.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

The Development Coordinating Committee (DCC) recommended approval on August 5, 2009. Scheduled for review by the Planning Legislative Review Committee (LRC) on August 20, 2009.

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

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

DEPARTMENT HEAD: _____
R. Alan Shubert

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 PRIVILEGES) OF THE EL PASO CITY CODE TO AMEND THE PROCEDURES FOR USE OF PUBLIC RIGHT OF WAY GRANTED BY SPECIAL PRIVILEGE LICENSE AND PERMITS, THE PENALTY AS PROVIDED FOR IN SECTION 15.08.125 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 desires to adopt this ordinance to amend the City Code to allow for the use of public right of way through either a special privilege license or a permit; and,

WHEREAS, the City has determined for those uses that are either temporary in nature or constitute a minimal encroachment on public right of way, that such uses may be approved administratively provided that they are in compliance with the standards established under this ordinance and obtain a permit for such use;

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), of the El Paso City Code shall be amended as follows:

15.08.120 Special privilege licenses and permits

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 Engineer. 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 Engineer 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 Engineer. The City Engineer 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 Engineer 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.

3. Terms. Licenses and temporary permits have stated durations and are terminable according to the terms specified within the license or permit granting the use.

4. Those receiving permits or licenses under this Section must maintain in good repair and condition any structure, covering, or appurtenance and the accompanying structural members extending over, under, or on public right-of-way, or other city property. No such encroachment may be a nuisance or safety hazard. All such encroachments, when built or renovated, must conform to the Building Code and other applicable codes of the City of El Paso as adopted and amended.

5. If an applicant receives a special privilege license or permit granted under this Section, the applicant shall indemnify and hold harmless the City against all loss, claims, costs, liability, damages or expense (including but not limited to all fees and charges of attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising from or relating to the city's grant of the rights or applicant's exercise of them. This section controls whether or not applicant's agreement with the city so provides. This section controls even if the agreement provides otherwise, unless an ordinance expressly states that City Council intends to override this section as to the particular use by the particular applicant. The indemnity specifically covers the city's own negligence, whether joint or sole. Entities that may not lawfully grant indemnities or may not lawfully be required to do so by the city need not grant the indemnity provided for in this section.

6. Special privilege license or permits granted under this Section shall not relieve the applicant of complying with any other approvals, permits, or licenses that are otherwise required by the City or under the City Code. No permit or license shall be granted under this Section if the proposed use would impair the primary public purpose of the affected public right-of-way.

7. Maintenance of Encroaching Structure. Any aerial, surface or subsurface structure which is granted a special privilege license or a permit to encroach onto public right-of-way shall be maintained in good repair and shall not constitute a nuisance or a safety hazard. If such structure is not properly maintained, together with any supporting members, it shall be removed from the public right-of-way. Particular to awnings, canopies, marquees, signs and other structures made of cloth, plastic or other similar material, the structure shall be maintained in safe condition at all times without ripping, tearing or other holes. Failure to properly maintain structures may necessitate removal.

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

B. Application Requirements for a Special Privilege License or Permit

1. One (1) completed application for Special Privilege License or Permit to include names, mailing addresses and telephone number of the property owner(s) and proposed tenants(s) (lessees), and signatures, where applicable. The owner of property directly adjacent to city owned public right-of-way areas shall authorize and sign any applications submitted if the property owner is not the applicant;

2. One (1) copy of a current map, accurately outlining the public right-of-way or easement upon which an encroachment is proposed.

3. Eight (8) copies of a plan of the public right-of-way or public easement, drawn to scale, showing the following:

a. all existing improvements contained on the public right-of-way or easement;

b. all proposed improvements to be placed on the public right-of-way or easement;

c. size and use of all structures;

d if permanent structures are proposed, an improvement survey shall be required;

4. A sealed written metes and bounds description, if applicable.

5. A transmittal letter including specific information, special circumstances or conditions, which apply to the request.

6. A certificate of liability insurance or self-insured affidavit to be submitted prior to ordinance introduction or permit issuance.

7. One (1) copy of a traffic control plan, if applicable.

8. Notice of Proposed Closure (required for events involving closure of city streets). The applicant shall provide the name, address and signature of each owner of real property abutting the boundaries of the area where the temporary event is proposed, on a form provided by the engineering department.

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

C. Procedure for a Special Privilege License. The application and related materials will be distributed to the Development Coordinating Committee (DCC), which will make a recommendation for approval or denial of the request.

1. If the DCC recommends 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 (1) 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 the DCC recommends 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 (30) days of the denial by the Development Coordinating Committee. The City Council may deny the appeal for a special privilege license or direct the preparation of the ordinance.

3. Approval by City Council. If, in the judgment of the City Council, the requested use is not inconsistent with and does not unreasonably impair the public use of the right-of-way, the City Council may, by ordinance, approve the special privilege license. As an express condition of the special privilege license, the City Council may impose development standards to mitigate the encroachment onto public right-of-way, to improve safety and aesthetics, or to insure compatibility with adjacent structures and uses.

