

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

DEPARTMENT: City Development Department

AGENDA DATE: September 17, 2013, Introduction
October 1, 2013, Public Hearing

CONTACT PERSON NAME AND PHONE NUMBER: Shamori Whitt, (915) 541-4477, whittSR@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:

An ordinance granting an exclusive special privilege license to the Central Business Association of El Paso, Inc., to permit sidewalk vending for participating merchants within certain public rights-of-way in Downtown El Paso (NESV13-00014) District 8.

BACKGROUND / DISCUSSION:

The Central Business Association (CBA) is requesting to continue to have the exclusive right to permit sidewalk retail vending within public rights-of-way within the boundaries of Yandell Drive, Campbell Street, Border Highway and Leon Street. The boundaries of the sidewalk vending program are being extended one block east and west from the current vending boundaries.

The CBA will be responsible for ensuring the participating merchants comply with the location, size, display and stacking requirements as well as coordinating with City staff in regards to citations, cleanliness, documentation and reporting. The CBA will also provide liability insurance for the participating merchants.

The City and CBA are requesting policy guidance on the following three items:

1. The maximum percentage of coverage (area) and height of displays and allowed for participating merchants.
2. The requirement for participating merchants to provide evidence of a certificate of occupancy for their business.
3. The annual payment required to be paid to the city.

PRIOR COUNCIL ACTION:

City Council approved Ordinance No. 016083 on June 28, 2005 which granted the CBA a special privilege to have the exclusive right to sidewalk vending within Downtown El Paso. This ordinance was amended by Ordinance No. 01679 on February 7, 2006 to add administrative approval of a renewal of the agreement which was executed in January of 2009.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

**Mathew S. McElroy, Director
City Development Department**

Information copy to appropriate Deputy City Manager

Sidewalk Vending Program Requirements

Vending Area

1. The maximum allowable vending area shall not exceed 50% of the ground floor linear frontage of the building. Vending areas are not permitted to wrap corners and shall be located directly abutting the building and are only permitted to sell items sold within the building. The majority of commercial activity (including cashiering) shall be done from inside the store.
2. The vending area shall be located adjacent to a building or space with a valid Certificate of Occupancy. Under no circumstances shall sidewalk vending be permitted in front of a Vacant Building or Structure. Buildings registered as vacant shall not be eligible to participate in the sidewalk vending program for the duration of the time the building is listed on the Vacant Building Registry.
3. Vending area shall be kept clean and in good condition at all times. CBA shall repair any damage caused by participating merchants.

Location

1. A minimum of four feet of unobstructed pedestrian sidewalk access, not including tree wells or parkway, shall be maintained at all times and shall be ADA/TAS compliant.
2. A minimum of three feet of unobstructed ingress and egress of the building is to be maintained at all times.
3. Vending areas shall not obstruct the windows. The store area should be readily visible from the sidewalk.
4. A minimum 15 feet perimeter is required from any sprinkler system, fire hydrants and/or fire suppression connections, water valves, street light power boxes and or traffic signal cabinets.
5. A minimum five feet perimeter is required from any gas meter connections, sanitary sewer manholes and/or utility equipment.

Display

1. The most current Certificate of Occupancy and sidewalk vending permit shall be displayed on the front window.
2. Display racks, tables and shelving is to finished or painted. Tables and shelving is to be skirted. Stacking shall not exceed five feet.
3. A minimum of seven feet vertical clearance is required from hanging merchandise.
4. No advertising or signs are permitted except pricing signs of a maximum size of one square foot.
5. No open storage is permitted. Packing or shipping cardboard is prohibited from public view except for shoe boxes.

Participating Merchant Documentation

1. Dimensioned detailed site plan of the display layout of the vending area including square footage, City and/or utility infrastructure within the vending area.
2. Two color photos of the vending area. A front view and one side view of the location without sidewalk vending present
3. Application form with contact information of the participating merchant.
4. Certificate of Occupancy.
5. Notarized statement of receipt of rules and receipt of the license agreement.

