

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

AGENDA DATE: April 9, 2024
PUBLIC HEARING DATE: April 23

CONTACT PERSON(S) NAME AND PHONE NUMBER: Daniela Quesada, 915-212-1826

DISTRICT(S) AFFECTED: City-wide

STRATEGIC GOAL: Goal 1 – Cultivate an Environment Conducive to Strong, Economic Development
Goal 3 – Promote the Visual Image of El Paso

SUBGOAL: 1.1 Stabilize and expand El Paso's tax base
3.1 Improve the visual impression of the community (gateways, corridors, intersection, and parklands)

SUBJECT:

An ordinance amending Title 15, Chapter 15.08 (Street Rentals), section 15.08.120 (Special Privilege Licenses and Permits) to add new uses for the sidewalk cafe and parking parklet programs and adopt the right-of-way cafe design guidelines. The penalty is provided in section 15.08.125.

BACKGROUND / DISCUSSION:

The CID Planning Division, in partnership with the Planning & Inspections and Streets & Maintenance Departments, is launching the Right-of-Way Café Program, a permanent extension of the Sun City Safe initiative established in response to the Covid-19 pandemic. The program introduces two permits, the Sidewalk Café and the Parking Parklet, aiming to activate downtown and uptown El Paso streets in a safe, pedestrian-friendly manner, aligning with the El Paso Complete Streets 2023 initiative.

PRIOR COUNCIL ACTION:

Sun City Safe 2020
El Paso Complete Streets 2023

AMOUNT AND SOURCE OF FUNDING:

N/A

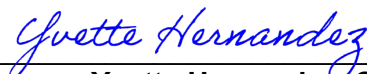
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: CID - Planning

SECONDARY DEPARTMENT: Planning and Inspections Department and Streets & Maintenance

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

DEPARTMENT HEAD:



Yvette Hernandez, City Engineer

AN ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES), CHAPTER 15.08 (STREET RENTALS), SECTION 15.08.120 (SPECIAL PRIVILEGE LICENSES AND PERMITS) TO ADD NEW USES FOR THE SIDEWALK CAFE AND PARKING PARKLET PROGRAMS AND ADOPT THE RIGHT-OF-WAY CAFE DESIGN GUIDELINES. THE PENALTY IS AS PROVIDED IN SECTION 15.08.125.

WHEREAS, On August 31, 2020, The El Paso City Council suspended various sections of the El Paso City Code to facilitate temporary uses of the public right-of-way and private property; and,

WHEREAS, in accordance with Ordinance No. 019091 City Administration has developed the *Sun City Safe Pilot Program* to support restaurants and similar establishments in their efforts to safely operate during the COVI D-19 pandemic by further facilitating outdoor service and dining opportunities; and,

WHEREAS, The City wishes to adopt regulations consistent with the *Sun City Safe Pilot Program* permanently to allow businesses and residents the opportunity for expanded use of the public right-of-way,

WHEREAS, The City wishes to offer a simplified process to allow applicants to obtain a permit to use the right-of-way for safe outdoor use of extensions of their businesses, and,

WHEREAS, the regulations herein are in the best interest of the public health, safety, and welfare of The City.

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

SECTION 1. The City Council adopts the Right-of-Way Design Guidelines attached to this ordinance as Attachment “A” which can be amended administratively so long as it meets the guidelines approved under this ordinance.

SECTION 2. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits), Section B (Application Required) is amended to read as follows:

- B. Application required. To acquire licenses or permits under this chapter, an applicant shall submit the following to the permit official, and follow the procedures prescribed by this section.
1. One application for a license or permit shall be made in writing or submitted electronically on a form prescribed by the permit official, which must be completed in accordance with the instructions provided on/with the application;
 2. One location map, accurately outlining the public rights-of-way or easement(s) upon which an encroachment is proposed.
 3. A digital copy of the proposed plan of the public right-of-way or public easement, drawn to scale, showing the following:
 - a. Size, location, arrangements of existing structures and improvements on the public rights-of-way or easements;
 - b. Size, location, arrangements and dimensions of proposed improvements to be located on the public rights-of-way or easements;

- c. Elevations or perspective of the buildings showing all existing and proposed encroachments;
4. Proof of ownership (warranty deed, title commitment, etc.).
5. A sealed written metes and bounds description and survey, of the public rights-of-way or easements if permanent structures are proposed.
6. A transmittal letter including specific information, special circumstances or conditions, which apply to the request.
7. A certificate of liability insurance or self-insured affidavit in accordance with subsection G (insurance required) of this chapter.
8. Upon review for completeness and acceptance of the application by the permit official, the applicant shall pay the established processing fee for the special privilege license or permit as prescribed in subsection F.1 of this chapter. The processing fee is non-refundable.

SECTION 3. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits), Section D (Procedure for a permit.), subsection 1 is amended to read as follows:

1. Permit applications and related materials will be forwarded to the affected departments, which will make a recommendation for approval or denial of the request within 7 days of the date of distribution.

SECTION 4. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits), Table 1-1, subsection 2 (Surface encroachments), is amended to rename paragraph a. and add paragraphs q. as follows:

a. Sidewalk Café	Permit	One-two years	See Section N.
q. Parking Parklet	Permit	One year	See Section O.

SECTION 5. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits), Section F (Fees.), subsection 2, line (a.) is deleted.

SECTION 6. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits), Section G (Insurance Required.), is amended to read as follows:

- G. Insurance required. As a condition of the license or permit, the grantees shall agree to indemnify, defend and hold harmless the city, its officers, agents, servants and employees from any and all claims, loss, damages, causes of action, suits and liability of every kind, including all expenses of litigation for injury or death of any person, or for damages to any property arising out of or in connection with grantee's use of the public right-of-way regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of the city.
 1. No license or permit shall be granted by the city unless grantee files a copy with the Planning & Inspections Department and financial services a certificate of liability insurance accompanied by a copy of the policy of insurance as prescribed by the Risk Management of the City of El Paso.

2. Grantee(s) 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 pay any judgment of a court of competent jurisdiction against the city, its officers, agents, servants or employees and grantee(s) their officers, agents, servants or employees as additional insureds to the full amount of the policy limits. The policy of insurance shall name the grantee and the city as insureds to the full amount of the policy limits.
3. Such policy or certificate shall provide that the insurance cannot be cancelled, or the amount of coverage changed without thirty days prior written notice to the city's Planning & Inspections Department and financial services, or ten days prior written notice for cancellation based on non-payment of insurance premiums.
4. Failure to keep the policy in full force and effect throughout the term of the license shall be grounds for cancellation. Certificates of insurance that state the insurer shall endeavor to give notice and/or that there shall be no liability for failure to give notice required therein shall not meet the minimum requirements of this section.

SECTION 7. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits), Subsection N (Outdoor Patio Cafes), is amended to read as follows:

N. Sidewalk cafés.

1. Filing application.
 - a. A letter from the property owner, if different from the food and/or beverage service establishment operator, indicating their authorization to obtain a sidewalk café permit; and acknowledging responsibility for any encroachments installed by tenant on city right-of-way.
 - b. The permittee shall be required to comply with all applicable codes, rules, regulations, and laws.
2. Compliance with Design Guidelines Required.
 - a. Sidewalk cafés shall comply with all guidelines in the “Right-of-way Café Design Guidelines” available on the city’s website or on file with the Planning and Inspections Department.
 - f. The sidewalk 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 sidewalk café shall not prevent access to the El Paso Fire Department connections (FDC), fire hydrants, or fire escapes.
 - g. The sidewalk 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 sidewalk 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.
3. Construction.
 - a. All construction shall comply with any applicable historic district design standards and guidelines. Applicants shall receive approval from the historic preservation officer or the historic landmark commission (if applicable) prior to approval of the permit.

All proposed improvements within city right-of-way shall be included in the permit application.

- b. A pavement cut permit in accordance with Chapter 13.08 (Excavations) shall be required for any work on city right-of-way.
 - c. Sidewalk cafés shall be reviewed for ADA compliance prior to permit approval. Sidewalk cafés shall not impede ADA accessibility.
4. Boundaries and fencing.
- a. A sidewalk café shall not be enclosed by permanent structure(s).
 - (1) If fencing is provided, fencing shall be continuous around the perimeter of the sidewalk café except for one opening/entry point. Fences shall have a durable professional finish and shall comply with applicable historic district guidelines. Fencing shall include sleeves at the base of the poles to allow for removal from city rights-of-way if necessary.
 - (2) The boundaries of a sidewalk café on a city sidewalk may also be defined by planters, trees, benches or other structure as approved by the permit official. If the applicant is permitted by TABC to sell and/or serve alcoholic beverages within the sidewalk café, the perimeter of sales shall be adequately delineated to note control of the premises and the following shall apply:
 - (a) Street furniture, benches, planters and seat wells shall comply with the provisions of subsection J. (additional requirements for street furniture) of this chapter.
 - (b) A minimum service area of two feet adjacent to each table that does not encroach into the pedestrian pathway is required for unenclosed café areas.
 - (c) A minimum distance of five feet shall be provided for a table and two chairs placed directly opposite each other is required for unenclosed sidewalk café areas.
5. Alcohol.
- a. A license issued by the Texas Alcoholic Beverage Commission (TABC) is required for the sale and service of alcoholic beverages within the sidewalk café area.
 - b. City approval of an application for a sidewalk 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 sidewalk café area.
 - c. The permittee must comply with any standards established by the Texas Alcoholic Beverage Commission.
6. Fire department requirements.
- a. The location of any proposed outdoor serving stations requires fire marshal approval for their proximity to points of ingress and egress to the property. The area for the sidewalk café shall meet the current fire code requirements as determined by the fire marshal regarding sidewalk café areas and ingress and egress points of access. The fire marshal through plan review shall determine fire code compliance.
 - b. The fire marshal shall also require that occupancy capacities as defined in the International Building Code for the sidewalk café area and the building remain distinct and separate.
 - c. The sidewalk 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 sidewalk café and may be included in the same special privilege application.

Canopies within the sidewalk café area shall meet current fire code definition and specifications. Proposed canopies shall comply with subsection I. (additional requirements for awnings, canopies, arcades and galleries) of this chapter.

- d. Acceptable auxiliary outdoor heating devices shall meet the requirements of the current fire code.
7. Other requirements.
- a. Planters within the sidewalk café limit line shall be shown on the site plan submitted with the application and shall comply with subsection J. (additional requirements for street furniture) of this chapter.
 - b. Each sidewalk café shall have no less than one trash receptacle within the café limit line.
 - c. Overhead lighting located within public right-of-way shall be included in the permit application and shall meet all applicable historic district architectural and design standards. All electrical work shall be designed and installed in compliance with the Chapter 18.16 (Electrical Code).
 - (1) Lighting on fencing may be permitted to add a decorative element but shall not be designed to attract attention. Flashing lights are not permitted.
 - (2) Lighting shall be clear or white.
 - (3) Light strands shall be maintained in good repair and burned-out bulbs shall be replaced promptly.
 - d. All relocation, removal, disposition and/or salvage of any city property shall be coordinated with the Streets & Maintenance Department. The Streets & Maintenance Department shall follow the city's establish policy and procedure for disposal or salvage of such property.
8. Cincinnati commercial district sidewalk café requirements. In addition to all other applicable provisions of Subsection 15.08.120 (Special privilege licenses and permits) of this Code, the following provisions shall be applicable to this district:
- a. Boundaries. The sidewalk cafés shall be defined as the terraced areas immediately adjacent to the storefront. For purposes of this subsection, retail and/or office space establishments, in addition to food and/or beverage service establishments may obtain a sidewalk café permit to use the terraced area immediately adjacent to the storefront. Boundaries of the sidewalk cafés shall be limited to the City of El Paso's constructed terraces as referenced in the university pedestrian improvements streetscape construction documents. Sidewalk cafés are limited to the use of seated only food and/or beverage service or retail and/or office space use.
 - b. Fencing. All fencing shall comply with design and height specifications found in the furnishing details of the City of El Paso's university pedestrian improvements streetscape construction documents.
 - c. Seating. For food and/or beverage service only. Seated-only capacity shall be required. Standing-only capacity shall not be permitted.
 - (i) Tables and chairs shall not exceed thirty inches in height.
 - (ii) Tables and chairs must be moveable to accommodate wheelchair access.
 - d. Smoking. Smoking shall not be permitted within the boundaries of the sidewalk café.

- e. Limits on use of the sidewalk café. The use of the sidewalk café (as defined in Section 15.08.120.N.8.a) must cease between the hours of 1:00 a.m. to 7:00 a.m. However, the use of the sidewalk café during special events will be governed by the terms of the special event permit.