4. Terms and Conditions—Duration—Right of Termination Reserved by City.

a. The ordinance shall contain the terms and conditions of the license and shall state the time for which the license exists. Whether or not stated in the ordinance, the City Council retains the right to terminate a license whenever in its judgment revocation is necessary to secure efficiency of public service at reasonable rates or to

assure that the property is maintained in good order throughout the term of the special privilege.

b. Upon termination of the special privilege license, at the option of the City, licensee shall remove any improvements and return the property to its original condition, or the City shall have the option of keeping the improvements, erected during the term of the special privilege license, and such improvements shall become the property of the City.

c. Breach by Licensee. If the licensee fails to fulfill any of the conditions stated in the special privilege ordinance, the City Council may terminate the license after reasonable notice and hearing.

D. Procedure for a Special Privilege Permit.

1. The application and related materials will be forwarded to the Development Coordinating Committee (DCC), which will make a recommendation for approval or denial of the request.

2. If the DCC recommends approval of the request, the City Engineer may issue the permit 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 the DCC recommends denial of the request, the City Engineer shall deny issuance of the permit.

4. Appeal process. If the City Engineer denies 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 Engineer. 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 Engineer 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.

a. Upon termination of the special privilege permit, at the option of the City, licensee shall remove any improvements and return the property to its original condition, or the City shall have the option of keeping the improvements, erected during the term of the special privilege license, and such improvements shall become the property of the City.

b. Permits may be terminated or revoked at any time by the City Engineer 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 Engineer may require annual renewal of permits and inspections of the permitted use and site.

c. The provisions of this section shall not be construed to impair the right of the city or any other person to abate or caused to be abated any unlawful activity, facility, improvement or use of any public right-of-way.

E. Types of Encroachments. Any one or more of the activities, improvements, facilities or uses on public right-of-way in Table 1-1 may be granted a special privilege license or a permit:

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Table 1-1

Type of Encroachment	Authorizing Instrument	Term	Additional Requirements
1. Aerial Encroachments			
a. Awnings, canopies	Permit	One (1) - five (5) years	See Section H
b. Security roll-up doors	Permit	One (1) - five (5) years	No new applications shall be accepted On renewals of legally existing licenses, the grill shall be screened by a canopy, awning or other structure.
c. Temporary Street Displays	Permit	One (1) year	See Section I
d. Banner Program	Permit	Maximum three (3) years	See Section J
e. A pedestrian sky-walk	License	License denotes term	Meets all applicable City, state and federal requirements.
f. Signs, kiosks, marquees	Permit	One (1) - five (5) years	The construction and installation for all marquees, kiosks, and other signs shall comply with all applicable city regulations
g. Pipelines, transmission lines or cables	License	License denotes term	Meets all applicable City, state and federal requirements
h. Other overhead encroachments not specified herein	License	License denotes term	Meets all applicable City, state and federal requirements

2. Surface Encroachments			
a. Outdoor patio café, including removable fencing, furniture, planters or related appurtenances	Permit	One (1) year Annual renewal required.	See Section K
b. Street furniture (includes but is not limited to, benches, bollards, bike racks, trash receptacles, lighting, shelters, outdoor pavilions, and other streetscape components providing convenience, safety and access to activities, amenities and location information)	Permit	One (1) year Annual renewal required	Construction, installation and maintenance shall meet all applicable city regulations.

c. Ornamental gates, columns or other ornamental works of iron, wood, masonry, earth or other materials denoting the entrance to a neighborhood or subdivision	Permit	One time -no annual renewal required	Improvements may display the name of the subdivision or neighborhood but shall contain no commercial advertising or other signage.
d. A taxi-stand	License	One (1) year. Annual renewal required	See standards in Title 6, Chapter 6.16 (Taxicabs) of the City Code
e. Supportive or decorative columns, arches or other structural or decorative features of any historically significant building or structure	Permit	One time -no annual renewal required	Historic Preservation Officer/HLC shall approve all applications prior to issuance of a permit.
f. A temporary street closure	Permit	Permit denotes term	See Section L. Applications for temporary street closure must be submitted for consideration at least 30 days prior to the proposed closure.
g. A building or other structural encroachment when vacation of the public right-of-way is not in the best interest of the public	License	Maximum fifteen (15) years	See Section M
h. Food vending concessions within the downtown area	License	License denotes term	See Section N
i. Accessibility ramps required by the city building code	Permit	One time -no annual renewal required	Shall comply with Texas Accessibility Standards (TAS).
j. Pipelines, transmission lines or cables	License	License denotes term	Does not unreasonably impair the public use of the right-of-way and meets all applicable City, state and federal requirements
k. Outdoor pay telephones	License	License denotes term	No new applications shall be accepted. Renewals of existing licenses may be granted by City Council
l. Other surface encroachments not specified herein	License	License denotes term	Does not unreasonably impair the public use of the right-of-way and meets all applicable City, state and federal requirements
3. Subsurface Encroachments			
1. An underground storage vault or basement structure	Permit	One time –no annual renewal required	Does not unreasonably impair the public use of the right-of-way and meets all applicable building code standards
2. Pipelines, transmission lines, cables or storage tank	License	License denotes term	Does not unreasonably impair the public use of the right-of-way and meets all applicable City, state and federal requirements.
3. Other subsurface encroachments not specified herein	License	License denotes term	Does not unreasonably impair the public use of the right-of-way and meets all applicable City, state and federal requirements.