Audits and Reports

1. CBA agrees to provide the City with financial and/or other records related to sidewalk vending for audit upon request by the City.
2. The City may audit the sidewalk vending program through sight inspections, financial inspections and/or document verification.
3. CBA will provide a written and/or electronic annual report on the first day of the anniversary month of the agreement (June). CBA will provide quarterly reports on the first day of September, December and March. The annual and quarterly reports will include the following:
 - a. Name, address, number of vendor areas for each merchant during the reporting period
 - b. Name, address, number of vendor areas cancelled during the reporting period
 - c. New participating merchant information (agreements and site plans) for the reporting period.
 - d. Total number participating merchants within the reporting period.
 - e. Any notices or citations issued by the City to any participating merchants and/or grantee related to sidewalk vending.

Term
Program is for five years with two options to renew for five additional years upon City Council approval.

ORDINANCE NO. _____

AN ORDINANCE GRANTING AN EXCLUSIVE SPECIAL PRIVILEGE LICENSE TO THE CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC., TO PERMIT SIDEWALK VENDING FOR PARTICIPATING MERCHANTS WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY IN DOWNTOWN EL PASO FOR A TERM OF FIVE YEARS WITH TWO RENEWABLE FIVE YEAR TERMS.

WHEREAS, the “El Paso Downtown 2015 Plan” for the City of El Paso, Texas was adopted on October 31, 2006 with the objectives to build on El Paso strengths; and

WHEREAS, South El Paso Street was recognized as one of ten “Great Streets in America for 2008” by the American Planning Association because the street is an economic and cultural anchor, a place where commerce, culture and community combine to create a place that is uniquely El Paso; and

WHEREAS, on March 6, 2012, the El Paso City Council adopted “Plan El Paso,” the City of El Paso’s Comprehensive Plan, which provides the basis for El Paso’s regulations and policies that guide its physical and economic development. “Plan El Paso” establishes priorities for public action and direction for complementary private decisions; and

WHEREAS, the overall goal of the Downtown Chapter of “Plan El Paso” is to direct public funding and private development of exemplary design to Downtown where it will have economic and social benefits shared by the entire City. Specifically, Goal 3.1 of “Plan El Paso” is to improve Downtown streets until they become El Paso’s premiere public spaces; and

WHEREAS, “Plan El Paso” recognizes that the Downtown Shopping District is a shopping destination for the Mexican national market and the discount shopper; contributing significantly to the City’s economy. The comprehensive plan suggests that efforts be made to protect and fortify the unique market niche; and

WHEREAS, the City previously granted a Special Privilege License to the Central Business Association of El Paso, Inc. for the use of specific portions of various City rights-of-way within the Downtown Area to permit sidewalk vending by participating merchants by Ordinance No. 016083 dated June 28, 2005, as amended by Ordinance No. 016279 dated February 7, 2006; and

WHEREAS, Central Business Association of El Paso, Inc. is requesting to continue to have the exclusive use of portions of City rights-of-way within a pre-defined area of Downtown El Paso for sidewalk retail vending by participating merchants; and

WHEREAS, the City agrees to allow the Central Business Association of El Paso, Inc. the exclusive use of various portions of City rights-of-way within a pre-defined area of Downtown El Paso for sidewalk retail vending by participating merchants.

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

SECTION 1. DESCRIPTION

The City of El Paso (hereinafter called "City") hereby grants a Special Privilege License (hereinafter called "License") to the Central Business Association of El Paso, Inc. (hereinafter referred to as "Grantee"), to provide for the conducting of sidewalk retail vending within portions of City rights-of-way within the boundaries of the Downtown Shopping District by the property owners and lessees of real property within the Downtown Shopping District as authorized for participation by Grantee (hereinafter referred to as "Participating Merchants") for the sale of goods (hereinafter referred to as "Sidewalk Vending"). The City and Grantee mutually agree as follows:

A. LICENSE AREA

The aerial and surface rights granted herein along portions of rights-of-way are located within the boundaries of the Downtown Shopping District more particularly shown in Exhibit "A," which is made a part hereof for all purposes (hereinafter referred to as "License Area").