SECTION 8. Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits) is amended to add a new Subsection O (Parking Parklets) to read as follows:

O. Parking Parklets

1. General

- a. “Parking Parklet” means the use and occupation of a portion of the public right of way that is currently used as on-street parking for additional outdoor public space.
- b. Application
 - i. Application for Parking Parklet permit shall be filed with the City. The applicant shall pay the established fee. Such application shall include the following information:
 - ii. The name and address of the applicant.
 - iii. The legal address of the real property adjacent to the site proposed for the Parking Parklet.
 - iv. If alcoholic beverages are served within the designated Parking Parklet area, the permittee must provide proof that a valid license under all applicable laws for alcohol sales has been obtained.
 - v. A site plan of sufficient detail to demonstrate compliance with the requirements of this section.
- c. Traffic Control Plan.
 - i. A traffic control plan in compliance with 12.30 is required for all applications for permit under this section during construction. Traffic control plan templates are available from the City Traffic Engineer and included in the Right-of-Way Design Guidelines.
 - ii. The traffic control plan and any required traffic control devices will be at the sole discretion of the Traffic Engineer.
 - iii. A traffic control permit is not required after construction activities have ceased.
- d. Compliance with Design Guidelines.
 - i. All proposed Parking Parklets shall comply with all guidelines in the “Right-of-way Café Design Guidelines” available on the city’s website or on file with the Planning and Inspections Department.
- e. In the event that The City determines that the location of any Parking Parklet constitutes an immediate physical danger, the encroachment into the right-of-way must be removed immediately.

f. Operational Standards

- i. A Parking Parklet must occupy only parking spaces directly in front of the applicant's business or establishment.
- ii. Occupancy within the Parking Parklet is limited to tables and chairs.
- iii. The permittee must maintain the sidewalk and parking area in a good and safe condition.
- iv. No amplified music, speakers, microphones, televisions, or other audio/visual devices will be permitted within the Parking Parklet area.
- v. Operating hours of the Parking Parklet shall be restricted to the operating hours of the adjacent business or businesses.
- vi. The Parking Parklet elements must be removed from the public right-of-way except during normal business hours. The storage of Parking Parklet elements within the public right-of-way is prohibited.
- vii. The Parking Parklet must have a two-foot (2') buffer zone between it and adjacent parking spaces and vehicular travel lanes. Additionally, wheel stops or posts should be included, as determined by the City Manager or their designee.
- viii. The Parking Parklet shall include a flush transition at the curb to permit easy access for wheelchair users or others with mobility issues and to avoid any tripping hazards.
- ix. Additional occupancy provided by the Parking Parklet may not exceed 50% of the establishment's permitted maximum occupancy.

SECTION 9. Except as herein amended, Title 15 (Public Services), Chapter 15.08 (Street Rentals), Section 15.08.120 (Special Privilege Licenses and permits) remains in full force and effect.

PASSED AND ADOPTED, this _____ day of _____, 2024.

THE CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Russel T. Abeln

Russell T. Abeln
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Philip F. Etiwe

Philip F. Etiwe
Planning & Inspection Director

RIGHT OF WAY CAFÉ



DESIGN GUIDELINES
City of El Paso
December 2023



★ Mission

Deliver exceptional services to support a high quality of life and place for our community.

★ Vision

Develop a vibrant regional economy, safe and neighborhoods, and exceptional recreational cultural and educational opportunities powered by a high government.

★ Values

I	INTEGRITY
R	RESPECT
E	EXCELLENCE
A	ACCOUNTABILITY
P	PEOPLE

01

Goal **CULTIVATE AN ENVIRONMENT CONDUCTIVE TO STRONG, ECONOMIC DEVELOPMENT**

- 1.1 Stabilize and expand El Paso's tax base
- 1.2 Enhance visitor revenue opportunities
- 1.6 Provide business-friendly permitting and inspection process

03

Goal **PROMOTE THE VISUAL IMAGE OF EL PASO**

- 3.1 Improve the visual impression of the community (gateways, corridors, intersections, and parklands)
- 3.3 Establish a brand that celebrates and promotes El Paso's unique identity and offerings

ACKNOWLEDGEMENTS

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El Paso International Airport

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Economic Development Assistant Director





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1.1 WHAT IS THE RIGHT-OF-WAY

The right-of-way refers to a designated area of land owned and controlled by the City of El Paso or the Texas Department of Transportation. It typically includes public streets, sidewalks, alleys, and other public infrastructure that are essential for transportation and public access.

The city right-of-way is typically considered a public domain and is accessible to all members of the community. However, certain restrictions and regulations may apply, such as permits for construction activities, temporary closures for events or maintenance, and specific rules for street vendors or public transportation.



1.2 ABOUT RIGHT-OF-WAY CAFÉS

The Right-of-Way Café program in El Paso offers an exciting opportunity for food and beverage businesses to enhance their establishments by extending their service areas towards the public sidewalks and on-street parking. The program aims to create a lively and communal dining experience, allowing patrons to enjoy their meals and beverages in an outdoor setting. With El Paso's abundant sunshine and beautiful downtown, right-of-way cafés are a perfect addition to the city's vibrant food and restaurant culture, supporting local businesses and promoting community.

Key features of the Right-of-Way Café program include:

1. **Alfresco Dining Experience:** Right-of-way cafés offer customers a unique and relaxed dining experience, with tables and seating placed outdoors, allowing them to savor their meals in the fresh air and enjoy the city's atmosphere.
2. **Temporary Use of Public Space:** The program allows participating restaurants and licensed businesses to temporarily utilize city sidewalks and portions of on-street parking to set up open-air seating areas.
3. **Support for Local Businesses:** By facilitating the expansion of restaurant services into public spaces, the program aims to support and strengthen local businesses, contributing to the growth of El Paso's food and restaurant culture.

1.3 WHEN IS A PERMIT NECESSARY

A right-of-way café permit is required when **city sidewalks and public on-street parking** are used for **outdoor dining** directly abutting an existing food and beverage establishment. A café sited entirely on private property does not require a Right-of-Way café permit but may be subject to other permits such as a temporary use permit.

1.4 WHO MAY APPLY FOR A PERMIT

Operators of a right-of-way café must be businesses licensed to serve food and beverages. The applicant does not have to be the property owner, but if they are not, they must have a valid lease for the building abutting the proposed right-of-way café.

TYPES OF PERMITS

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2.1 SIDEWALK CAFE

A sidewalk cafe is an outdoor dining space that extends from a neighboring established restaurant onto a portion of the sidewalk. The sidewalk cafe occupies a part of the sidewalk adjacent to the establishment. It may include tables, chairs, umbrellas, or other furnishings to create a comfortable and inviting outdoor dining experience. The primary purpose of a sidewalk cafe is to provide restaurant customers with the option to dine outdoors while contributing to the vibrancy and street life of the city.



Example #1



Example #2



Example #3

2.2 PARKING PARKLET

A Parking Parklet, alternatively referred to as a parklet or sidewalk extension, is a small-scale urban intervention aimed at converting a segment of a conventional on-street parking space into a public space. This permit enables parklets to function as an expansion of a neighbouring established restaurant, providing the establishment with the opportunity to cater to customers in an outdoor setting.



Example #1



Example #2



Example #3

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APPLICATION PROCESS

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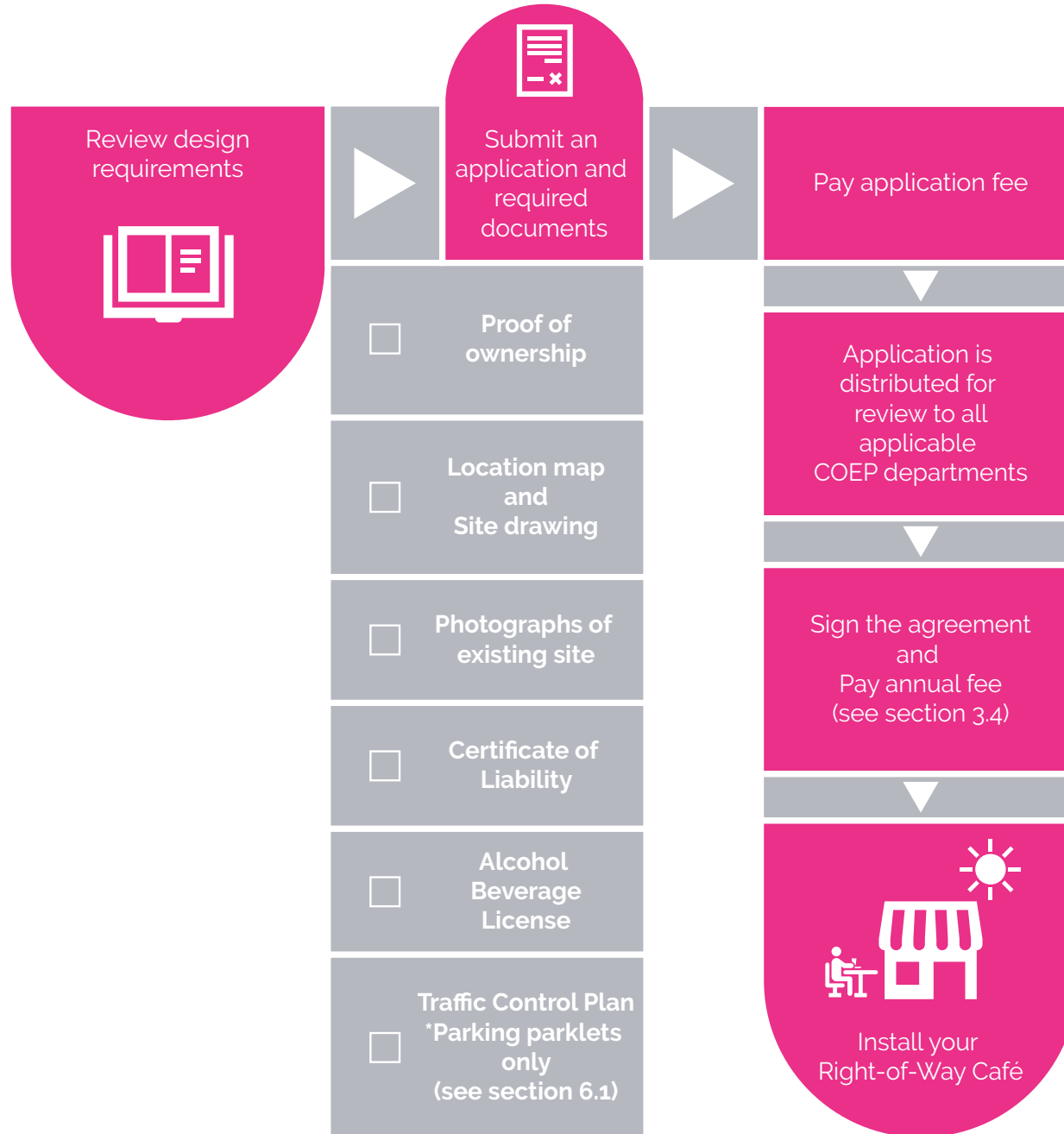
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3 MIN
PASSENGER
LOAD ONLY

FOOD
PICK-UP
PRIORITY

CARTA
DE
OAXACA

3.1 PERMIT PROCESS FLOW CHART



3.2 INSTRUCTIONS FOR APPLICATION SUBMITTAL

Applicants must complete the [application](#) and submit it in person to the One-Stop-Shop located at 811 Texas Ave. El Paso, TX 79901. Alternatively, the application may be submitted via email to ROWpermits@elpasotexas.gov.

In addition to a complete application, the following documents must be submitted to process your request for a Right-of-way Café Permit:

- ☐ **Proof of ownership:** This may include a warranty deed, title commitment, or other relevant documentation. If the applicant is not the business owner, they must have a valid lease for the building and written permission by the property owner indicating authorization to obtain a right-of-way café permit.
- ☐ **Location Map:** A location map, accurately outlining the public rights-of-way or easement(s) upon which a temporary encroachment is proposed.
- ☐ **Site Drawing:** A detailed site drawing is required during the submission. While professional drawings are not mandatory, the site drawing must be legible, close to scale, and provide sufficient detail to describe the proposed temporary encroachment on the public right-of-way or easement(s). An example can be found on page 19.
- ☐ **Photographs:** Please include pictures of the existing site before the installation of the café, as well as photos of the adjacent street and sidewalk.
- ☐ **Certificate of Liability Insurance:** The insurance must meet the requirements specified on page 18.
- ☐ **Alcohol Beverage License:** If your application involves selling and serving beverages containing alcohol within the city's right-of-way, include a copy of the current alcohol beverage license.
- ☐ **Traffic Control Plan** *only applicable for parking parklets. ([See section 6.1](#))

Once the permit official reviews the application for completeness and acceptance, the applicant must pay the processing fee for the special privilege license or permit, as prescribed in Schedule C. Please note that the processing fee is non-refundable

3.3 INSURANCE REQUIREMENTS

A certificate of liability insurance or self-insured affidavit with the required liability limitations as required per Section 15.08.120G of the El Paso City Code. Liquor liability insurance will be required separately for requests to sell and serve alcoholic beverages on City right-of-way. Certificate of liability insurance must be in accordance with the State of Texas Certificate Law. City of El Paso must be listed as the “Certificate Holder” as well as “Additional Insured” under the descriptions section. In addition, coverage must meet the following limitations:

\$1,000,000 in General Commercial Liability for Personal Injury/ Death per occurrence.