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 Engineer, and shall be in addition to other charges for a particular licensed or permitted use.

a. The annual fee for a license or permit to use a public right-of-way is determined by City Council resolution. When the term of the special privilege license or permit exceeds one (1) year, the total annual fee shall be paid each year on or before the anniversary date of approval.

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 engineer. This fee shall be refunded if the application is not approved.

2. Fees in the downtown improvement area. For purposes of this section, the downtown improvement area is defined as the area bounded by Yandell Street, Kansas Street, Border Highway and Santa Fe Street, and all property zoned UP (Union Plaza) and SRR (Special Residential Revitalization). This area has a separate fee schedule, as determined by City Council resolution. Payments shall be made as stated in Section F.1.

3. Fees for a special privilege permit to use a public right-of-way for a temporary street display:

a. The fee is accessed regardless of the display duration or whether on a single- or double-side mounting bracket. The applicant shall also pay for the city's cost for installation, inspection and removal, and a bracket rental fee in the amount of thirty dollars per single hung and fifty dollars per double hung brackets.

b. All installation and removal of temporary street displays on city fixtures shall be performed by the city.

c. Payment of the estimated cost for the installation and removal of the display(s) must be paid prior to approval.

d. The city shall not be responsible for the cost of replacing a temporary street display resulting from any damage incurred during its installation, removal or when replacement is deemed necessary by the city in order to maintain a safe condition or a display free of ripping, tearing and other damage; if the city must remove or replace the display in order to maintain a safe condition, then the owner shall be responsible for all costs of removal.

e. The temporary street displays must be delivered to the designated city department no later than two weeks prior to the scheduled installation, and must be picked up no later than two weeks after notice from the city of their removal or be subject to storage costs.

f. The city shall not be liable for any speculative damages as a result of any reasonable delay to the scheduled time for the installation of the display.

g. Where utility poles or other utility fixtures are used for the temporary street display, the installation and removal of the display shall be performed by the utility company and any labor costs incurred shall be at the applicant's expense;

4. The annual fee for a license to use public right-of-way for uses other than those listed in Table 1-1 of this section will be calculated as follows, except that the minimum annual fee shall be no less than one thousand dollars:

a. Aerial encroachments:

Area in square feet × market value
per square foot × ten percent
× seventy-five percent;

b. Surface encroachments:

Area in square feet × market value
per square foot × ten percent;

c. Subsurface encroachments:

Area in square feet × market value
per square foot × ten percent
× fifty percent

d. The market value shall be determined by using the appraised land value of the abutting property as set by the central appraisal district, except that when the city or applicant finds that the assessed value is unreasonable, a fee may be negotiated by using recent sale values per square foot in the area.

5. The annual fees shall remain the same for a period of one year from the date the license or permit is granted and are subject to change after each one year period the license or permit remains in effect. Whether or not stated in this section, the City Council retains the right to increase or decrease the annual fee specified in this section.

G. Exceptions. The following activities, improvements, facilities, or uses on public right-of-way shall not require a special privilege license or permit as herein provided:

1. City owned and maintained transit bus shelters and other related amenities for the convenience of the public;

2. Decorative landscaping, including plantings and architectural materials, lighting, irrigation systems and other appurtenances for the maintenance thereof, under the following circumstances:

a. Medians. Landscaping complying with the provisions of Section 12.68.060 (Planting in arterial and local street medians) and Chapter 13.16 (Insurance requirements for work within right-of-way of public streets and alleys). For purposes of this section, a “median” shall mean the strip (whether level, raised or depressed) that separates the opposing flows of traffic on a street.

b. Parkway.

(1) Abutting a local street as defined in Title 19 (Subdivisions), and not subject to the provisions of Chapter 18.46 (Landscape standards) of this code. Landscaping complying with other applicable provisions of this code,

(2) Abutting an arterial street as defined in Title 19 (Subdivisions), and not subject to the provisions of Chapter 18.46 (Landscape standards) of this code. Landscaping complying with a landscape plan submitted to and approved by the deputy director for building services, or that person’s designee. The landscape plan shall comply with the requirements of Section 18.46.070 (Plans required) of this code,

(3) Abutting a local or arterial street as defined in Title 19 (Subdivisions), and subject to the provisions of Chapter 18.46 (Landscape) of this code. Landscaping complying with the requirements of Chapter 18.46 (Landscape) of this code. For purposes of this subsection, “parkway” shall mean the area of a street between the right-of-way line and the face of the curb line.

c. Installation and Maintenance. Landscaping of medians and parkways is encouraged; however, nothing in this section shall be deemed to require such landscaping. In all instances where a property owner or other entity landscapes a parkway or median, such property owner or other entity shall be responsible for furnishing, installing and maintaining all such landscaping, including costs for irrigation systems, water meters, and associated water consumption;

3. A temporary street closure or use of right-of-way for a period of twenty-four hours or less for activities such as, but not limited to, parades, public assemblies, block parties, marches, athletic events, and temporary

commercial film-making activities, provided that the city has issued a permit for such use as authorized under Chapters 13.30, 13.32 and 13.36 of this code.