Matter # 13-1007-721 # 290062
CBA/Special Privilege License/Sidewalk Vending
LKF

B. VENDING AREA

1. The maximum allowable Vending Area shall not exceed more than fifty percent (50%) of the ground floor linear frontage of the real property. The Vending Area is not permitted to wrap around corners of real property. Each Vending Area shall be directly abutting real property of the Participating Merchant within the License Area utilized for the display of merchandise generally sold within the real property of the Participating Merchant (hereinafter referred to as “Vending Area”). The majority of the commercial activity shall be conducted within the structure of the real property, including but not limited to all financial transactions (i.e. cash registers).
2. The Vending Area shall be located adjacent to a building or space with a valid Certificate of Occupancy issued in accordance with Section 18.02.108 (Certificates of Occupancy) of the El Paso City Code. Under no circumstances shall sidewalk vending be permitted in front of a Vacant Building or Structure as defined by Chapter 18.40 (Vacant Buildings), Section 18.40.020 (Definitions) of the El Paso City Code. Furthermore; buildings registered as vacant in accordance with Section 18.40.030 (Vacant Building Registration) shall not be eligible to participate in the sidewalk vending program for the duration of time the building is listed on the Vacant Building Registry.

SECTION 2. USE OF RIGHT-OF-WAY

This License is granted solely for the encroachment onto City rights-of-way for Sidewalk Vending within the Vending Area. This License shall not permit or be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way except as provided herein.

Grantee and Participating Merchants shall not construct any additional improvements, or make any additions or alterations on, above, or below the City right-of-way, without prior

written consent of the City. This License shall not be construed to waive any City permit requirements. Grantee and Participating Merchants shall be responsible for all maintenance in conjunction with Sidewalk Vending. Grantee and Participating Merchants, at no cost to the City, shall clean up all litter and debris within the License Area and Vending Area, leaving City rights-of-way in a clean and orderly condition at all times when not in use for Sidewalk Vending.

A. LOCATION

1. A minimum width of four (4) unobstructed pedestrian sidewalk access points, not including tree wells or parkway, abutting the Vending Area shall be maintained at all times; and shall comply with the Americans with Disabilities Act and the Texas Accessibility Standards.
2. A minimum of three (3) feet of unobstructed access shall be required and maintained at all times for the entrance(s) and/or exit(s) of the real property of Participating Merchants and/or any adjacent business or real property.
3. Vending areas shall not obstruct windows of the real property. The store area shall be readily visible from the sidewalk.
4. No equipment including, but not limited to tables, booths, electrical lines utilized in conjunction with Sidewalk Vending within the Vending Area shall be located within fifteen (15) feet of any sprinkler systems, fire hydrants and/or fire suppression connections, water valves, streetlight power boxes, traffic signal cabinets on or near the Vending Area.
5. No equipment including, but not limited to tables, booths, electrical lines utilized in conjunction with Sidewalk Vending within the Vending area shall be located within five (5) feet of any connections to gas meters, sanitary sewer manholes and/or any other utility equipment on or near the Vending area.

Matter # 13-1007-721 # 290062
CBA/Special Privilege License/Sidewalk Vending
LKF

B. DISPLAY

1. The most current Certificate of Occupancy and the permit issued by Grantee shall be displayed, in plain sight, on the front window of the primary structure.
2. Display racks, tables and shelving utilized in conjunction with Sidewalk Vending shall be finished or painted. Tables and shelving shall be skirted or otherwise adorned. Stacking of merchandise shall not exceed five (5) feet. In no instance shall stacking of merchandise be permitted beyond the boundaries of the Vending Area.
3. Hanging of merchandise is permitted within the Vending Area; provided a minimum seven (7) foot clearance shall be maintained at all times from the lowest portion of merchandise to the finished floor grade of the sidewalk. In no instance shall hanging be permitted beyond the boundaries of the Vending Area.
4. No advertising and/or signs shall be permitted within the Vending Area; save and except for pricing signs with an area not to exceed one (1) square foot in area.
5. No open storage shall be permitted unless screened. Packing or shipping cardboard shall be prohibited from public view; however, containers in which merchandise is packaged for sale (i.e. shoe boxes) shall be permitted.

SECTION 3. GRANTEE RESPONSIBILITY

Grantee shall ensure strict compliance by Participating Merchants of all requirements of this License and shall enforce the provisions of this License, including, but not limited to revocation of the assignment of non-compliant Participating Merchants.