\$2,000,000 in General Aggregate Coverage

\$1,000,000 in Property Damage

\$5,000,000 if located within 50 feet of the streetcar

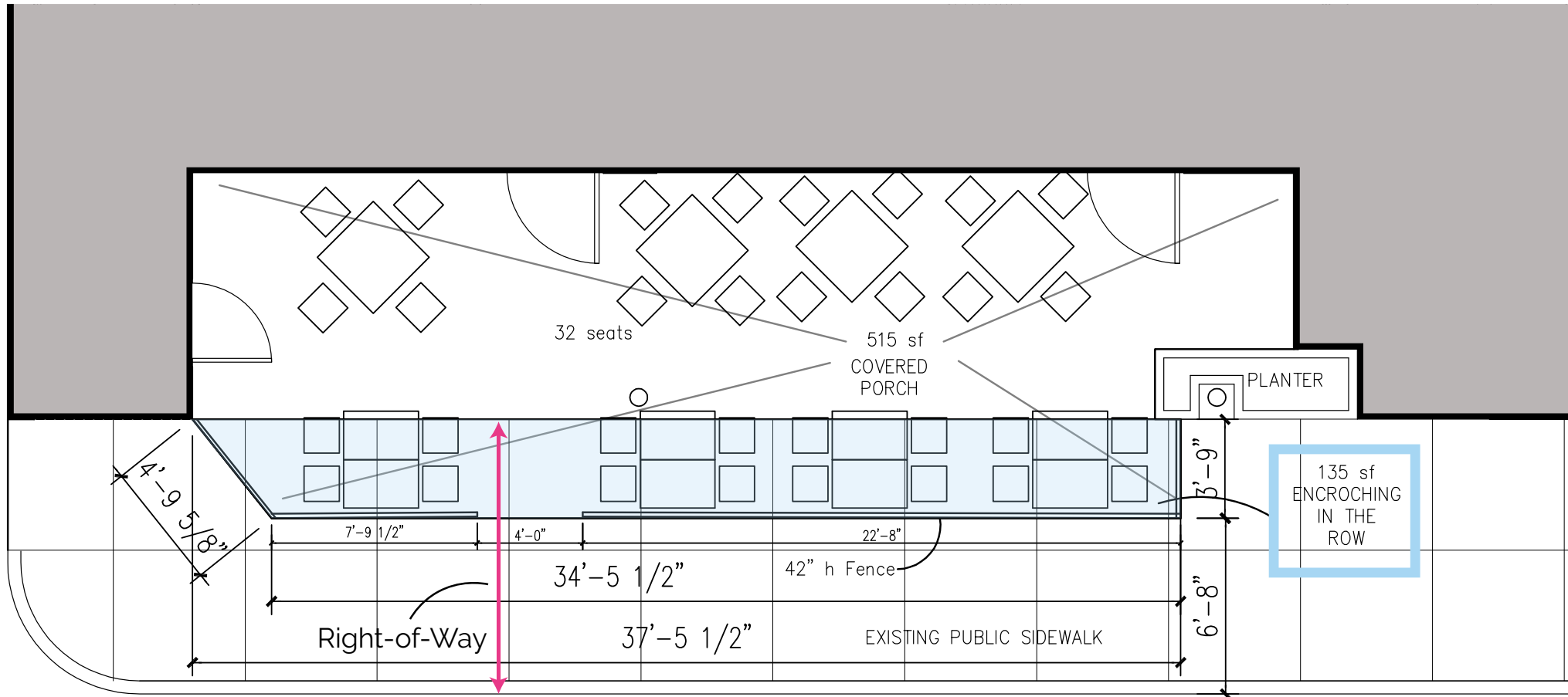
3.4 PERMIT FEES

ROW Cafe Program	Sidewalk Cafe Permit	Parking Parklet Permit
Application fee	\$371.00 + applicable technology fee	\$371.00 + applicable technology fee
Annual fee	\$159.00 per site + applicable technology fee	\$2,000.00 per metered space +applicable technology fee

*See [City of El Paso Schedule C](#) for more information

**Fees subject to review by City Council

3.5 SITE PLAN EXAMPLE



1 IMPROVEMENT FLOOR PLAN
SCALE: 3/16" = 1'-0"

SIDEWALK CAFÉ

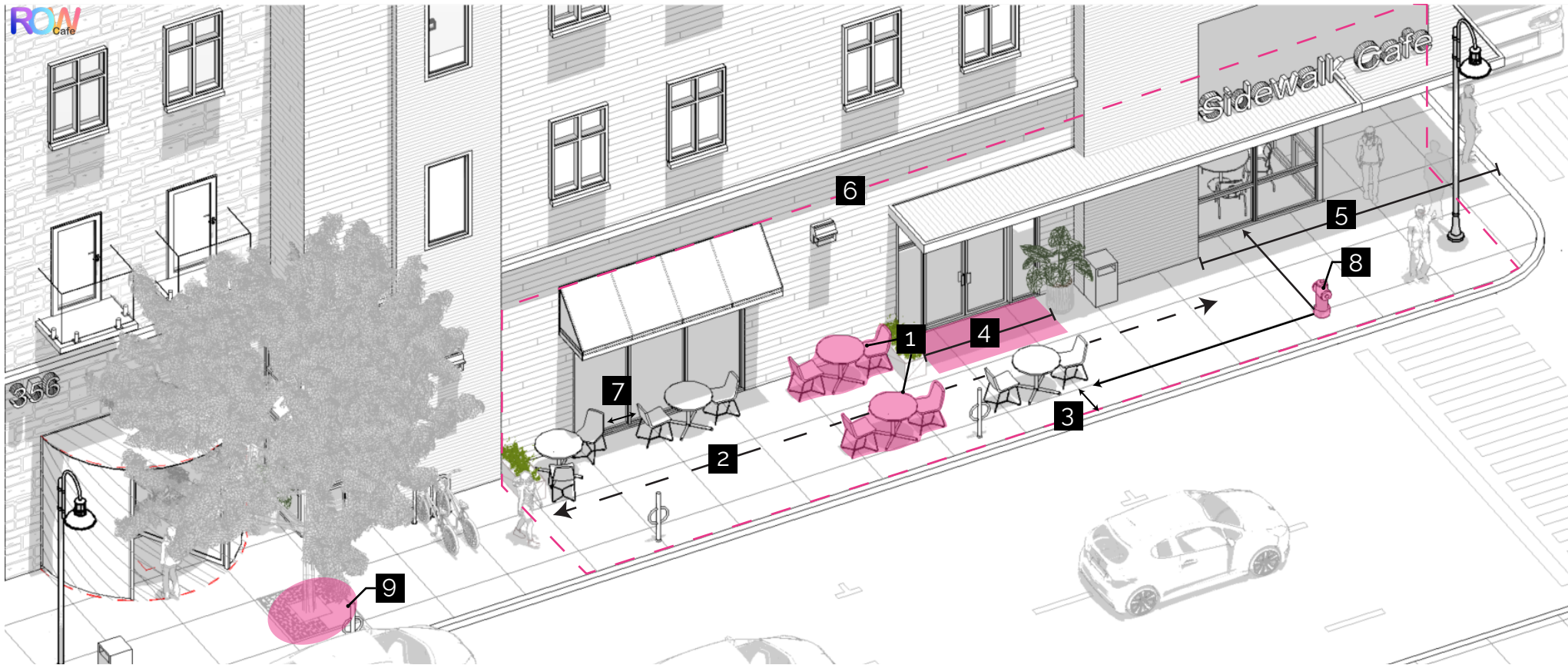
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**SANITATION
CERTIFIED**

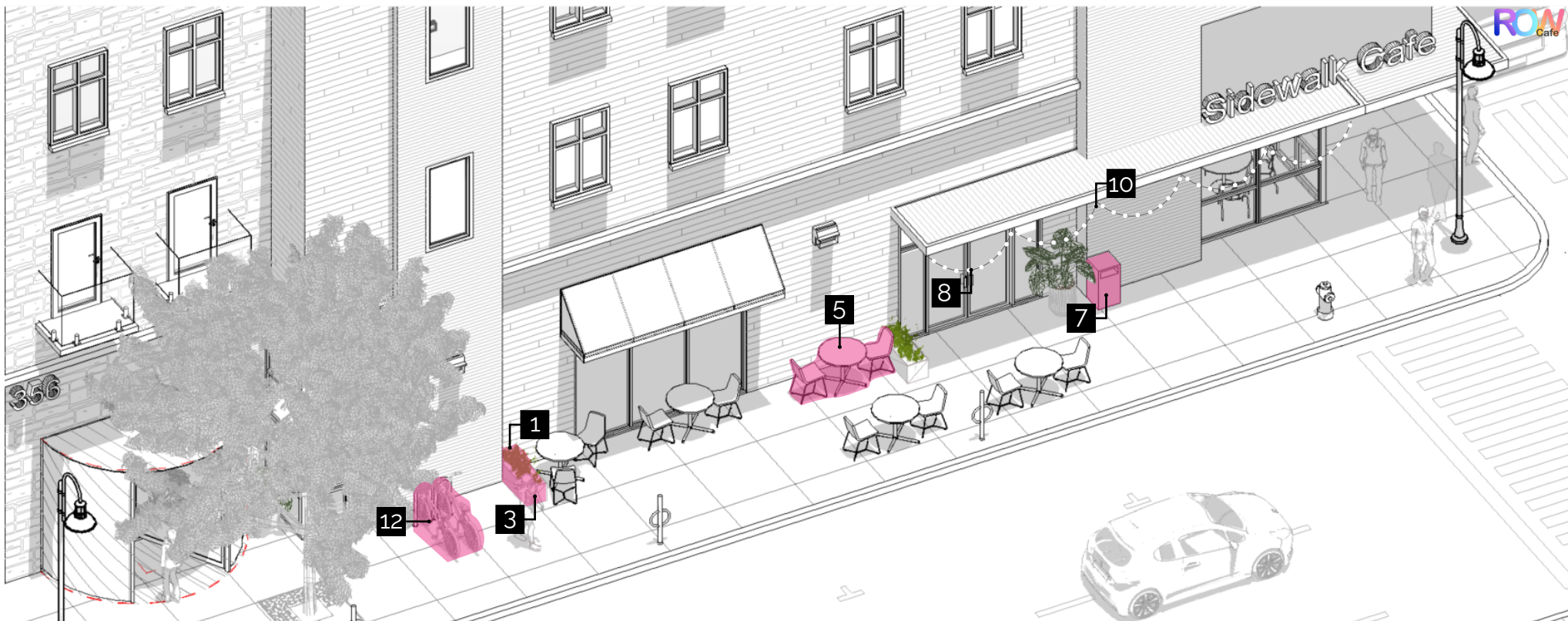


WWW.CJSGLOBAL.COM
for more information on our sanitation standards.



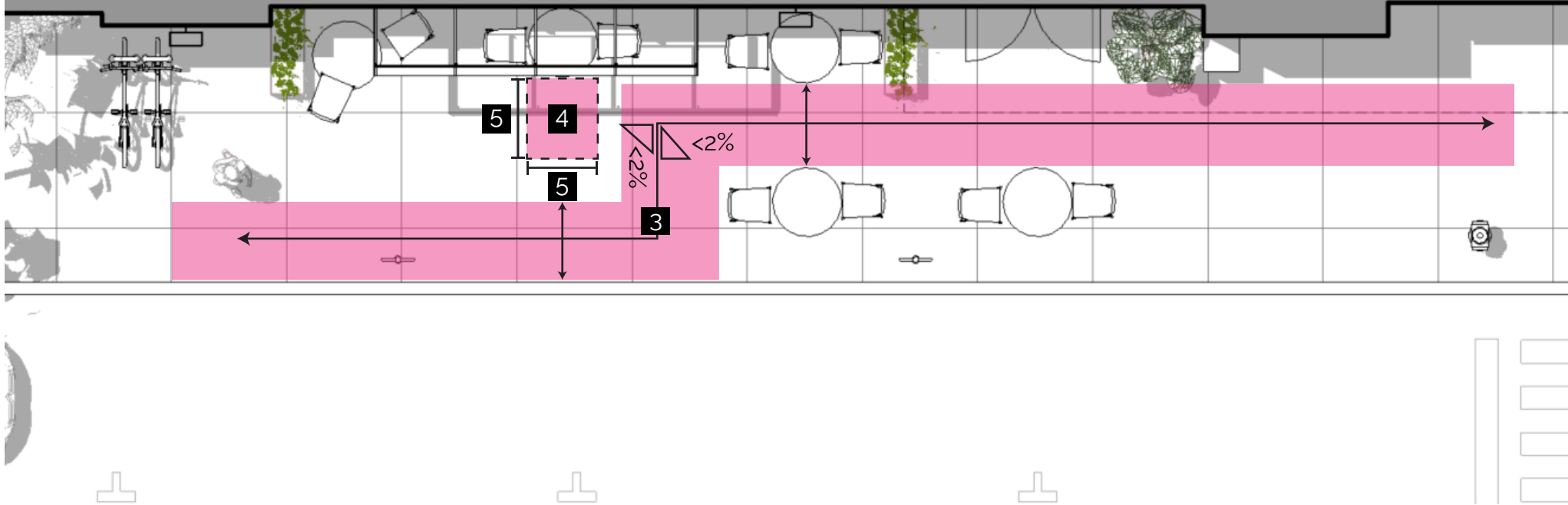
4.1 LOCATION REQUIREMENTS

1. The sidewalk café may be located between the face of the curb and the pedestrian pathway and/or between the pedestrian pathway and the face of the building(s).
2. Maintain a 5 feet minimum clear path for pedestrian access.
3. A minimum setback of 2 feet between the face of the curb and the closest portion of the sidewalk café is required.
4. Maintain a minimum of 3 feet wide unobstructed path of ingress and egress between all exit door(s) and the public right-of-way; and between adjacent cafés.
5. Cafés and structures must be located at least 20 feet from any adjacent intersection or street corner. The location of the café adjacent to the intersection or street corners may be modified with the approval of the City Traffic Engineer where special conditions exist, and modification is consistent with public safety.
6. The sidewalk café must stay within the business frontage and shall not extend beyond without written permission from the neighbouring businesses.
7. Maintain a minimum of 2 feet between tables.
8. Maintain a 15 feet clear space at the base of existing fire hydrants.
9. Maintain a 3 feet radius of clear space at the base of existing trees.
10. Easements, meters, valves, manholes, or structures must be accessible for maintenance and/or repair.