4. Encroachments such as, but not limited to, newspaper racks, benches, trash containers, and public utility facilities where the city has granted a franchise or lease permitting such use of the public right-of-way;

5. The temporary use of streets or public property for the storage or handling of materials or of equipment required for construction or demolition complying with Chapter 18.08 (Building Code) of this code;

6. Encroachments such as, but not limited to, bay windows, fire escapes, and cornices that comply with Chapter 18.08 (Building Code) of this code;

7. The temporary use of public right-of-way or public property for the drilling of monitoring wells complying with Section 13.08.175;

8. City sponsored temporary street displays. Any encroachment not covered under this subsection shall require a special privilege license or permit to utilize the public right-of-way;

9. The temporary street closure for a period of forty-eight hours or less for a film-making event location permit duly approved pursuant to the requirements of Chapter 13.30 of this code;

10. Memorial markers, provided that the placement of such markers are approved by the city and comply with the policies and procedures established by the city engineer; and

11. Reserved

12. For properties with zero-lot lines, wall signs that are flush mounted on a façade that project less than 18” (eighteen inches) and meet the standards of the adopted Sign Ordinance (Title 20.18)

H. Additional Requirements for Aerial Encroachments (Awning or canopy).

1. Scaled architectural drawing(s) showing front and side elevations must be in keeping with the original architectural design of the structure involved for historical correctness.

2. An engineering certification on the structural design and wind loading capability based on the current edition of the adopted Building Code

3. Awnings and canopies cannot have walls and must be to within twelve inches (12”) of the street curb line clear to the sky.

4. Clearance of at least eleven feet (11’) measured from the bottom of the structure to the sidewalk elevation.

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:

1. Temporary Street Displays Permitted. A temporary street display shall be free of all commercial, political, or immoral symbolism, and shall also exclude displays from individuals and political organizations. A display may provide for a business or organization sponsor name. The display shall provide the following

information, “The City of El Paso,” name of the sponsor(s) for the activity, event, or route as described in this section, name of the activity, event or route, time and place of the activity, event, or route, and slogan if applicable, unless determined that due to the design of the display such language cannot be added. Temporary street displays are intended to display a:

a. Educational, scholastic, or artistic event,

b. Community or public interest activity,

c. Designated or recognized civic route or trail,

d. Scenic roadway,

e. Other civic and cultural programs;

2. Location. In determining whether to approve the installation of a temporary street display at a particular location, the city shall consider the following factors:

a. The display meets the criteria stated in section I(1) above.

b. The display locations create no possible obstructions to pedestrian and vehicular traffic,

c. The display at the proposed location is feasible considering the placement of city fixtures or utility poles, installation of street mounting brackets, or other necessary fixtures,

d. The display at a proposed location that will utilize a utility pole or other utility fixture has been approved in writing by the utility company, and such approval includes the method of installation by the utility company,

e. The display is of approved material, will not be permanently installed or attached, and will allow for wind cuts to reduce tendency of material to billow or sail,

f. The display material is properly maintained in a safe condition at all times,

g. The display location and installation has been inspected and has been 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 city directors for engineering and streets if city fixtures are to be used,

h. The display locations are consistent with existing land uses in the area,

i. The display is authorized subject to reasonable conditions regulating the location, mounting, duration, or manner of display,

j. In no case shall individual displays be permitted on any city traffic control device.

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 development coordinating committee. 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 development coordinating committee.

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 development coordinating committee; 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.

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:

a. Educational, scholastic, or artistic events,

b. Community or public interest activities or destinations,

c. Designated or recognized civic routes or trails,

d. Areas of historical or archeological significance,

e. Directional assistance to other areas in near proximity,

f. Other civic and cultural programs or facilities,

g. Trade shows, events, and festivals;

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 City 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 Development Coordinating Committee 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 engineer shall approve only upon a finding of compliance with the following factors:

a. Individual displays satisfy the advertising intent of subsection,

b. Individual display locations do not obstruct pedestrian and vehicular traffic,

c. Individual displays at each proposed location are feasible considering the placement of city fixtures or utility poles, installation of street mounting brackets, or other necessary fixtures,

d. When individual displays are propose for placement on a utility pole, written authorization from the utility company allowing installation and placement shall be provided,

e. Individual displays are of approved material, will not be permanently installed or attached, and will allow for wind cuts, when necessary to reduce tendency of material to billow or sail,

f. Individual displays shall be maintained in a safe condition at all times,

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 City Engineer and Director for Streets if city fixtures are to be used.

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

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 Streets and removal of individual banners, upon request by the City Manager or that person's designee, should same become worn, broken, or otherwise of no further aesthetic benefit to the area.

j. Banner displays located on Texas Department of Transportation right-of-way may only be authorized with approval from the State of Texas.