Grantee assumes full responsibility for the planning, coordination, management and enforcement of the terms of this License with each Participating Merchant. The City shall not be subject to any obligations or liabilities of the Grantee in conjunction with the setup, operation, production, or maintenance of the Vending Area.

Grantee shall be responsible for all costs associated with Sidewalk Vending within the License and Vending Areas.

A. LICENSE AND VENDING AREA

Grantee shall require Participating Merchants to keep the License Area and Vending Areas in good condition, repair and in a clean, orderly and attractive condition at all times. Grantee shall be responsible for all maintenance of the Vending Area and shall repair any damage caused to the rights-of-way by Participating Merchants in conjunction with Sidewalk Vending.

B. PARTICIPATING MERCHANT DOCUMENTATION

Grantee shall provide the City the following documentation for each Participating Merchant within the License Area:

1. A dimensioned, detailed site plan showing the proposed display layout of the Vending Area for each Participating Merchant showing the area and locations of each separate Vending Area. The site plan shall also include frontage square footage, any City or utility infrastructure located within the proposed Vending Areas.
2. Two (2) color photos of the Vendor Area. One (1) front view photo and One (1) side view photo of the site without Sidewalk Vending.
3. A form prescribed by Grantee providing a description of the merchandise to be sold, number of Vendor Areas, contact information of the Participating Merchant.

4. A copy of the Certificate of Occupancy for the Participating Merchant in accordance with Section 18.02.108 (Certificates of Occupancy) of the El Paso City Code.
5. A copy of a notarized statement from the Participating Merchant that they have received, read a copy of this License, that they understand and agree to the terms of this License.

C. AUDITS AND REPORTS

1. Grantee expressly agrees, by grant of this License, to produce copies of any and all financial and/or other related records upon request by the City. Furthermore, Grantee agrees the City may, at its sole discretion conduct an audit of Sidewalk Vending, including, but not limited to site inspections, financial inspections and/or document verification.
2. Grantee shall provide a written and/or electronic annual report on the first day of the month of the anniversary date of the approval of this License by City Council. Grantee shall also provide a written and/or electric quarterly report the first day of the month following each three-month period of the year, save and except the three-month period prior to the anniversary month of this License which shall be included in the annual report. Each report shall contain the following information:
 - a. The name, address, number of Vendor Area sites and payment amount for each Participating Merchant paid for the reporting period of the report.
 - b. The name, address, number of Vendor Area sites that were cancelled or revoked during the reporting period.
 - c. The Participating Merchant Documentation as prescribed in Section 3.B of this License for any new Participating Merchants for the reporting period.

- d. The total number of Participating Merchants within the reporting period.
- e. Any notices or citations issued by the City to any Participating Merchants and/or Grantee related to Sidewalk Vending.

D. MERCHANT PARTICIPATION

Grantee shall not require membership in the Central Business Association of El Paso, Inc. prior to allowing Sidewalk Vending. Grantee shall not discriminate against Participating Merchants based on race, gender or other violation under Title 7, U.S.C. Annotated.

SECTION 4. REGULATION OF CONSTRUCTION

1. The work done by Grantee in installation, replacing, repairing, reconstructing, or maintaining the Sidewalk Vending shall be subject to and governed by all laws, rules and regulation of the City of El Paso and State of Texas, Federal Communications Commission, and the U.S. Government that are applicable to the Sidewalk Vending. Work done in connection with the construction, repair and maintenance of such facilities is subject to the continuing police power of the City.
2. Grantee covenants and agrees that Grantee shall, at its own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee, its employees, contractors, agents or assigns damage so that such repair of the water lines, storm and sanitary sewer lines and water meters shall comply with the approval of the City.
3. The City shall have the power at any time to order and require Grantee and/or Participating Merchants to remove and abate any portion of the License Area that is dangerous to life or property. Should Grantee and/or Participating Merchant, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate same, at the expense of Grantee and/or Participating Merchant. In the event City removes or abates the License Area and/or Vending Area as provided herein, Grantee and/or Participating Merchant shall not be compensated for the loss of the License Area and/or Vending Area,

or revenues associated with the area, nor shall the City be liable to the Grantee and/or Participating Merchant for any direct, indirect or consequential damages due to the removal or abatement of the License Area and/or Vending Area.