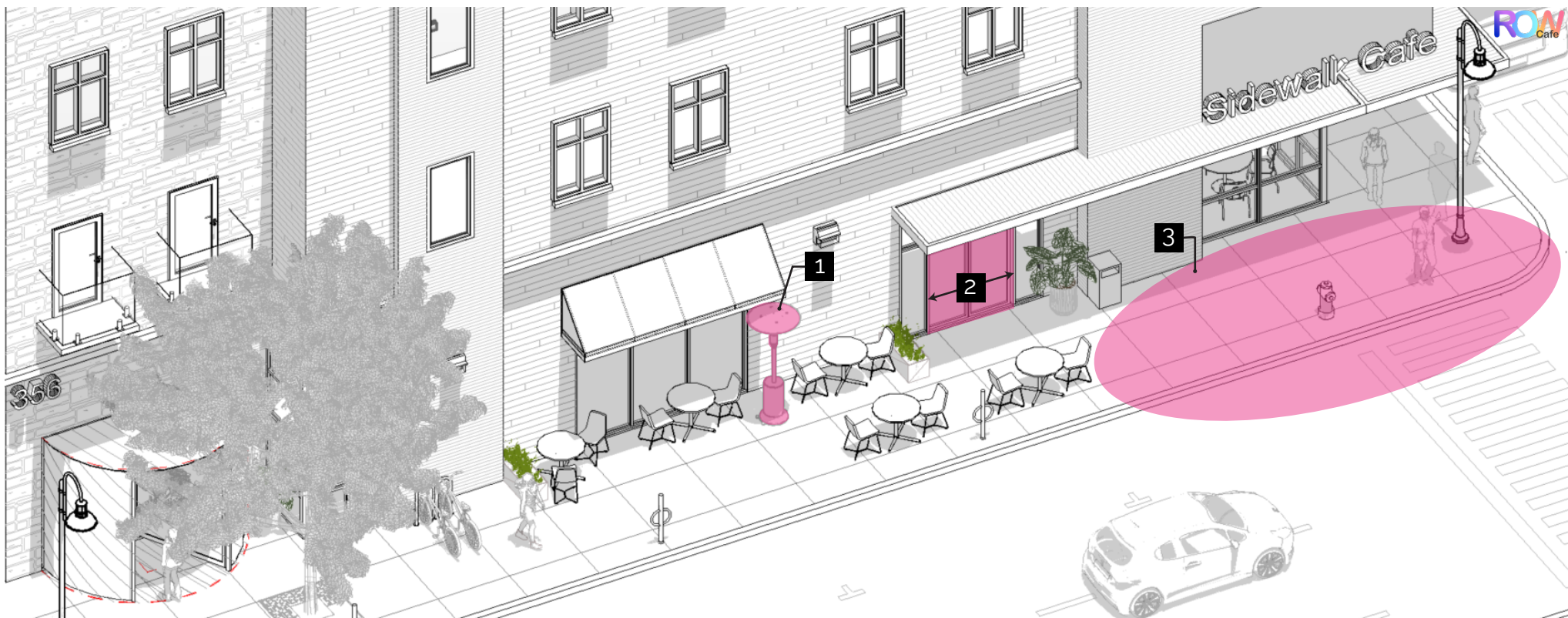
4.2 DESIGN REQUIREMENTS

1. The sidewalk café shall not be enclosed by permanent structures.
2. If fencing is provided, fencing shall be continuous around the perimeter of the patio café except for entry points. Fences must have a durable professional finish and shall comply with applicable historic district guidelines.
3. Planters may be used as barriers to delineate the café limits. Barriers must be 30" - 36" in height.
4. All construction and additions shall comply with any applicable historic district design standards and guidelines.
5. The sidewalk café must consist of moveable furniture. All furniture should be designed for outdoor use. Furniture must be able to withstand heavy weather conditions.
6. All materials must be suitable for outdoor use.
7. Each outdoor sidewalk café shall have a trash receptacle within the café limit line, not including the City of El Paso trash receptacles.
8. Any light fixtures, awnings, umbrellas, extension cords, etc., shall not protrude into the clear pedestrian path.
9. Lighting on fencing may be permitted to add a decorative element but shall not be designed to attract attention.
10. Flashing lights are not permitted. Lighting shall be clear or white.
11. Light strands shall be maintained in good repair, and burned-out bulbs shall be replaced promptly.
12. Street furniture and fixtures by the City of El Paso, such as bike racks, benches, light fixtures, and others, must be available at all times.
13. Objects like umbrellas and heating devices should be designed to endure wind speeds of 20 mph or higher, and measures must be taken to prevent them from becoming airborne.
14. Loose furniture, including tables, chairs, umbrellas, shades, portable heaters, portable light fixtures, and other items, must be removed from the row during wind advisories of 30 mph or more.



4.3 ACCESSIBILITY REQUIREMENTS

1. All sidewalk cafés must comply with TAS (Texas Accessibility Standards).
2. The sidewalk café must not be located on a raised platform or sunken area unless an accessible ramp is provided.
3. A minimum 36" ADA-accessible entryway to the sidewalk café must be maintained for all cafés.
4. A minimum of one wheelchair-accessible seating space must be provided in all sidewalk cafés. A minimum of one wheelchair-accessible seating space must be provided for every 20 non-accessible seats.
5. Accessible wheelchair spaces shall have a minimum of 36 inches in width by 48 inches in depth unobstructed area.



4.4 FIRE CODE REQUIREMENTS

1. Acceptable auxiliary outdoor heating devices shall meet the current fire code requirements.
2. A minimum emergency service access gap of 3 feet wide, without horizontal or vertical obstructions, shall be required for every 20 feet of linear frontage.
3. Fire hydrants and El Paso Fire Department water connections (FDC) must be accessible at all times.
4. Smoking or vaping shall not be permitted within the sidewalk café or 20 feet of such as per [section 9.50.030](#) of the City of El Paso Municipal Code.
5. Music may be permitted. Any music must comply with the [noise ordinance](#).

4.5 OTHER REQUIREMENTS

1. No food preparation, equipment, or storage may take place on the sidewalk café.
2. The serving of alcohol must be limited to within the boundaries of the sidewalk café as identified in the permit application.
3. A license issued by the Texas Alcoholic Beverage Commission (TABC) is required to sell and service alcoholic beverages within the sidewalk café.
4. City approval of a permit allowing a sidewalk café on city right-of-way does not guarantee, warrant, or assure that the TABC will allow the sale and service of alcoholic beverages within the sidewalk café area.
5. All relocation, removal, disposition, and/or salvage of any city property is prohibited without prior approval. It shall follow the established policy and procedure for disposal or salvage of such property if approved.



4.6 CASE STUDY #1



Location

Elements of the sidewalk café are not located more than 3 feet from a utility pole.
The pedestrian pathway is obstructed by cafe elements.



Design



Accessibility

Cafe has no accessible pedestrian path.



Fire code

Elements of the sidewalk café are not located more than 15 feet from a fire hydrant.



4.7 CASE STUDY #2



Location

Elements of the sidewalk café are not located more than 3 feet from a tree.



Design



Accessibility



Fire code

PARKING PARKLET

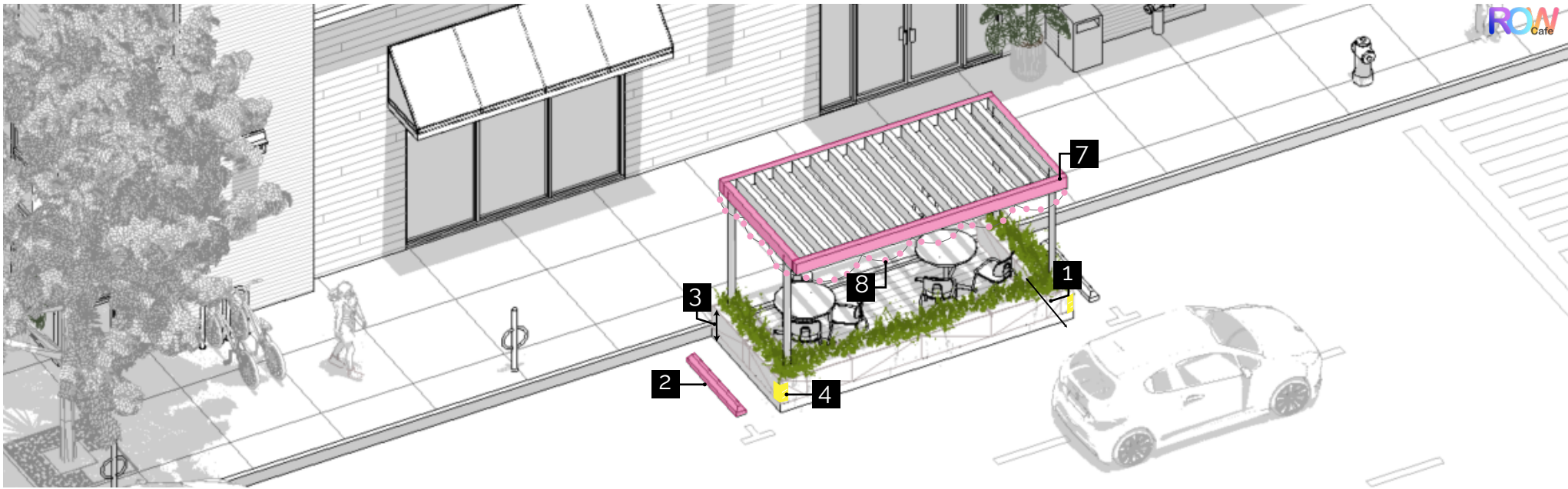
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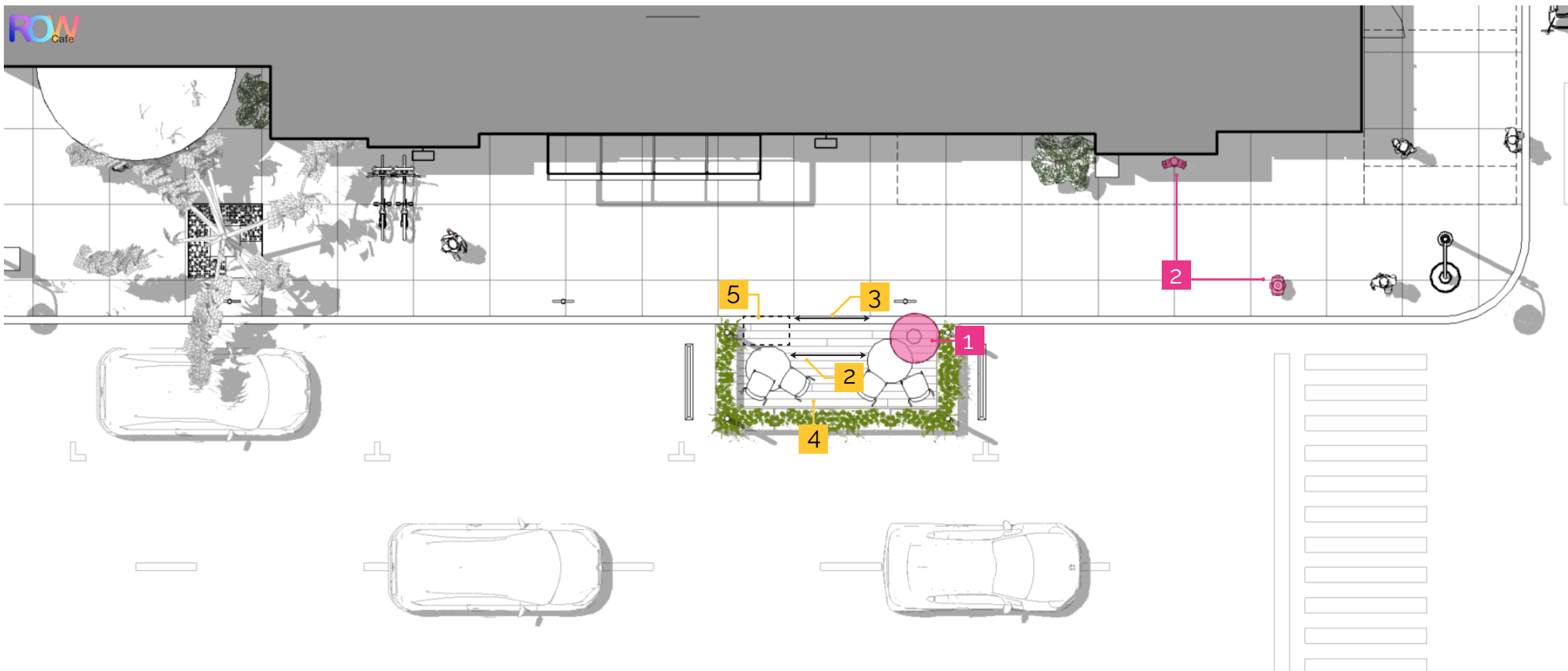
5.1 LOCATION REQUIREMENTS

1. The parklet must utilize the parking spaces directly in front of the business. It should not extend beyond without written permission from the neighbouring businesses.
2. Parklets are permitted on streets with speed limits of 35 mph or less; any other will be considered on a case-by-case basis.
3. Parklets are not permitted on streets owned by the Texas Department of Transportation (TxDOT).
4. Parklets must be located at least 20 feet from any adjacent intersection, street corner, or crosswalk.
5. Parklets are not permitted along red and yellow painted curbs.
6. Maintain a 15 feet clear space at the base of existing fire hydrants.
7. Parklets are prohibited at bus stops, loading zones, or designated bike lanes.
8. Parklets are not permitted over utility access panels, manhole covers, transformers, water meters, or water valves. All parklets shall maintain a minimum of 5 feet from any storm drain, inlets, or cleanouts.
9. Parklets proposed along the streetcar route will be considered on a case-by-case basis and must be approved by Sun Metro prior to approval.
10. Parklets located next to driveways must have a minimum 10 feet setback from the outside edge of the driveway.
11. Parklets are not allowed within 50 feet of the nearest rail of a railroad crossing.
12. Maintain a minimum distance of 20 feet from the driveway entrance of a fire station. Additionally, Parklets are prohibited from being directly across from such entrances or within 75 feet of them.
13. Parklets are permitted on metered parking spaces only.