3. Other Requirements.

a. Eligible Entities. Any municipal management district created pursuant to Chapter 375 of the Texas Local Government Code, the El Paso Empowerment Zone, the City of El Paso, and an institution of higher education as that term is defined by Section 61.003 of the Texas Education Code.

b. Duration of Permit. Banner programs are permitted for periods of time not be less than six months or longer than three years. However, existing banner programs may be renewed for periods equal to the original period granted.

c. Residential and Apartment Zoning. No banner program shall cover an area of which more than thirty-five percent is zoned under any residential or apartment classification.

d. The design of individual banners located within a banner district shall not require a certificate of appropriateness from the Historic Landmark Commission yet shall be reviewed by the Director of Development Services or that person's designee as to compatibility with adjacent properties with historic zoning. Upon completion of review, the director or that person's designee shall provide a recommendation to City Council regarding such compatibility.

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 Engineer or their 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 Engineer or their designee and submitted to the Engineer Department, Traffic Division, for review and approval.

(2) One application shall be submitted for each outdoor patio café.

(3) The following information must be submitted with the application prior to processing of the application:

(a) A scaled site plan of the proposed outdoor patio café area showing the number and placement of tables, chairs, and other furnishings, access aisles and all appurtenances, including the location of any existing City benches, planters, trees and utility facilities. If there are any proposed permanent structures, a separate special privilege application shall be required for these;

(b) The name and address of the adjacent food and/or beverage service establishment or other operator of the outdoor patio café;

(c) Proof of general commercial liability insurance coverage in the amount established to protect the City's interest. At a minimum 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. The minimum amounts of insurance coverage may be increased by the city when it is in the best interest of the public. These amounts are not a limitation upon the Permittee's agreement to indemnify and hold the City harmless;

(d) 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. 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 permit shall be granted until Permittee files a copy of the policy or certificate of liability insurance as herein set forth with the Engineering Department. The policy shall contain a provision that it may not be canceled, revoked or annulled by the insurer without giving the city ten days' prior written notice. The licensee shall not surrender or release such policy without filing in lieu thereof another policy complying with the requirements of this section, or surrendering the special privilege license. Failure to keep the policy in full force and effect throughout the term of the permit shall be grounds for revocation of the permit. Neither the city or any officer or employee thereof shall be liable for the financial responsibility of any insurer, or in any manner become liable for any claim, act or omission, relating the licensee's use of the public right-of-way. No special privilege license shall be granted to a self-insured grantee until the self-insured grantee has submitted to the city a sworn affidavit signed by a duly authorized representative identifying that the grantee is self-insured in accordance with the laws of Texas and stating that the grantee has sufficient funds to provide payment in the same amounts as are required to be maintained under a policy of insurance which is required of non-self-insured grantees to persons who suffer personal injury or property damage. The affidavit must be in a form and contain provisions which are acceptable to the city. The affidavit shall contain an affirmative recital identifying that the grantee shall meet, accept, perform and be bound by the same obligations and requirements of any grantee who is not self-insured as required by the provisions of this subsection. Where a self-insured grantee no longer meets the minimum levels of coverage required of non-self-insured grantees, the grantee shall be required to immediately provide the city with a certificate of insurance which demonstrates that the grantee has met the requirements of this subsection. The city may impose additional requirements upon a self-insured grantee in order to protect the public health, safety and welfare. The city reserves the right to require that a self-insured grantee provide a policy of insurance under this subsection as permitted by law.

(e) A letter from the property owner, if different from the food and/or beverage service establishment operator, indicating their authorization to obtain an outdoor patio café permit; and acknowledging responsibility for any encroachments installed by tenant on city right of way.

(f) A letter of intent to sell and serve alcoholic beverages, if applicable; and,

(g). Notice to abutting property owners. The applicant shall provide the name, address and signature of each owner of real property abutting the boundaries of the area where the outdoor patio cafe is proposed, on a form provided by the Engineering Department.

(4) Application criteria and process. An application may be rejected for any of the following reasons:

(a) The application is not fully completed, executed or contains a material falsehood or misrepresentation;

(b) The applicant has not tendered the required application fee or has not tendered other required user fees or costs within times prescribed;

(c) The applicant is currently in violation or has any outstanding violations of the terms of a special privilege issued to or on behalf of the applicant;

b. Outdoor patio cafes shall comply with the following standards:

(1) The permit is granted solely for the encroachment onto public right of way and the installation, maintenance and/or removal of improvements and Permittee's use of the permitted area.

(2) City sidewalks and/or right-of-way that has been vacated to vehicular use to be used for the proposed outdoor patio café shall be improved to City standards and shall abut a food and/or beverage service establishment associated with the outdoor patio café and the outdoor patio café shall only be used in conjunction with the service of food and drink from the abutting food and/or beverage service establishment; except for an area north of San Francisco Street, designated herein as the "San Francisco Street Platform Promenade" that shall be operated as authorized by the City of El Paso under a separate procurement process and agreement..

(3) A minimum of six feet (6') of any city sidewalk shall remain unobstructed for pedestrian access at all times.

(4) Outdoor patio cafes shall be located a minimum of five feet (5') from the centerline of any street or alley that has been vacated to vehicular use to ensure an unobstructed ten feet (10') for pedestrian access.

(5) All construction shall comply with the Union Plaza Design Standards in reference to building materials, color, and design of the outdoor patio café. The Permittee (s) shall receive approval from the Deputy Director of Planning or designee prior to the issuance of any required building permits. All proposed improvements within city right-of-way shall be included in the permit application.