SECTION 5. TERM

1. This Special Privilege shall be for a term of five (5) years from the effective date hereof, unless terminated earlier as provided herein. At the end of the term, the City shall have the unilateral option of renewing this Special Privilege for two (2) additional five (5) year terms upon the request of the Grantees and approval of the El Paso City Council.
2. If Grantee desires to renew this License, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this License. Should Grantee fail to submit such request for the renewal of this License to the City as herein required, the License shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require the terms, conditions, and provisions of this License be modified as a condition for renewing the grant of the encroachment within the License Area as permitted by this License.

SECTION 6. WORK DONE BY OTHERS

1. Throughout the term of this License, the City expressly reserves the right to install, repair, or reconstruct the City right-of-way used or occupied by Grantee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures.
2. The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under the License Area occupied by Grantees,

and to change any curb or sidewalk or the street grade of any street. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee and/or Participating Merchants for any damage resulting there from, nor shall the City be liable to Grantee and/or Participating Merchants for any damages arising out of the performance of any work by the City, its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to the License Area. If the City requires Grantee and/or Participating Merchants to alter, change, adapt, remove, or relocate the Vending Area due to imminent public safety concerns, or because of changes in the grade of the Vending Area or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee and Participating Merchants shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee and/or Participating Merchants, Grantee shall have the right to present alternative proposals for the City's consideration. If the City requires Grantee and/or Participating Merchants to remove, alter, change, adapt or relocate the Vending Area or any portion thereof to enable any other entity or person, except the City, to use, or to use with greater convenience, the Vending Area, Grantee and/or Participating Merchants shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee and/or Participating Merchants for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of the Vending Area; provided, however, the City shall not be responsible nor liable for such reimbursement.

SECTION 7. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

The City reserves the right to use the surface or subsurface or airspace within the License Area and/or Vending Area for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith

which may be deemed necessary or proper by the City on, across, along, under or over said License Area and/or Vending Area occupied by Grantees provided such use does not interfere with Grantees' use of the License Area. Whenever by reason of said work in connection with said purposes it shall be deemed necessary by the City to alter, change, adapt, conform or relocate portions of the License Area and/or Vending Area, such alteration or change or relocation shall be made by Grantee and/or Participating Merchants when ordered in writing by the City without any claim for reimbursement or damages against the City.

SECTION 8. CONSIDERATION

1. As consideration for this Special Privilege, Grantee shall pay to the City ONE HUNDRED FIFTY AND NO/100 DOLLARS (\$150.00) per Vending Area per year. The annual fee shall remain the same for a period of one year from the date of execution by City Council and shall be subject to change after each one year period the License remains in effect. The City retains the right to increase or decrease the annual fee specified in this License.
2. The City shall notify the Grantee of any proposed changes in fees as prescribed in Section 15 (Notice) of this License. This License is granted on the condition the Grantee pays for all costs associated with Sidewalk Vending, as well as all costs for the restoration of the License Area and/or Vending Area upon the termination of this License and/or Participating Merchant.
3. The first annual consideration shall be due and owing prior to City Council approval of the License. The advance payment shall be in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the City Development Department for remittance to the Financial Services Department. If the Special Privilege is disapproved by the City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action. Subsequent considerations shall be due in conjunction with the associated Annual or Quarterly Report immediately following the month in which the Participating Merchant was authorized by the Grantee and remitted to the City Development Department.

4. The fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes, and assessments for public improvements except as hereinafter provided as may be enacted during the term of this License or any renewal. The fee established in this section shall not be affected by any relocation of Participating Merchants' Vending Area required by the City pursuant to this License. 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 City Special Privileges and regulations.
5. Grantee may charge an additional administrative fee to Participating Merchants in an amount not to exceed three hundred fifty and no/100 dollars (\$350.00), for the first year, exclusive of Consideration and insurance fees. It is understood that this fee is assessed on a per business location basis. A Participating Merchant shall pay a separate administrative fee for each business location. Grantee is authorized to increase the administrative fee no more than five percent (5%) each year.