5.2 DESIGN REQUIREMENTS

1. Maintain a minimum 2 feet setback between the parking parklet seating area and adjacent on-street parking spaces and travel lanes.
2. Wheel stops, or posts must be included to separate the occupied parking space and the adjacent parking spaces and travel lane.
3. Provide a 42" high barrier at the edge of the parking parklet as a barrier to vehicular traffic. If cable railing is used, spacing between cables must not exceed six inches (see materials section.)
4. Reflectors must be included at each end of the parking parklet.
5. Parklets must include vertical elements that make them visible to traffic, such as reflective delineator posts or reflective plastic drums.
6. Parklets may not occupy more than three parking spaces. No design element may encroach into adjacent parking spaces.
7. Umbrellas or canopies may not encroach on the pedestrian travel path, travel lanes, or adjacent parking spaces.
8. The parklet must include lighting if intended for night use. Any lighting must comply with the dark sky ordinance.
9. Parklets must be equipped with a deck or platform that is flush with the adjacent sidewalk, with a maximum gap of 1/2 inch.
10. Maintain an equal grade with the adjoining sidewalk.
11. The parklet base must not be attached or bolted to the street in any manner. Instead, it should be constructed as a self-supporting structural foundation that rests directly on the street surface. The frame of the parklet should not be permanently affixed to the street or curb, and no permanent modifications or alterations to the street are permitted.
12. Access must be provided underneath the flooring of the parklet for cleaning purposes.
13. No loose particles such as sand or loose stone are permitted as surface materials.
14. The parklet must be designed to allow rainwater to flow along the curb without obstructions. The entire parklet structure should be built to allow for easy removal of the parklet if necessary.
15. All materials must be high quality, durable, non-reflective, and weather-resistant.
16. Objects like umbrellas and heating devices should be designed to endure wind speeds of 20 mph or higher, and measures must be taken to prevent them from becoming airborne.
17. Loose furniture, including tables, chairs, umbrellas, shades, portable heaters, portable light fixtures, and other items, must be removed from the row during wind advisories of 30 mph or more.



5.3 ACCESSIBILITY REQUIREMENTS

1. The parklet must comply with all TAS (Texas Accessibility Standard) standards.
2. The accessible path on the deck surface shall be a minimum of 44 inches wide and shall be level.
3. A minimum 36 inches ADA-accessible entryway to the parklet must be maintained.
4. Openings in the floor or deck must not be greater than $\frac{1}{2}$ inch. Elongated openings shall be placed so that the long dimension is perpendicular to the direction of travel.
5. A minimum of one wheelchair-accessible seating space must be provided for every 20 non-accessible seats.

5.4 FIRE CODE AND HEALTH REQUIREMENTS

1. Acceptable auxiliary outdoor heating devices shall meet the current fire code requirements.
2. Fire hydrants and El Paso Fire Department water connections (FDC) must be accessible at all times.
3. Smoking or vaping shall not be permitted within the sidewalk café or 15 feet of such.
4. Music may be permitted. Any music must comply with the [noise ordinance](#).

5.5 OTHER REQUIREMENTS

1. Permittee shall be responsible for maintenance of the parking parklet including but not limited to:
 - a. Removing any graffiti tagging within 24 hours, unless part of a pre-approved design.
 - b. Perform pest abatement as needed.
 - c. Allow for adequate drainage.
 - d. Maintaining all plants, equipment and furnishings.
 - e. Trash removal including any loose trash within 1.5 feet of the parklet.
 - f. Repair conditions at all times and promptly replace any broken improvements or property within a reasonable period of time.
2. A parking parklet proposal may be rejected if it conflicts with future programmed streetscape improvements by the City of El Paso.
3. Storage or preparation of food is not permitted in the parklet.
4. Parklets are intended for commercially zoned areas and shall not be allowed in residential districts.
5. The parking parklet permit is non-transferable. If the applicant business changes ownership or cease to operate, the permit will be automatically terminated and the parklet shall be removed by the applicant or a new application must be submitted by the new owner. A new application of an existing parklet does not guarantee approval.
6. Seating. For food and/or beverage service only. Seated-only capacity shall be required. Standing-only capacity shall not be permitted.
7. Tables and chairs shall not exceed 42 inches in height.
8. Tables and chairs must be moveable to accommodate wheelchair access. The business is responsible for the loss or theft of any property.
9. Emergency: During emergencies, the City or other public utility may remove the parklet with little or no notice.



5.6 CASE STUDY #1



Location

Elements of the parklet are located within the bike lane.
Parklet is not within a metered space.



Design

No setback between the travel lane and parklet.
Parklet does not contain a deck or platform.
Parklet does not maintain equal grade with sidewalk



Accessibility



Fire code



5.7 CASE STUDY #2



Location



Design



Accessibility



Fire code

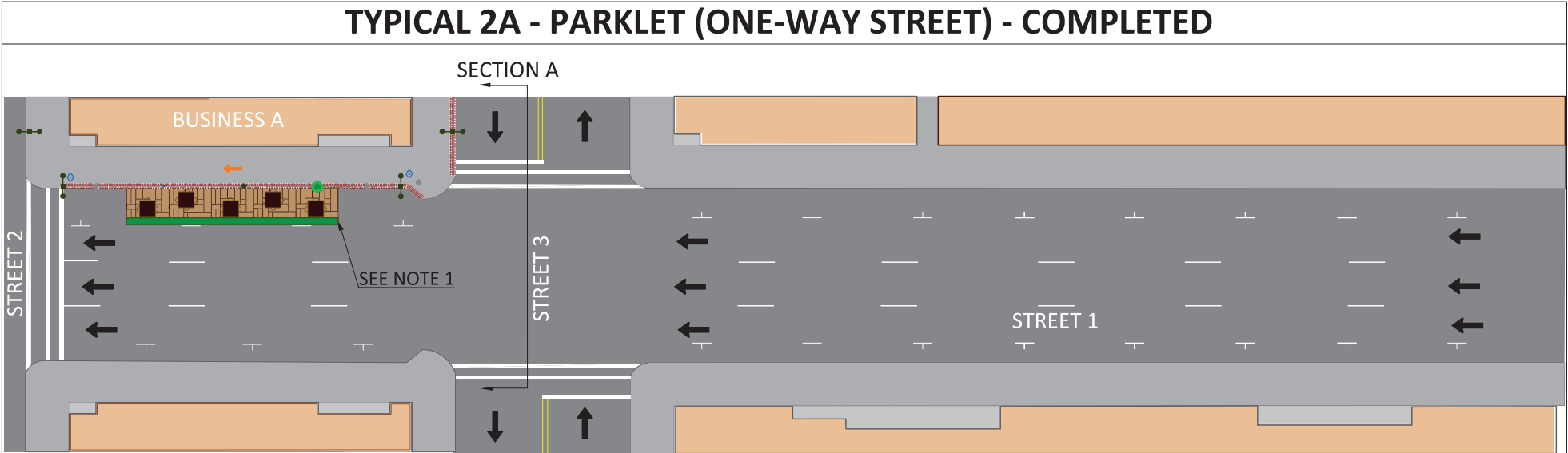
ADDITIONAL INFORMATION

6.2 TRAFFIC CONTROL EXAMPLES.....38

6.1 GLOSSARY.....44



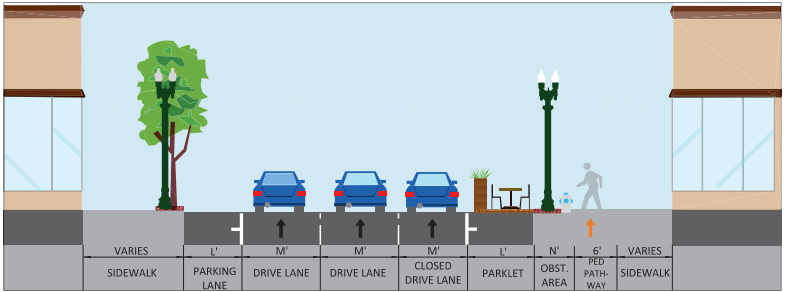
6.1 TRAFFIC CONTROL TEMPLATES



NOTES:

1. ACTUAL PARKLET FEATURES WILL VARY. ENCLOSURE TO BE PROVIDED PER COEP APPROVED MATERIALS.

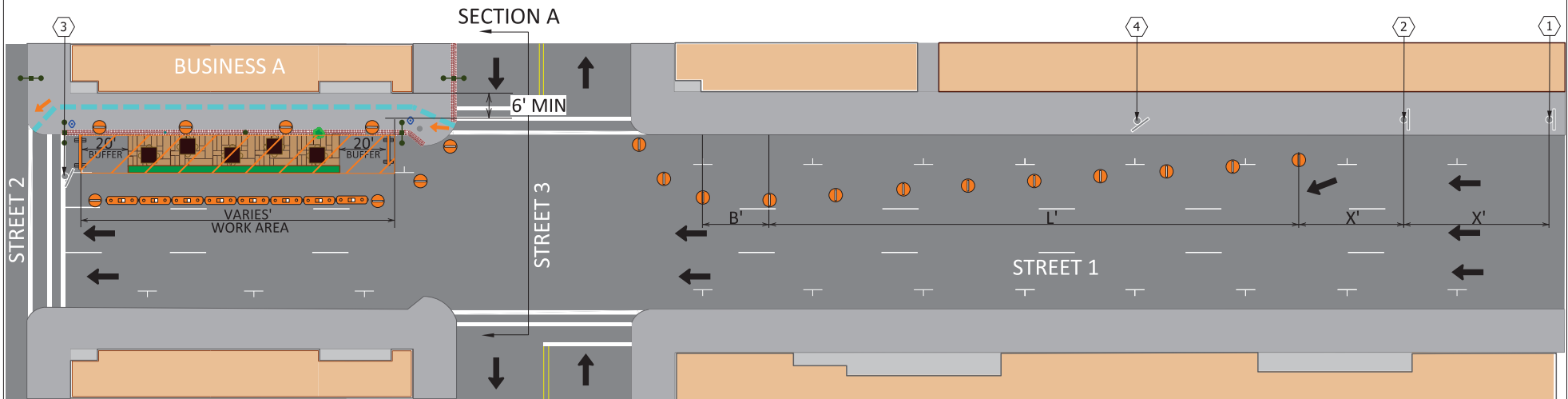
LEGEND	
	DINING TABLES/AMENITIES
	EXISTING OBSTRUCTIONS
	VEHICULAR TRAFFIC FLOW
	PEDESTRIAN TRAFFIC FLOW



SECTION A

	LOCATION:	PARKLET FOR ONE-WAY STREET	STANDARD NO.	APPROVED BY: _____ (DATE & SIGNATURE)	SCALE: N.T.S.
	TYPICAL CITY BLOCK EL PASO, TX		TYPICAL 2A-COMPLETED		
			THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.		
					SHEET 9

TYPICAL 2A - PARKLET (ONE-WAY STREET) - TCP



NOTES:

1. TCP IS ONLY FOR INSTALLATION AND REMOVAL PHASES. REMOVE ALL TRAFFIC CONTROL DEVICES/INVENTORY UPON COMPLETION OF PARKLET INSTALLATION. REPLACE DEVICES WITH COEP APPROVED ENCLOSURES AND APPROVED MATERIALS.



CW20-1D
36"X36"
①



CW20-5TR
36"X36"
②















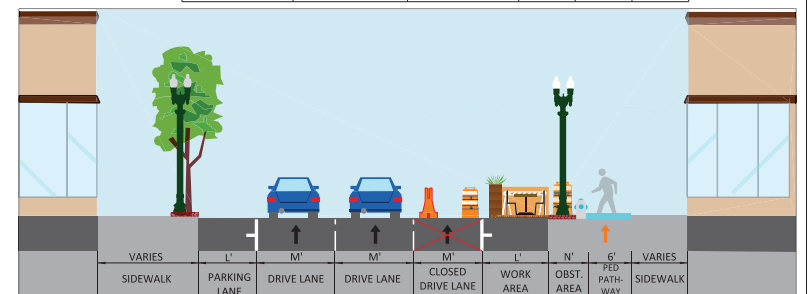
G20-2
36"X18"
③




R7-1 DBL
12"X18"
④
(INSTALL TEMPORARY NO
PARKING SIGN DURING WORK
ACTIVITIES)

POSTED SPEED LIMIT	CHANNELIZING DEVICE "B" (FT)	SIGN SPACING "X" (FT)	CLOSED LANE WIDTH (FT):		
			10	11	12
25	25	100	105	115	125
30	30	120	150	165	180
35	35	160	205	225	245

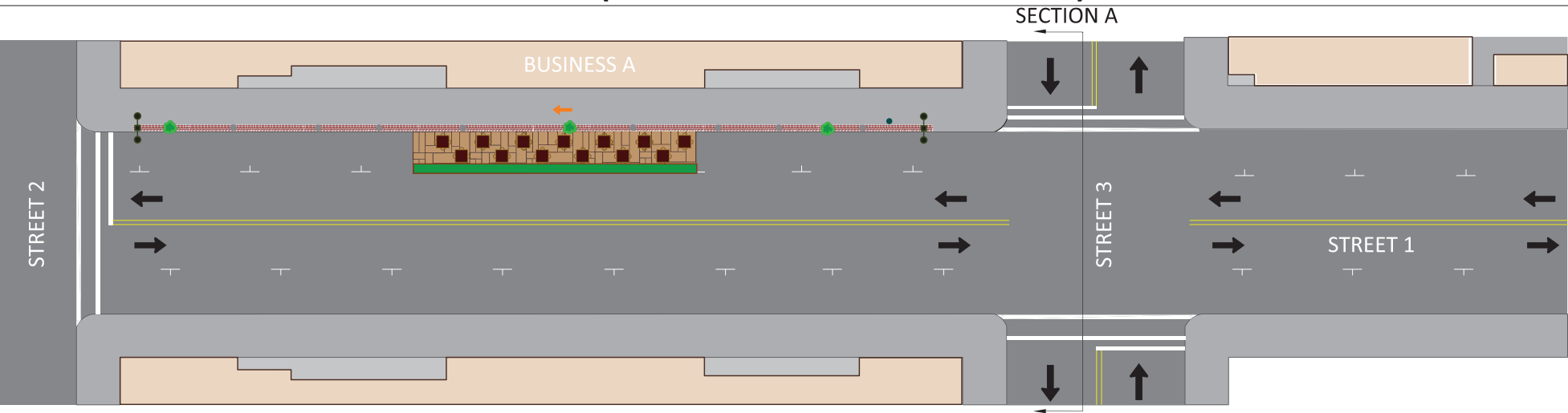
LEGEND			
	A-FRAME TYPE I BARRICADE		DINING TABLES/AMENITIES
	TYPE III BARRICADE		EXISTING OBSTRUCTIONS
	ORANGE WATER BARRIER		ADVANCED WARNING SIGN
	STEEL BARRICADE		PEDESTRIAN PATHWAY TO BE MAINTAINED
	WORK AREA		VEHICULAR TRAFFIC FLOW
	CHANNELIZING DEVICES		PEDESTRIAN TRAFFIC FLOW