(6) A building permit for all construction applicable to the outdoor patio café shall be obtained from the Development Services Department – Building Permits and Inspections Division to include any structural, electrical, mechanical, or plumbing work done within the portions of city rights-of-way utilized by the Permittee (s). A pavement cut permit shall be required for any work on City right-of-way.

(7) An outdoor patio café shall not be enclosed by permanent structure(s).

(a) Wrought-iron fencing of a minimum of four-feet (4') in height is required for all establishments requesting to sell and/or serve alcoholic beverages within portions of streets and/or alleys that have been vacated to vehicular use.

(b) Wrought-iron fencing of a minimum of three-feet (3') in height is required for all establishments requesting to sell and/or serve alcoholic beverages on City sidewalks.

(c) The wrought-iron fencing in a or b shall be continuous around the perimeter of the patio café except for one opening/entry point. Fences shall have a durable professional finish and shall meet Union Plaza Design Standards. Fencing shall include sleeves at the base of the poles to allow for removal from city rights-of-way if necessary.

(d) The boundaries of an outdoor patio café on a City sidewalk may be defined by planters, trees, benches or other street furniture, when a fence is not required by the TABC, provided that a boundary line is painted and maintained by the applicant on the sidewalk surface showing the café limit.

(8) Written approval from City Council and the Texas Alcoholic Beverage Commission are required for the sale and service of alcoholic beverages within the outdoor patio café area. City approval of a permit allowing an outdoor patio café on City right-of-way does not guarantee, warrant or assure that the Texas Alcoholic Beverage Commission will allow the sale and service of alcoholic beverages within the outdoor patio café area. The Permittee must comply with any standards established by the Texas Alcoholic Beverage Commission.

(9) The location of any proposed outdoor serving stations require Fire Marshal approval for their proximity to points of ingress and egress to the property.

(10) The area for the outdoor patio café shall meet the current fire code requirements as determined by the Fire Marshal regarding outdoor patio café areas and ingress and egress points of access. The Fire Marshal through plan review shall determine fire code compliance.

(11) The Fire Marshal shall also require that occupancy capacities as defined in the International Building Code for the outdoor patio café area and the building remain distinct and separate.

(12) The outdoor patio café must be open to the air, except that a canopy or awning conforming to requirements established by this Chapter for aerial encroachments may be constructed over the outdoor patio café, and may be included in the same special privilege application. Canopies within the outdoor patio café area shall meet current fire code definition and specifications. Proposed canopies shall comply with the Union Plaza Design Standards.

(13) Acceptable auxiliary outdoor heating devices shall meet the requirements of the current fire code.

(14) The outdoor patio café shall not prevent access to El Paso Water Utilities, El Paso Natural Gas, or El Paso Electric Company easements, meters, valves, manholes, or structures for maintenance and/or repair. The outdoor patio café shall not prevent access to the El Paso Fire Department connections (FDC), fire hydrants, or fire escapes.

(15) The outdoor patio café shall not impede access to City of El Paso light fixtures, benches, bicycle racks, etc. for maintenance and repair. Trees planted by the City of El Paso and irrigation systems that are located within the outdoor patio café area shall be maintained by the Permittee and may not have objects attached to them that would impede or affect the life of the trees. The City shall have the right to enter and inspect the property at any time to ensure proper maintenance of City property.

(16) Outdoor patio cafés shall be reviewed for ADA compliance prior to permit approval. Outdoor patio cafés shall not impede ADA accessibility.

(17) Tables and chairs used in the outdoor patio café shall be of durable, commercial grade non-reflective material that is stackable and ADA compliant.

(18) Planters within the outdoor patio café limit line shall be shown on the site plan submitted with the application and shall comply with the Union Plaza design standards.

(19) Each outdoor patio café shall have a trash receptacle and a cigarette receptacle (if smoking is permitted) within the café limit line.

(20) Overhead lighting located within public right-of-way shall be included in the permit application, and shall meet all applicable Union Plaza architectural and design standards. All electrical work shall be designed and installed in compliance with the applicable electrical code requirements.

(a) Lighting on fencing may be permitted to add a decorative element but shall not be design to attract attention. Flashing lights are not permitted.

(b) Lighting shall be clear or white.

(c) Light strands shall be maintained in good repair and burned-out bulbs shall be replaced promptly.

(21) A person may not sell, barter, trade, store, or take orders for merchandise at an outdoor patio café in violation of this Subsection, except food or drink to be consumed in the outdoor patio café that is also sold in the adjacent food and/or beverage service establishment associated with the outdoor patio cafe.

(22) All relocation, removal, disposition and/or salvage of any City property shall be coordinated with the Street Department. The Street Department shall follow the city's establish policy and procedure for disposal or salvage of such property.

(23) As a condition of the permit, the applicant 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 Permittee'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.

c. Prior to the issuance of a permit, the City Engineer shall distribute a copy of each application the City Engineer receives for their review and comment to the following:

(1) Members of the Development Coordinating Committee (DCC), and

(2) Affected utility franchise holders.

d. Approval or Denial of Permit. The City Engineer or their 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 DCC. 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 Engineer or their 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 engineer or their 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 Engineer or their 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 Engineer or their 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 to the City Engineer or their 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.

f. Permittee Responsibilities.