SECTION 9. INSURANCE

Prior to commencement of any future construction, repairs, or maintenance operations during the term of this License, Grantee shall provide the City with a Certificate of Insurance and shall maintain such insurance in effect during the term of this License. Said Certificate of Insurance shall cover all Participating Merchants in conjunction with Sidewalk Vending. The City shall be named as additionally insured on the Grantee's insurance policies required by this License. Failure to maintain insurance shall be a material breach of this license and a basis for termination of this License by the City.

Grantees shall obtain and provide a commercial general liability policy with a minimum one million dollar (\$1,000,000.00) limit, per occurrence, for personal injury, death, and property damage, with a minimum one million dollar (\$1,000,000.00) general aggregate

limit. These amounts are not a limitation upon the Grantees' agreement to indemnify and hold the City harmless.

Grantees shall procure said insurance with a solvent insurance company authorized to do business in Texas. Such policy or certificate shall provide that the insurance cannot be canceled, modified or the amount of coverage changed without thirty (30) days prior written notice to the Financial Services Department, or ten (10) days prior written notice to the Financial Services Department for cancellation based on non-payment of insurance premiums. Grantees shall file a copy of the policy or certificate of insurance with Financial Services and the City Development Department. If the policy is not kept in full force and effect throughout the term of this License, the License shall automatically become void.

SECTION 10. INDEMNITY

As a condition of this License, Grantee and/or Participating Merchants shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all costs, claims, liens, damages, losses, expenses (including but not limited to attorneys' fees and costs), fees, fines, penalties, proceedings, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death or property damage, arising out of, resulting from or related to the activities of the Grantee and/or Participating Merchant under this License, including any act or omission by the GRANTEE and/or PARTICIPATING MERCHANTS, their agents, employees or subcontractors, all, without, however, waiving governmental immunity available to the City, hereafter, the "damages". This indemnification shall apply even where such damages described above involve the negligence or allegations of negligence on the part of the City, its officers, agents or employees.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal

liability against the City as required by the City Charter or any law, the City will promptly forward to the GRANTEE every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. GRANTEE shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the GRANTEE may deem expedient, and defend or cause to be defended on behalf of the City all suites for damages, even if groundless, false or fraudulent brought because of such damages. GRANTEE shall pay all judgments finally establishing liability of the City in actions defended by GRANTEE pursuant to this section, along with all attorneys' fees and costs incurred by the City, including interest accruing to the date of payment by GRANTEE and premiums on any appeal bonds.

The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. In addition, the GRANTEE shall promptly advise the City in writing of any claim or demand against the City or the GRANTEE known to the GRANTEE related to or arising out of the GRANTEE' activities under this License. **The City will not be responsible for any loss of or damage to the GRANTEE'S property from any cause.**

SECTION 11. TEXAS DEPARTMENT OF TRANSPORTATION AUTHORIZATION

Permission for Vending Areas located on El Paso Street from the US/Mexico Border to Paisano Drive (US 85) and Stanton Street from Paisano Drive to the US/Mexico Border (US 62) is subject to the Texas Department of Transportation (TxDOT) continued waiver of Paragraph Seven of General Conditions of the Municipal Maintenance Agreement between the TxDOT and the City regarding encroachment of Vending Areas on the aforementioned rights-of-way as stated in a letter from TxDOT dated June 27, 2002 attached hereto and incorporated herein as Exhibit "B". **Upon notification from TxDOT to the City that they will no longer waive Paragraph Seven of the Municipal Maintenance Agreement and require the enforcement of removal of encroachment on state or federally designated right-of-way, the rights granted under this License shall be terminated immediately. Upon written notification from the City, Grantee**

and Participating Merchants shall remove all encroachments immediately without any claim of compensation or reimbursement of fees, costs incurred or other damage, whether economic or non-economic.

SECTION 12.DEFAULT

Participating Merchants are subject to notice and/or citation for any actions or omissions not expressly authorized by this License and/or violations of any provisions of the El Paso City Code related to the use of the License Area.

Grantee shall retain the right to terminate Vending Areas of Participating Merchants at its discretion. Grantee shall provide written notice within 30 days to the City of any change of Participating Merchants. Failure to provide notice may be basis for default.

The City may provide notice of violations of the El Paso City Code or this License to Grantee and may allow the Grantee to cure the violation within ten (10) business days. Notice may be provided as per Section 15 (Notice) of this License. Correction Notices and Citations issued by the City shall serve as notice by the City and shall not require additional notice from the City to cure. Revocation of the Vendor Area by Grantee may be considered as a cure of violation and not subject Grantee to termination of this License.