SECTION A

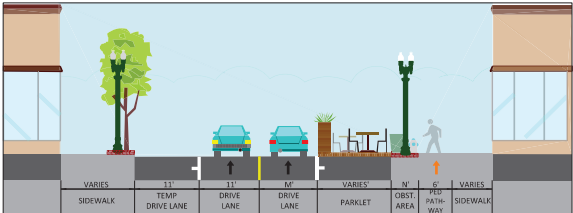
<div></div> <div>CITY OF EL PASO</div> <div>STREETS & MAINTENANCE DEPARTMENT</div>	LOCATION:	PARKLET FOR ONE-WAY STREET	STANDARD NO.	APPROVED BY: _____					SCALE: N.T.S
	TYPICAL CITY BLOCK EL PASO, TX		TYPICAL 2A- TRAFFIC CONTROL PLAN	(DATE & SIGNATURE)					
			THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	TYPICAL USAGE					
				SPEED LIMIT ≤ 35 MPH	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY	
				✓	✓	✓	✓	✓	
				SHEET 10					

TYPICAL 2B - PARKLET (TWO-LANE TWO-WAY STREET) - COMPLETED



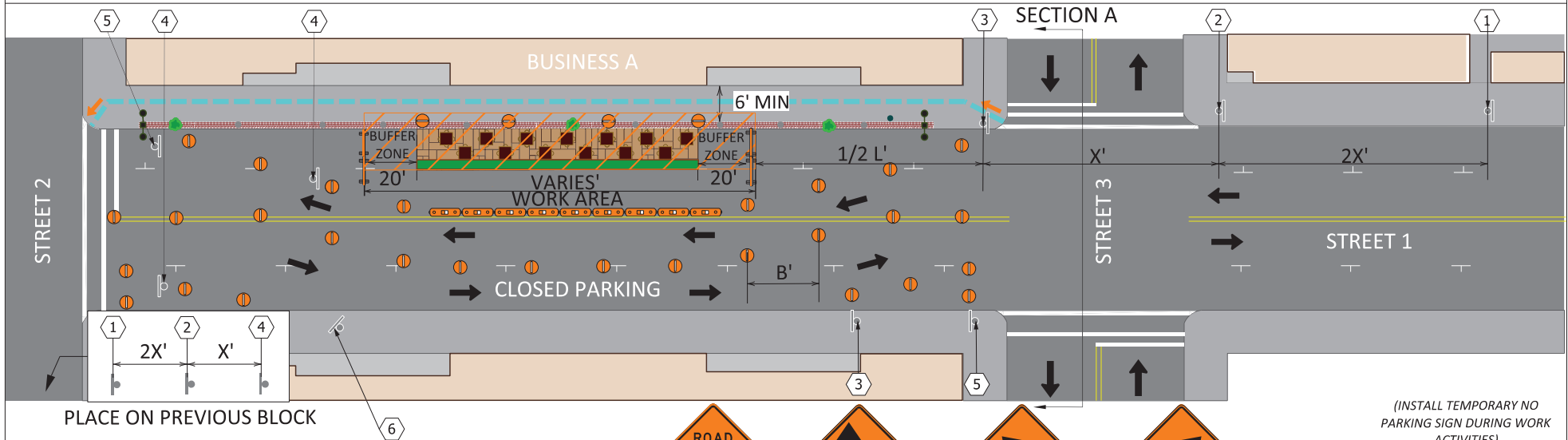
NOTES:
1. ACTUAL PARKLET FEATURES WILL VARY. ENCLOSURE TO BE PROVIDED PER COEP APPROVED MATERIALS.

LEGEND	
	DINING TABLES/AMENITIES
	EXISTING OBSTRUCTIONS
	VEHICULAR TRAFFIC FLOW
	PEDESTRIAN TRAFFIC FLOW



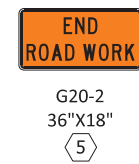
	LOCATION:	PARKLET FOR TWO-LANE TWO-WAY STREET	STANDARD NO.	APPROVED BY: _____ (DATE & SIGNATURE)	SCALE: N.T.S.
	TYPICAL CITY BLOCK EL PASO, TX		TYPICAL 2B-COMPLETED		
			THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.		
					SHEET 11

TYPICAL 2B - PARKLET (TWO-LANE TWO-WAY STREET) - TCP



NOTES:

1. TCP IS ONLY FOR INSTALLATION AND REMOVAL PHASES. REMOVE ALL TRAFFIC CONTROL DEVICES/INVENTORY UPON COMPLETION OF PARKLET INSTALLATION. REPLACE DEVICES WITH COEP APPROVED ENCLOSURES AND APPROVED MATERIALS.

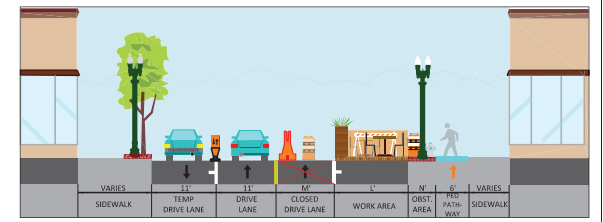


(INSTALL TEMPORARY NO PARKING SIGN DURING WORK ACTIVITIES)


LEGEND

	A-FRAME TYPE I BARRICADE		DINING TABLES/AMENITIES
	TYPE III BARRICADE		EXISTING OBSTRUCTIONS
	ORANGE WATER BARRIER		ADVANCED WARNING SIGN
	STEEL BARRICADE		PEDESTRIAN PATHWAY TO BE MAINTAINED
	WORK AREA		VEHICULAR TRAFFIC FLOW
	CHANNELIZING DEVICES		PEDESTRIAN TRAFFIC FLOW

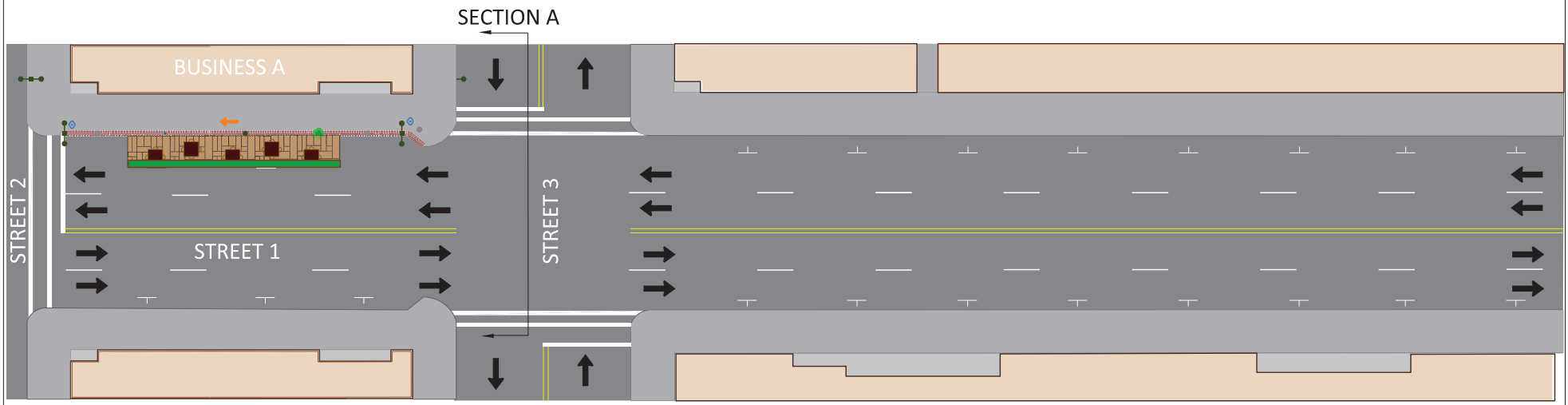
POSTED SPEED LIMIT	CHANNELIZING DEVICE "B" (FT)	SIGN SPACING "X" (FT)	CLOSED LANE WIDTH (FT):		
			10	11	12
25	25	100	105	115	125
30	30	120	150	165	180
35	35	160	205	225	245



SECTION A

 CITY OF EL PASO STREETS & MAINTENANCE DEPARTMENT	LOCATION:	PARKLET FOR TWO-LANE TWO-WAY STREET	STANDARD NO.	APPROVED BY: _____ (DATE & SIGNATURE)					SCALE: N.T.S
	TYPICAL CITY BLOCK EL PASO, TX		TYPICAL 2B- TRAFFIC CONTROL PLAN						
			THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	TYPICAL USAGE					
				SPEED LIMIT ≤ 35 MPH	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY	
				✓	✓	✓	✓	✓	
									SHEET 12

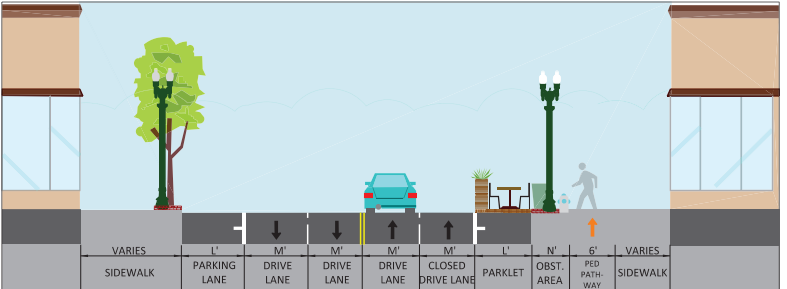
TYPICAL 2C - PARKLET (MULTI-LANE TWO-WAY STREET) - COMPLETED




NOTES:

1. ACTUAL PARKLET FEATURES WILL VARY. ENCLOSURE TO BE PROVIDED PER COEP APPROVED MATERIALS.

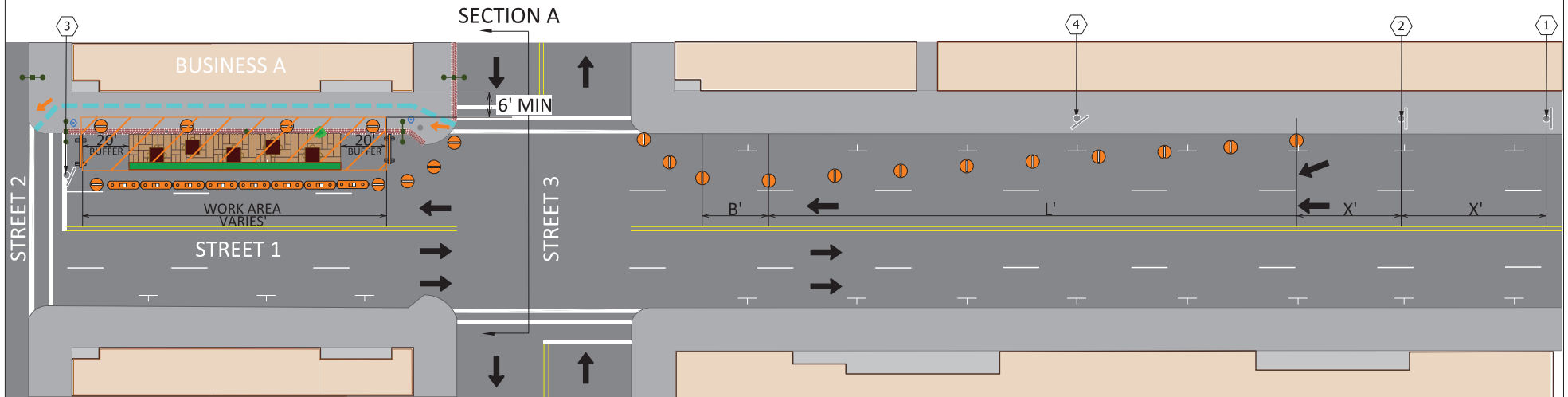
LEGEND	
	DINING TABLES/AMENITIES
	EXISTING OBSTRUCTIONS
	VEHICULAR TRAFFIC FLOW
	PEDESTRIAN TRAFFIC FLOW



SECTION A

 CITY OF EL PASO STREETS & MAINTENANCE DEPARTMENT	LOCATION:	PARKLET FOR MULTI-LANE TWO-WAY STREETS	STANDARD NO.	APPROVED BY: _____ (DATE & SIGNATURE)	SCALE: N.T.S
	TYPICAL CITY BLOCK EL PASO, TX		TYPICAL 2C- COMPLETED		
			THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.		
	SHEET 13				

TYPICAL 2C - PARKLET (MULTI-LANE TWO-WAY STREET) - TCP



NOTES:

1. TCP IS ONLY FOR INSTALLATION AND REMOVAL PHASES. REMOVE ALL TRAFFIC CONTROL DEVICES/INVENTORY UPON COMPLETION OF PARKLET INSTALLATION. REPLACE DEVICES WITH COEP APPROVED ENCLOSURES AND APPROVED MATERIALS.