(1) A Permittee shall comply with all application requirements and conditions, and with all other applicable federal, state and local laws and ordinances.

(2) The responsible party shall maintain the permit within the premises at all times.

(3) The Permittee shall be responsible for cleaning and removing all litter and debris left on the abutting roadways, sidewalks, and other public rights-of-way within twenty-four (24) hours. Permittee fails to clean and remove all such litter and debris from the ROW, the city may perform such cleaning and the Permittee shall be responsible for the costs of the city cleaning. Payment of any city cleaning costs shall be due and payable within ten business days of receipt of the bill from the city comptroller.

(4) The Permittee shall be responsible for maintaining fences and furnishings on city right-of-way in good condition. Fences, furnishing and other appurtances that are damaged shall be refurbished, repaired or removed by Permittee within ten (10) days.

(5) Damage to the city right-of-way or City property attributable to the outdoor patio café installation, maintenance, and use, shall be restored to its original condition by the Permittee. If Permittee fails to repair such damage, then the property owner or lessee shall be responsible for repair of such damage. If Permittee, property owner or lessee fail to repair such damage within 30 days of written notification from the City that the right of way has been damaged, then the City shall have the right to repair the damage and assess the costs of such repair to the property owner. The City shall have a right to place a lien on the abutting property until the costs for the repair have been paid to the City. Failure to pay such costs shall be grounds for denial of any subsequent request for use of city right of way for any purpose.

(6) If the outdoor patio café area presents a hazard to public health, safety and welfare, the City shall have the right to correct the safety hazard and assess the costs to the Permittee, property owner and/or lessee. Costs shall be due and payable within ten (10) days of receipt of a bill from the City controller. Non-payment shall be grounds for termination of the permit.

(7). Outdoor patio café area shall be restored to its original condition by Permittee, property owner or lessee upon termination of the special privilege permit. If Permittee, property owner or lessee fails to restore the property, then the City shall have the right to remove encroaching fencing, furnishings or other appurtances and assess the costs to the property owner. The City shall have a right to place a lien on the abutting property until the costs have been paid to the City. Failure to pay such costs shall be grounds for denial of any subsequent request for use of city right of way for any purpose.

h. Costs and fees.

(1) The special privilege application fee for an outdoor patio café shall be as authorized by City Council resolution.

(2) The annual fee for an outdoor patio café shall be as authorized by City Council resolution. The fee shall be due and payable prior to issuance of the permit.

(3) The Permittee shall be solely responsible for all costs associated with the acquisition, installation, maintenance, replacement and removal of improvements within the outdoor patio café area and the cost of restoration required because of such removal.
(4) Additional fees shall be as provided in Section 15.08.120.D of the El Paso City Code or as otherwise authorized by City Council resolution.

i. Termination

(1) The City of El Paso reserves the right to terminate the permit at any time at no cost to the city if it decides that the right-of-way is needed for public use. If the city terminates the permit under this specific provision, at the request of the Permittee, the Permittee shall be refunded a proportionate share of the permit fee based on the months remaining in the permit term.

(2) The city may terminate the permit if the Permittee ceases to use or occupy the property for the purposes approved in the permit for a period of thirty (30) days, or if the Permittee defaults in any obligations under the permit and fails to correct such defaults within thirty (30) days.

(3) The permit is not transferrable and shall terminate upon a change of property owner, business owner or change of occupancy.

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 Engineer 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 Engineer or their designee at least thirty days before the commencement of the event, but not more than one year in advance of the event.

3. Approval Criteria. An application may be rejected or denied for any of the following reasons:

a. The application is not fully completed and executed or contains a material falsehood or misrepresentation;

b. The applicant has not tendered the required application fee or has not tendered other required user fees or costs within times prescribed;

c. The applicant has previously permitted a violation or has violated the terms of a special privilege license or permit issued to or on behalf of the applicant;

d. The applicant has on prior occasions damaged city property and has not paid in full for such damage;

e. A fully executed prior application for the same time and place has been received, and approval has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple simultaneous events;

f. The applicant requests a use not permitted under this Section;

g. The proposed event would conflict with previously planned programs organized, conducted, or sponsored by the city and previously scheduled at or near the same time and place;

h. The proposed use would present an unreasonable danger to the public health or safety;

i. The proposed use would substantially or unnecessarily interfere with traffic;

j. The use would likely interfere with the movement of emergency equipment and police protection in areas contiguous or in the vicinity of the use;

k. There would not, at the time of the use, be sufficient security and traffic control personnel to adequately protect participants and non-participants from traffic related hazards;

l. The proposed use would take place on an arterial roadway during peak traffic hours;

m. The proposed use would take place at a location that cannot reasonably accommodate all of the expected participants;

n. The proposed use would take place on a state or federal highway or road and the appropriate governmental agency has not authorized the proposed use of the highway or road in writing.

4. Approval or Denial of Application.

a. The City Engineer or their 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 Engineer or their designee when issuing the approval, may modify and change the time of the event.

c. The City Engineer 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.