A finding of guilty for a violation of the El Paso City Code or the provisions of this License by Grantee and/or Participating Merchants shall be considered a material breach of this License and may be determined to be a default.

Neither Grantee nor any Participating Merchant shall be authorized to lease, rent or otherwise allow the use of any portion of the Vending Area to any non-participating merchant for the sale of merchandise not principally sold by the Participating Merchant. Any occurrence of third party rentals, sub-leasing or any conduct of similar nature of Vending Areas shall be considered a material breach of this License and may result in the cancellation of this License agreement.

SECTION 13.CANCELLATION

Grantee shall have the option to terminate this License at any time upon giving the City and Participating Merchants written notice thirty (30) days in advance of such termination. Upon termination of this License, prior to the expiration of the original term for any reason, Grantee shall ensure removal of all Vending Areas at no cost to the City. Grantee shall restore the License Area and Vending Areas to the reasonable satisfaction of the City Engineer and in accordance with City specifications, at Grantee's own cost and expense. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the License Area and Vending Areas as required herein, the City may at its option restore the License Area and Vending Areas and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

The City reserves the right to terminate this License upon giving thirty (30) days' written notice to Grantee if the License Area is necessary for a public use or facility at no cost to the City. All rights of Grantee and/or Participating Merchants shall then be terminated.

The City reserves the right to terminate this License for default under Section 12 (Default) of this License. Terminations in case of default by Grantee and/or Participating Merchants shall be effective immediately upon notice from the City. Grantee shall restore the License Area and Vending Areas to the reasonable satisfaction of the City Engineer and in accordance with City specifications, at Grantee's own cost and expense. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the License Area and Vending Areas as required herein, the City may at its option restore the License Area and Vending Areas and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

Consideration payments shall be current and paid through the date of termination regardless of the cause of termination. Section 8 (Consideration) shall survive this License in case of termination.

SECTION 14.RECORDS

Matter # 13-1007-721 # 290062
CBA/Special Privilege License/Sidewalk Vending
LKF

The El Paso City Council and the City Manager or designee shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of its rights under this License, including the construction, replacement, reconstruction, maintenance, and repair of the Vending Areas. Obtaining all applicable City permits shall be deemed sufficient to keep such parties informed. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the structures within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

SECTION 15. NOTICE

Any notice or communication required in the administration of this License shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY: City of El Paso
Attn: City Manager
PO BOX 1890
El Paso, Texas 79950-1890

with copy to: City of El Paso
ATTN: City Development Department
PO BOX 1890
El Paso, Texas 79950-1890

with copy to: City of El Paso
ATTN: Financial Services – Capital Assets Division
PO BOX 1890
El Paso, Texas 79950-1890

GRANTEE: Central Business Association of El Paso, Inc.
ATTN: Dennis Melonas
310 N. Mesa Suite 420
El Paso, Texas 79901

or to such other addresses as Grantees may designate from time to time by written notice as required in this paragraph.

SECTION 16. ASSIGNMENT

The rights granted by this License inure to the benefit of the Grantee and Participating Merchants, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assignable without the express advanced written consent of the El Paso

Matter # 13-1007-721 # 290062
CBA/Special Privilege License/Sidewalk Vending
LKF

City Council.

SECTION 17. LEASING OR DEDICATION OF FACILITIES

Grantee, without the advanced written consent of the El Paso City Council, shall not lease the License Area or any Vending Area to any non-grantee person or entity. Such leasing shall be a material breach of this License subject to Cancellation in accordance with Section 13 (Cancellation) of this License.

SECTION 18. LEGAL RELATIONSHIP

The City retains the right to enforce this License and the El Paso City Code. Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between the City and Grantee, and the Grantee shall not be deemed to be an independent contractor of the City. The City shall in no way construe the grant of this License as co-sponsorship with Grantee and/or Participating Merchants.

SECTION 19. ADMINISTRATION OF LICENSE

The City Development Director or designee is the principal City Official responsible for the administration of this License. Grantee recognizes that questions regarding the interpretation or application of this License shall be referred to the City Development Director or designee.