CW20-1D
36"X36"
1



CW-20-5TR
36"X36"
2



G20-2
36"X18"
3

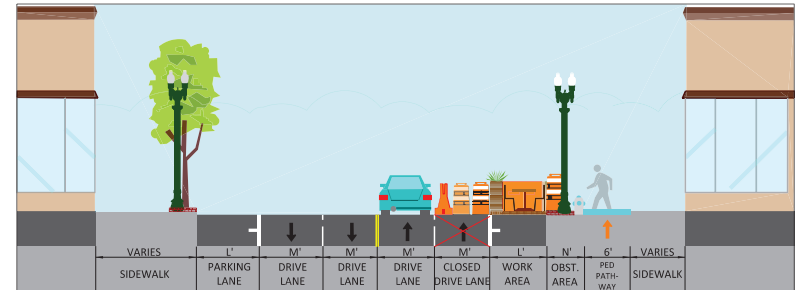


R7-1 DBL
12"X18"
4
(INSTALL TEMPORARY NO
PARKING SIGN DURING WORK
ACTIVITIES)


POSTED SPEED LIMIT	CHANNELIZING DEVICE "B" (FT)	SIGN SPACING "X" (FT)	CLOSED LANE WIDTH (FT):		
			10	11	12
25	25	100	105	115	125
30	30	120	150	165	180
35	35	160	205	225	245

LEGEND

	A-FRAME TYPE I BARRICADE		DINING TABLES/AMENITIES
	TYPE III BARRICADE		EXISTING OBSTRUCTIONS
	ORANGE WATER BARRIER		ADVANCED WARNING SIGN
	STEEL BARRICADE		PEDESTRIAN PATHWAY TO BE MAINTAINED
	WORK AREA		VEHICULAR TRAFFIC FLOW
	CHANNELIZING DEVICES		PEDESTRIAN TRAFFIC FLOW



SECTION A

<div><p>CITY OF EL PASO STREETS & MAINTENANCE DEPARTMENT</p></div>	LOCATION:	PARKLET FOR MULTI-LANE TWO-WAY STREETS	STANDARD NO.	APPROVED BY: _____ (DATE & SIGNATURE)					SCALE: N.T.S	
	TYPICAL CITY BLOCK EL PASO, TX		TYPICAL 2C- TRAFFIC CONTROL PLAN							
	TYPICAL USAGE									
	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.		SPEED LIMIT ≤ 35 MPH	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY			
			✓	✓	✓	✓	✓			
SHEET 14										

6.2 Glossary

The following definitions are provided for purposes of this document only

A

Accessible - An environment or facility that provides equal access to people with different abilities.

Alley - any public or private passageway or street open to traffic and generally used to reach the rear end of lots or buildings.

Applicant - any person, group, organization, or entity who seeks a permit from the permit official to conduct or sponsor a special event governed by this chapter.

B

Bicycle lane - a designated lane or portion of a roadway that is specifically marked or selected for the use of bicycles.

C

Crosswalk - a portion of the roadway at an intersection that is marked with pavement markings where traffic stops to guide pedestrians in the proper crossing paths.

Curb - a raised edge or boundary separating the roadway from a pedestrian walkway, such as a sidewalk or footpath. Curbs are typically made of durable materials like concrete and are designed to provide a physical barrier between the road and the adjacent pedestrian area.

D

Driveway - an area designed to provide a controlled and convenient path for vehicles to enter or exit a property. Driveways generally have a slope or incline that allows vehicles to transition smoothly from the street to the private property.

E

Easement - a legal right or privilege granted to a person or entity to use or access a specific portion of another person's property for a particular purpose. Some common types of easements include: right-of-way, utility easement, conservation easement, and drainage easement.

Egress - the pathways, exits, and systems that are designed to ensure the safe evacuation of occupants in the event of a fire, natural disaster, or other emergencies. These egress systems typically include exit doors, corridors, staircases, ramps, emergency lighting, and signage, all of which are intended to facilitate the rapid and orderly movement of people out of a building.

F

Frontage - the front facade of a building; area of public realm that is parallel to the front of a building.

M

Metered parking - an on-street parking space where drivers pay for parking based on their use time. Payment is typically made through parking meters or pay stations, with the purchased time displayed on a digital display.

O

On-street parking - a "curbside parking space" located adjacent to the curb where it is permissible within the public right-of-way for drivers to leave their vehicles.

P

Pedestrian pathway - a designated route or pathway specifically intended to provide a safe, accessible walkway for pedestrians.

Private property - real estate that are owned by individuals, businesses, or other non-governmental entities.

Property owner - an individual, business, or entity that has legal ownership and control over a particular property or asset. The property owner holds the rights and responsibilities associated with the property, including the right to use, transfer, and manage the property according to applicable laws and regulations.

Public infrastructure - the physical systems, facilities, and services that are owned, operated, and provided by the government or public entities for the benefit of the general public.

R

Right-of-way - Land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage purposes.

S

Setback - A distance from a curb, property line, or structure within which building is prohibited.

Sidewalk - a paved path or walkway alongside a road or street that is intended for pedestrians. It provides a designated space for people to walk, separating them from vehicular traffic. Sidewalks are typically constructed with materials such as concrete or asphalt.

Siteplan - a detailed architectural or engineering drawing that provides an overview of a specific property or development project. It typically includes information about the layout, dimensions, and location of buildings, roads, parking areas, landscaping, and other elements on the site.

T

Traffic Control - the management and regulation of vehicular and pedestrian movement on roads, streets, and highways to ensure safe and efficient transportation. It involves the use of various measures and devices such as traffic signals, signs, lane markings, and the deployment of law enforcement officers or traffic management personnel to direct and control the flow of traffic.

Traffic Control Plan - a detailed document or set of instructions that outlines specific measures and strategies for managing and regulating traffic in a particular area or at a specific location. They may include information on traffic diversions, lane closures, signage, flagging operations, and other measures designed to ensure safety.

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RIGHT-OF-WAY CAFE APPLICATION

PLANNING AND INSPECTIONS DEPARTMENT – RIGHT-OF-WAY DIVISION
CITY OF EL PASO 811 TEXAS AVE. EL PASO TEXAS 79901 (915) 212-0104

Pursuant to 15.08.120 (Special Privilege Licenses and Permits) of the El Paso City Code, the City may grant a special privilege license or permit for use of public right-of-way for specified uses. The Planning and Inspections Right of Way team are available to advise you in the preparation of this application. Call (915) 212-1584 or email ROWpermits@elpasotexas.gov for further information.

What are Right-of-Way Cafés?

Right-of-way cafes are temporary uses of city sidewalks and on-street parking for the purpose of open-air seating provided by a restaurant located on the adjoining property, where the restaurant patrons may eat or drink.

When is a Right-of-Way Café Permit Necessary?

A right-of-way café permit is required when city sidewalks are used for outdoor dining. An outdoor café sited entirely on private property does not require a special privilege permit but may require other permits such as a temporary use permit.

Who May Apply for a Right-of-Way Café Permit?

Operators of a right-of-way café must be businesses licensed to serve food and beverages. The applicant does not have to be the property owner; but if they are not the owner, they must provide a letter by the property owner.

Insurance Requirements

Certificate of Liability. A certificate of liability insurance or self-insured affidavit with the required liability limitations as required per Section 15.08.120G of the El Paso City Code. Liquor liability insurance will be required separately for requests to sell and serve alcoholic beverages on City right-of-way. Certificate of liability insurance must be in accordance with the State of Texas Certificate Law. City of El Paso must be listed as the "Certificate Holder" as well as "Additional Insured" under the descriptions section. In addition, coverage must meet the following limitations:

- \$1,000,000 in General Commercial Liability for Personal Injury/Death per Occurrence.
- \$2,000,000 in General Aggregate Coverage.
- \$1,000,000 in Property Damage
- \$5,000,000 if located within 50 feet of the streetcar

What construction is allowed?

A right-of-way café shall not be enclosed by permanent structures. See the Right-of-Way Café Design Guidelines for allowed structures.

What is the Fee for a Right-of-Way Café Permit?

The Right-of-Way Café permit fee follows the Schedule C fee list. This fee is due at the time the permit is issued, payable by cash, check (remit to the City of El Paso), money order or credit card (Visa, MasterCard, and Discover are accepted and subject to a 1.98% credit card fee). Please note these fees are non-refundable.

Instructions for Application Submittal

Applicants must submit a completed application online at <https://aca-prod.accela.com/ELPASO/Default.aspx>

A complete application must include the following documents to process the request for a Right-of-way Café Permit:

- **Review the Right-of-Way Café Design Guidelines**
- **Prepare:**
 - **Site Drawing:** A detailed site drawing is required at the time of submission. While drawings are not required to be professionally drawn, they must be legible, close to scale and provide sufficient detail to describe what your outdoor patio café will look like. See design manual for details.
 - **Proof of ownership** (warranty deed, title commitment, etc.)
 - **Photographs** of existing site prior to the café installation, along with photos of the adjacent street and sidewalk (see examples).
 - **Copy of State TABC license and must be current with City Alcohol License**
 - **Certificate of Liability Insurance**
 - **Traffic Control Plan** *only applicable for parking parklets.

Checklist for Submittal

Right-of-Way Café Checklist requirements:

- ☐ 1. Application for a permit shall be submitted electronically on a form prescribed by the permit official, which must be completed in accordance with the instructions provided on the application.
- ☐ 2. Proof of ownership (warranty deed, title commitment, etc.). If not the owner, a letter from the owner authorizing the request for a Right-of-Way Café.
- ☐ 3. One location map, accurately outlining the public rights-of-way or easement(s) upon which a temporary encroachment is proposed, see design manual for example.
- ☐ 4. Site Drawing. See design manual for example.
- ☐ 5. Photographs of existing site prior to the café installation, along with photos of the adjacent street and sidewalk. See design manual for example.
- ☐ 6. Certificate of Liability A certificate of liability insurance or self-insured affidavit with the required liability limitations as required per Section 15.08.120G of the El Paso City Code. Liquor liability insurance will be required separately for requests to sell and serve alcoholic beverages on City right-of-way. Certificate of liability insurance must be in accordance with the State of Texas Certificate Law. City of El Paso must be listed as the "Certificate Holder" as well as "Additional Insured" under the descriptions section. In addition, coverage must meet the following limitations:
 - \$1,000,000 in General Commercial Liability for Personal Injury/Death per Occurrence;
 - \$2,000,000 in General Aggregate Coverage;
 - \$1,000,000 in Property Damage
 - \$5,000,000 if located within 50 of the street car
- ☐ 7. Alcohol Beverage License – a copy of the current alcohol beverage license is required for applications requesting to sell and serve beverages containing alcohol within city right-of-way.
- ☐ 8. Traffic Control Plan – only required for Parking Parklet permits.
- ☐ 9. Upon review for completeness and acceptance of the application by the permit official, the applicant shall pay the established processing fee for the special privilege license or permit as prescribed in Schedule C. The processing fee is non-refundable.



Right-of-Way CAFE APPLICATION

PLANNING AND INSPECTIONS DEPARTMENT – RIGHT OF WAY DIVISION
CITY OF EL PASO 811 TEXAS AVE. EL PASO TEXAS 79901 (915) 212-0104

11/13/2023

Date:

1. Applicant Information

Applicant's Name: _____
Company/Business Name: _____
Business Address: _____
Mailing Address, City, State, Zip Code: _____
Phone: _____ Email: _____

2. Owner Information

Property Owner's Name: _____
Company/Business Name (if applicable): _____
Mailing Address, City, State, Zip Code: _____
Phone: _____ Email: _____

Note: The applicant does not have to be the property owner; but if they are not the owner, they must have a valid lease for the building and written permission by the property owner indicating authorization to obtain a right-of-way café permit.

4. Type of Closure

Sidewalk Café: ☐ Parking Parklet: ☐

3. Location

Address: _____

Legal Description: _____

Historic Designation ☐: Yes ☐No * City Representative District Number: Choose an item.

4. Days and Hours of Establishment Operation

Sunday:	Thursday:
Monday:	Friday:
Tuesday:	Saturday:
Wednesday:	

5. Alcoholic Beverages

Will alcohol beverages be served? ☐Yes ☐No

TABC Permit No. _____ City License No. _____

6. Permitted Items/Structures

Check off the type of item/structure proposed and the list the number. **Note: no permanent structures are allowed**

- ☐ Chairs # ____ ☐ Benches # ____
- ☐ Tables # ____ ☐ Umbrellas # ____
- ☐ Planters # ____ ☐ Awnings/Canopy # ____

7. Curbside Conflicts

Review your proposed site for evidence of any of the following curb conflicts. Indicate any potential conflicts observed.

- ☐ Fire Hydrant ☐ Fire Escapes ☐ Utility Easements
- ☐ Bus Stop/Transit Station ☐ Taxi Zones ☐ Meters
- ☐ Loading Zone ☐ Driveways ☐ Valves
- ☐ Manholes ☐ Light Fixtures ☐ Other: _____

Please note: If any curb conflicts exist, additional review may be required.

8. Historic Designation

Is the property located in a historic area? ☐ Yes ☐ No

Proposed outdoor patio cafés shall comply with any applicable historic district design standards and guidelines.

9. Description of Request

Please provide a description of your request and any additional information you feel is pertinent to consider during the application process.

Sidewalk Café

In consideration of the promises and mutual considerations hereinafter set forth, the parties hereto agree as follows:

A. Grantee has requested to install, maintain, use and repair a sidewalk café City of El Paso, El Paso County, Texas more commonly known as _____; and

B. The City may grant a special privilege permit for use of the City right-of-way for a sidewalk café where a favorable recommendation is made regarding the request to install the outdoor patio café pursuant to the El Paso City Code 15.08.120.N. Any work done on a property with an “H” overlay or listed as a historic property must be reviewed by the Historic Preservation Office (HPO) and may require review from the Historic Landmark Commission (HLC).

3. **TERM.** The term of this Permit shall be for **2 years** from the date of execution of this Permit. The grantee may request to renew this permit by submitting a request in writing to the City at least (3) months prior to the expiration date of this Permit. This Permit shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantee as herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this be modified as a condition for renewing the grant of the encroachment upon or through City rights-of-way as permitted by this Permit.

The annual consideration shall be paid in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the Planning and Inspections Department for remittance to the Financial

Services Department. Subsequent annual considerations shall be due the first day of the month of the effective date of this Permit.