5. Permittee Responsibilities.

a. A permittee shall comply with all application requirements and conditions, and with all applicable laws and ordinances.

b. If alcoholic beverages are to be served, applicant shall obtain approval from the Texas Alcoholic Beverage Commission (TABC). A resolution of City Council shall be required.

c. The responsible party shall carry the permit upon his or her person during the conduct of the event or use. It is recommended that a copy of the permit be posted at the site during the event.

d. The permittee shall be responsible for cleaning and removing all litter and debris left on the roadways, sidewalks, and other public rights-of-way immediately upon the conclusion of the event. If the permittee fails to clean and remove all such litter and debris within four hours of the end of the event, the city may perform such cleaning and the permittee shall be responsible for the costs of the city cleaning. Payment of any city cleaning costs shall be due and payable within ten days of receipt of the bill from the city comptroller.

6. Additional Costs and Fees.

a. The applicant shall be responsible for hiring and paying the fees for the cost of police or private security officers, vehicles and equipment to appropriately control traffic and to police roadway closures during the entirety of each event to include the staging and disbanding of the event.

b. The applicant shall reimburse the city for the costs of providing roadway and sidewalk cleaning, if applicable.

c. Additional fees shall be as authorized by City Council resolution.

M. Requirements for a building or other structural surface encroachment.

1. If a structural encroachment has existed 50 years or longer, is located in the downtown improvement area, and is less than 50 square feet in area, the abutting property owner(s) may apply for a special privilege license to continue the encroachment for an annual fee of $50 per square foot. The application process shall be as described in Section C.

2. If any other structural encroachment is requested, the abutting property owner(s) may apply for a special privilege license to permit the encroachment. The application process shall be as described in Section C, and the annual fee shall be as determined in Section F.

N. Requirements for food vending concessions within the central business district (Downtown Area Food Vending**)**

1. It is unlawful for the licensee of a downtown area food vending special privilege license or for licensee's representatives to do the following:

a. Offer for sale or sell anything other than commercially packaged food items;

b. Fail to visibly display upon the vending unit licensee's or licensee's representatives' concessionaire's license, concessionaire's health permit, food handler's card, state sales tax permit, or any other license or permit including, but not limited to, work permits, as may be required by law for the purpose of operating or being employed by a business in the city or state;

c. Fail to wear on their outermost clothing the city-issued laminated identification badge so that the badge is readily visible at all times;

d. Operate the vending unit before nine a.m. or after seven p.m. on any day;

e. Fail to maintain the vending unit as required in Chapter 9.12 (Food and Food Handling Establishments) of this code;

f. Fail to provide and maintain a thirty-gallon covered garbage container at the premises, except that such container shall not be placed in the pathway of pedestrian traffic, and to collect and deposit in the garbage container all trash and debris accumulated on the premises and within thirty feet thereof, as often as needed to keep the area clean at all times;

g. Operate beyond the premises identified in the special privilege license; or

h. Operating any sound devices or strobe lights in violation of law.

2. For the purposes of this section, the term “representative” means any person, company, association, corporation, employee, independent contractor or any other individual or entity acting on behalf of the licensee of a downtown area food vending special privilege license.

Section 2. Effective Date. This ordinance shall take effect on September 1, 2009.

Section 3. Except as expressly herein amended, Title 15 (Public Services), Chapter 15.08, (Street Rentals), of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2009.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Patricia D. Adauto, Deputy City Manager
Development and Infrastructure Services

Special Privilege Permits & Licenses

Revisions to Current Ordinance (Title 15)

- Change of responsibilities from Development Services to Engineering
- Increase use of administrative process

  -Permits (approved by City Engineer)

  -Licenses (approved by City Council)
- Delete fees from Title 15 and add to Schedule C

Special Privilege Permits & Licenses

Increased use of Administrative Process (Permit vs. License)

- Permit if encroachment is temporary or removable
  - Began use in 2007 for temporary street closures / per City Charter & Title 15 amendments

  - TABC requires Council approval (resolution) if alcoholic beverages are served

- License if encroachment is permanent / long term / structural

Special Privilege Permits & Licenses

Increased use of Administrative Process (Permit vs. License)

- Aerial Encroachments
  - -Permit: Canopies, Awnings, Marquees, Signs, Temporary Banners & Street Displays
  - -License: Skywalk, Pipelines, Cables

- Surface Encroachments
  - -Permit: Temporary Street Closures, ADA Ramps, Outdoor Patio Cafes, Street Furniture
  - -License: Buildings / Structures, Taxi Stands, Pipelines, Cables, Food Vendors

Special Privilege Permits & Licenses

Section A – Where used

Section B – Application requirements

Section C – Procedure for a License

Section D – Procedure for a Permit

Section E – Types of Encroachments

Section F – Fee information

Section G – Exceptions to requirements

Special Privilege Permits & Licenses

Section H – Requirements for Aerial Encroachments

Section I – Requirements for Temporary Street Displays

Section J – Requirements for Banner Programs

Section K – Requirements for Outdoor Patio Cafes

(*Union Plaza Entertainment Area - Other areas to be added as designated by Council)*

Section L - Temporary Street Closures

Section M - Buildings and Structural

Section N - Downtown Food Vendors

(*possible future privatization*)

Questions/Comments?