SECTION 20. NO PROPERTY RIGHTS

Nothing herein shall grant any real property interest to the Grantee and/or Participating Merchants nor give rise to any vested right in the Grantee, their assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

SECTION 21. 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 License Area or Vending Area that arises or is alleged to have arisen from Grantee's and/or Participating Merchants' use of the Licensed Area and/or Vending Area.

Matter # 13-1007-721 # 290062
CBA/Special Privilege License/Sidewalk Vending
LKF

SECTION 22. RIGHT OF ENTRY AND INSPECTION

The City’s authorized representative shall have the right to enter upon the licensed area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

SECTION 23. LAWS AND ORDINANCES

Grantee and Participating Merchants shall comply with all statutes, laws, codes and ordinances applicable to Grantees’ construction, repair, renovation, alteration or use of the License Area and/or Vending Area.

SECTION 24. 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.

SECTION 25. SEVERABILITY

Every provision of this license is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this license.

SECTION 26. LAWS GOVERNING/VENUE

The laws of the State of Texas shall govern the validity, performances, and enforcement of this License and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

SECTION 27. RESTRICTIONS AND RESERVATIONS

This License 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 license, 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 and/or

Participating Merchants' use of the License Area and Vending Area, Grantee shall have the right to terminate this License upon giving the City 30 days prior written notice of its intent to do so.

SECTION 28. EFFECTIVE DATE

The effective date of this License shall be the date last entered below. This License shall not take effect unless Grantee files its written acceptance with the City prior to the enactment of this License by the El Paso City Council.

PASSED AND APPROVED this ____ day of _____, 2013.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lauren Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy, Director
City Development Department

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2013.

GRANTEE:
Central Business Association of El Paso, Inc.

By: Dennis Melonas, Executive Director

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this _____ day of _____, 2013, by Dennis Melonas on behalf of Central Business Association of El Paso, Inc, as Grantee.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires



Texas Department of Transportation

13301 GATEWAY BLVD. WEST • EL PASO, TEXAS 79928-5410 • (815) 790-4200

June 27, 2002

Fax Transmittal Memo

of Pages 1

Ms. Cindy J. Crosby
Assistant City Attorney
2 Civic Center Plaza
El Paso, TX 79901-1196

To: <i>Cindy Crosby</i>	From: <i>Manuel Aguilera</i>
Co.: <i>City EP</i>	Co.: <i>TXDOT</i>
Dept.: <i>City Atty</i>	Phone # <i>790-4205</i>
Fax # <i>541-4710</i>	Fax # <i>790-4374</i>

Dear Ms. Crosby:

We are responding to your fax dated June 19, 2002 regarding clarification of our letter of June 14, 2002- Vendors on El Paso (US 85) and Stanton (US 62) Streets south of Paisano Drive. Our letter made a recommendation to impose a temporary moratorium on the enforcement by the city to remove vendors off the ROW on the above mentioned roadways.

The reason we recommended a temporary moratorium is that it is the City of El Paso's responsibility to enforce removal of encroachments on State rights of way when requested by the State per our Municipal Maintenance Agreement. Additionally, if current negotiations with the City to remove these City maintained roadways from the State Designated System and make them municipal streets are successful, then the encroachments become a moot issue.

Although, TxDOT cannot legally allow encroachments on State Designated Highway System rights of way, we will not require the City of El Paso to enforce encroachment issues on these roadways, as required by Paragraph Seven under General Conditions of the Municipal Maintenance Agreement, until negotiations to change them to municipal roadways have concluded. We anticipate that negotiations will continue for several months. Since municipalities are allowed to permit encroachments on municipal streets, we feel that it would not be appropriate to enforce the encroachment issue at a time when negotiations are still underway.

Your letter also requests that we address a municipal code section that requires TxDOT permission prior to the City issuing a "Special Privilege License". We have a procedure to permit awning and sign encroachments and can provide written approval for such encroachments. TxDOT cannot provide written approval to allow vendors on state right of way.

If any further information is required, please contact me at (915) 790-4203 or Manuel F. Aguilera P.E. at (915) 790-4205.

Sincerely,

Charles H. Berry, Jr., P.E.
District Engineer

CHB/cc