ADVANCE PAYMENT OPTION: Grantee may pay to the City the sum of _____ prior to the execution of this Permit. Said (_____) reflects a 3% discount of the total annual fees required for the entire term of the Permit. In the event of cancellation of this Permit by the City and/or the Grantee, the Grantee shall not be entitled to a refund of the consideration paid to the City.

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 Planning and Inspections Department for remittance to the Financial Services Department.

5. USE OF PROPERTY. This Permit is granted solely for the encroachment onto public right-of-way with the sidewalk café. Grantee shall not commence construction under this Permit until all applicable building permits have been issued by the City appropriate under the applicable City ordinances and the terms of this Permit. This Permit shall not be construed to waive any City or State permit requirements. Grantee shall be responsible for all maintenance of the sidewalk café.

- A. As an express condition of this Permit, and not as a mere covenant, Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein.
- B. A copy of a license issued by the Texas Alcoholic Beverage Commission (TABC) is required for the sale and service of alcoholic beverages within the outdoor patio café

6. WORK DONE BY OTHERS 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.

A. 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 conduits, 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 City right-of-way occupied by Grantee, 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.

B. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee 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 Grantee's sidewalk café.

C. If the City requires Grantee to remove, alter, change, adapt, or conform its sidewalk café because of changes in the grade of the City right-of-way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee 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, Grantee shall have the right to present alternative proposals for the City's consideration. If the City requires Grantee to remove, alter, change, adapt or conform its sidewalk café to enable any other entity or person, except the City, to use, or to use with greater convenience, the City right-of-way, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee

for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of Grantee's sidewalk café; provided, however, the City shall not be responsible nor liable for such reimbursement.

7. **IMPROPER USE.** This Permit shall not permit or be construed to permit any other private use of the City's right-of-way which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the Planning and Inspections Director.

8. **REPAIRS.** Grantee shall keep the sidewalk café and Permit Area clean and in good repair during the term of this Permit. Grantee shall repair any damage to the sidewalk café and/or Permit Area regardless of the cause of such damage at Grantee's sole expense.

9. **MAINTENANCE.** Grantee shall maintain the sidewalk café and Permit Area in good condition, in a clean, orderly, and attractive condition for the duration of the Permit. Grantee shall be responsible for all maintenance of the sidewalk café and Permit Area.

10. **INDEMNITY.** As a condition of the Permit, the Grantee or its insurer shall **INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, its officers, agents, servants and employees HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT.** 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 shall promptly forward to the Grantee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. The Grantee shall 1) Investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) Negotiate or cause to be negotiated the claim as the Grantee may deem expedient; and 3) Defend or cause to be defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought on because of such injuries or damages. The Grantee shall pay all judgments in actions defended by the Grantee pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of the payment by the Grantee, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss or of damage to the Grantee's property from any cause.

7. **LIABILITY INSURANCE.** Grantee shall 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 two million dollar (\$2,000,000.00) general aggregate limit. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

A. Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants, and employees as additional insureds to the full amount of the policy limits.

B. No Permit shall be granted by the Planning and Inspections Director until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the Planning and Inspections

Department and Financial Services Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of the Permit shall be grounds for cancellation of the Permit. Certificates of Insurance that state that the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

11. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which the sidewalk café is encroaching is needed for public use, the City may upon thirty (30) calendar days written notice, cancel this Permit at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Permit Area shall then be terminated. Grantee may cancel this Permit, for any reason, upon thirty (30) calendar days prior written notice to the City, and all rights of the Grantee shall then be terminated. In addition, if, for a period of six (6) months, Grantee shall cease to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Permit and fail to correct such defaults within fifteen (15) calendar days after written notice to do so; the City may cancel this Permit and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

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

B. Upon termination of this Permit for whatever reason, the encroaching sidewalk café shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

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

13. ASSIGNMENT. Grantee shall not assign this Permit without the prior written consent of the City Manager or designee.

14. MISCELLANEOUS.

A. RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter the Permit Area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Permit.

B. LAWS AND ORDINANCES: Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the sidewalk café, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Permit. This Permit shall not grant permission for Grantee to erect the sidewalk café without first having obtained any required building permits from the City. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

C. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants, and conditions of this Permit inure solely to the benefit the Grantee and City and shall not be a benefit for the successors and assigns of Grantee. This permit shall not be construed as a covenant running with the Permitted Area or the Premises or any other real property leased by Grantee or any other entity. Any assignee

or sub grantee of the Permit shall not be entitled to operate under the provisions of this Permit without the express consent of the Planning and Inspections Director.

D. NOTICES: A copy of the agreement shall be provided to the applicant and Financial Services Department. All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso

Attn: Planning and Inspections Department
811 Texas Avenue
El Paso, Texas 79901

with a copy to:

City of El Paso
Attn: Financial Services Department
Financial Accounting & Reporting
300 North Campbell
El Paso, Texas 79901-1196

and:

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

E. 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.

F. SEVERABILITY: Every provision of this Permit 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 the Permit.

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

15. RESTRICTIONS AND RESERVATIONS. This Permit 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 Permit, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Permit Area, Grantee shall have the right to terminate this Permit upon giving the City prior written notice of its intention to do so.

16. NO WAIVER. Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

17. WARRANTY OF CAPACITY TO EXECUTE CONTRACT. If Grantee accepts the terms and conditions of this License, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms

and conditions of this License and each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City’s request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

18. EFFECTIVE DATE. This Permit shall not take effect unless Grantee files its written acceptance with the Planning and Inspections Department, pays the consideration of the Permit and provides the certificate of insurance. This contract is effective as of the last date of entered below.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

APPROVED this ____ day of _____, 2023.

GRANTEE:

Applicant Signature

Name: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

)

COUNTY OF EL PASO)

)

This instrument is acknowledged before me on this _____ day of _____, 2023,
by _____, as _____, on behalf of _____ as Grantee.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT A

STATE OF TEXAS)
)
COUNTY OF EL PASO)

Parking Parklet

THIS AGREEMENT is entered into by and between the **City of El Paso**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as “the City,” and _____, owner, hereinafter referred to as “Grantee.”

In consideration of the promises and mutual considerations hereinafter set forth, the parties hereto agree as follows:

1. REPRESENTATIONS:

- A. Grantee has requested to install, maintain, use and repair a **Parking Parklet** City of El Paso, El Paso County, Texas more commonly known as _____; and
- B. The City may grant a special privilege permit for use of the City right-of-way for a parking parklet where a favorable recommendation is made regarding the request to install the outdoor patio café pursuant to the El Paso City Code 15.08.120.N.

2. DESCRIPTION. This Special Privilege Agreement (hereinafter the “Permit”) authorizes Grantee the right to encroach over portions of City right-of-way at _____ (hereinafter “Permit Area”) with an outdoor patio café (hereinafter “**parking parklet** as shown in Exhibit “A” which is attached hereto and made a part hereof for all purposes.

3. TERM. The term of this Permit shall be for **2 years** from the date of execution of this Permit. The grantee may request to renew this permit by submitting a request in writing to the City at least (3) months prior to the expiration date of this Permit. This Permit shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantee as herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this be modified as a condition for renewing the grant of the encroachment upon or through City rights-of-way as permitted by this Permit.

4. CONSIDERATION. For consideration of the Permit, the grantee shall pay to the City a fee of TWO THOUSAND 00/100 Dollars (\$2,000.00) per year per parking space, for the use of City right-of-way. The annual fee shall remain the same for a period of one year from the effective date of the Permit. The City retains the right to increase or decrease the annual fee specified in this Permit during consideration of renewals.

The City shall notify the Grantee of any proposed changes in fees as prescribed in Section 15 (Notice) of this Permit. This Permit is granted on the condition that Grantee pays for all costs associated with the Structures, as well as all costs for the restoration of the Permit Area upon the termination of the Permit.

The annual consideration shall be paid in the form of a cashier’s check or business check payable to “The City of El Paso” and delivered to the Planning and Inspections Department for remittance to the Financial Services Department. Subsequent annual considerations shall be due the first day of the month of the effective date of this Permit.

ADVANCE PAYMENT OPTION: Grantee may pay to the City the sum of _____ prior to the execution of this Permit. Said (_____) reflects a 3%

discount of the total annual fees required for the entire term of the Permit. In the event of cancellation of this Permit by the City and/or the Grantee, the Grantee shall not be entitled to a refund of the consideration paid to the City.

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 Planning and Inspections Department for remittance to the Financial Services Department.

5. USE OF PROPERTY. This Permit is granted solely for the encroachment onto public right-of-way with the **parking parklet**. Grantee shall not commence construction under this Permit until all applicable building permits have been issued by the City appropriate under the applicable City ordinances and the terms of this Permit. This Permit shall not be construed to waive any City or State permit requirements. Grantee shall be responsible for all maintenance of the **parking parklet**

- A. As an express condition of this Permit, and not as a mere covenant, Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein.
- B. A copy of a license issued by the Texas Alcoholic Beverage Commission (TABC) is required for the sale and service of alcoholic beverages within the outdoor patio café

6. WORK DONE BY OTHERS 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.

A. 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 conduits, 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 City right-of-way occupied by Grantee, 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.

B. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee 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 Grantee's **parking parklet**

C. If the City requires Grantee to remove, alter, change, adapt, or conform its **parking parklet** because of changes in the grade of the City right-of-way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee 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, Grantee shall have the right to present alternative proposals for the City's consideration. If the City requires Grantee to remove, alter, change, adapt or conform its **parking parklet** to enable any other entity or person, except the City, to use, or to use with greater convenience, the City right-of-way, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of Grantee's **parking parklet**; provided, however, the City shall not be responsible nor liable for such reimbursement.

7. **IMPROPER USE.** This Permit shall not permit or be construed to permit any other private use of the City's right-of-way which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the Planning and Inspections Director.

8. **REPAIRS.** Grantee shall keep the **parking parklet** and Permit Area clean and in good repair during the term of this Permit. Grantee shall repair any damage to the **parking parklet** and/or Permit Area regardless of the cause of such damage at Grantee's sole expense.

9. **MAINTENANCE.** Grantee shall maintain the **parking parklet** and Permit Area in good condition, in a clean, orderly, and attractive condition for the duration of the Permit. Grantee shall be responsible for all maintenance of the **parking parklet** and Permit Area.

10. **INDEMNITY.** As a condition of the Permit, the Grantee or its insurer shall **INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, its officers, agents, servants and employees HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT.** 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 shall promptly forward to the Grantee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. The Grantee shall 1) Investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) Negotiate or cause to be negotiated the claim as the Grantee may deem expedient; and 3) Defend or cause to be defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought on because of such injuries or damages. The Grantee shall pay all judgments in actions defended by the Grantee pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of the payment by the Grantee, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss or of damage to the Grantee's property from any cause.

7. **LIABILITY INSURANCE.** Grantee shall 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 two million dollar (\$2,000,000.00) general aggregate limit. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

A. Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants, and employees as additional insureds to the full amount of the policy limits.

B. No Permit shall be granted by the Planning and Inspections Director until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the Planning and Inspections Department and Financial Services Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of the Permit shall be grounds for

cancellation of the Permit. Certificates of Insurance that state that the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

11. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which the **parking parklet** is encroaching is needed for public use, the City may upon thirty (30) calendar days written notice, cancel this Permit at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Permit Area shall then be terminated. Grantee may cancel this Permit, for any reason, upon thirty (30) calendar days prior written notice to the City, and all rights of the Grantee shall then be terminated. In addition, if, for a period of six (6) months, Grantee shall cease to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Permit and fail to correct such defaults within fifteen (15) calendar days after written notice to do so; the City may cancel this Permit and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

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

B. Upon termination of this Permit for whatever reason, the encroaching **parking parklet** shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

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

13. ASSIGNMENT. Grantee shall not assign this Permit without the prior written consent of the City Manager or designee.

14. MISCELLANEOUS.

A. RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter the Permit Area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Permit.

B. LAWS AND ORDINANCES: Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the **parking parklet**, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Permit. This Permit shall not grant permission for Grantee to erect the **parking parklet** without first having obtained any required building permits from the City. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

C. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants, and conditions of this Permit inure solely to the benefit the Grantee and City and shall not be a benefit for the successors and assigns of Grantee. This permit shall not be construed as a covenant running with the Permitted Area or the Premises or any other real property leased by Grantee or any other entity. Any assignee or sub grantee of the Permit shall not be entitled to operate under the provisions of this Permit without the express consent of the Planning and Inspections Director.

D. NOTICES: A copy of the agreement shall be provided to the applicant and Financial Services Department. All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Planning and Inspections Department
811 Texas Avenue
El Paso, Texas 79901

with a copy to: City of El Paso
Attn: Financial Services Department
Financial Accounting & Reporting
300 North Campbell
El Paso, Texas 79901-1196

and: _____

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

E. 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.

F. SEVERABILITY: Every provision of this Permit 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 the Permit.

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

15. RESTRICTIONS AND RESERVATIONS. This Permit 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 Permit, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee’s use of the Permit Area, Grantee shall have the right to terminate this Permit upon giving the City prior written notice of its intention to do so.

16. NO WAIVER. Any waiver by the City of any breach of any of Grantee’s obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

17. WARRANTY OF CAPACITY TO EXECUTE CONTRACT. If Grantee accepts the terms and conditions of this License, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this License and each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City’s request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

18. **EFFECTIVE DATE.** This Permit shall not take effect unless Grantee files its written acceptance with the Planning and Inspections Department, pays the consideration of the Permit and provides the certificate of insurance. This contract is effective as of the last date of entered below.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

APPROVED this ____ day of _____, 2023.

GRANTEE:

Applicant Signature

Name: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument is acknowledged before me on this _____ day of _____, 2023,
by _____, as _____, on behalf of _____ as Grantee.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT A