

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

AGENDA DATE: Oct 11, 2021
PUBLIC HEARING DATE: N/A (Work Session)

CONTACT PERSON(S) NAME AND PHONE NUMBER: Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 6. Set the standard for sound governance and fiscal management

SUBGOAL: Subgoal 6.5. Deliver services timely and effectively with focus on continual improvement

SUBJECT:

Discussion and action on an Emergency Ordinance instituting emergency measures to allow temporary uses on the public right of way and private property by suspending various City Ordinances; Penalty as provided in Section 6.

BACKGROUND / DISCUSSION:

This item is to support restaurants and similar establishments in their efforts to safely operate during the COVID-19 pandemic by further facilitating outdoor service and dining opportunities. This item would enact an Emergency Ordinance for 30 days to suspension of various sections of the El Paso City Code to facilitate temporary uses on the public right of way and private property and continue the pilot program.

PRIOR COUNCIL ACTION:

March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency.

March 17, 2020, El Paso City Council adopted Emergency Ordinance No. 019035 extending the City's Disaster Declaration due to a Public Health Emergency. Also on, March 17, 2020, El Paso City Council re-enacted its Emergency Ordinance extending the City's Disaster Declaration monthly, with the most recent extension taking place on August 31, 2020.

August 31, 2020, El Paso City Council adopted Emergency Ordinance No. 019091, which suspended various sections of the El Paso City Code to facilitate temporary uses on the public right of way and private property and established a pilot program.

September 28, 2020, El Paso City Council enacted an Emergency Ordinance Re-Enacting Emergency Ordinance No. 019091.

October 27, 2020, El Paso City Council enacted an Emergency Ordinance Re-Enacting Emergency Ordinance No. 019091. Also, City Council approved increasing the fine for all emergency directive violations from \$500 to \$1,000.

November 23, 2020, El Paso City Council enacted an Emergency Ordinance Re-Enacting Emergency Ordinance No. 019091, which included the amendment to increase the fine to \$1,000 (Ordinance No. 019119).

December 14, 2020, January 5, 2021, February 1, 2021, March 1, 2021, March 29, 2021, April 26, 2021, May 24, 2021, June 21, 2021, July 19, 2021, August 16, 2021, El Paso City Council enacted an Emergency Ordinance Re-Enacting Emergency Ordinance No. 019091.

AMOUNT AND SOURCE OF FUNDING:
N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Capital Improvement Department
SECONDARY DEPARTMENT: Streets and Maintenance, Planning and Inspections

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

DEPARTMENT HEAD: 

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

**AN EMERGENCY ORDINANCE INSTITUTING EMERGENCY MEASURES TO
ALLOW TEMPORARY USES ON THE PUBLIC RIGHT OF WAY AND PRIVATE
PROPERTY BY SUSPENDING VARIOUS CITY ORDINANCES;
PENALTY AS PROVIDED IN SECTION 6.**

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and

WHEREAS, by proclamation issued on March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency; and

WHEREAS, on March 17, 2020, El Paso City Council adopted Emergency Ordinance No. 019035 extending the City's Disaster Declaration due to a Public Health Emergency; and

WHEREAS, since March 2020, El Paso City Council has re-enacted Emergency Ordinance No. 019035 monthly basis, with the most recent re-enactment taking place on January 5, 2021; and

WHEREAS, Governor Abbott has similarly renewed the State's COVID- 19 Disaster Declaration, with the most recent extension taking place on January 5, 2021; and

WHEREAS, El Paso City Charter Section 3.10 allows City Council to adopt an emergency ordinance to meet a public emergency affecting life, health, property, or the public peace; and

WHEREAS, the El Paso City Council desires to support restaurants and similar establishments in their efforts to safely operate during the COVID-19 pandemic by further facilitating outdoor service and dining opportunities; and

WHEREAS, to that end, the El Paso City Council hereby suspends various sections of the El Paso City Code to facilitate temporary uses on the public right of way and private property.

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

SECTION 1. SUSPENSION AND MODIFICATION OF ORDINANCES.

- A. The following El Paso City Code provisions are hereby suspended, only as they apply to the temporary uses identified and described in this Ordinance under Section 2(B) below:

<u>Title</u>	<u>Section</u>	<u>Sub-Section</u>	<u>Name</u>
Title 9	9.12	9.12.010	Food And Food Handling Establishments-Definitions
Title 9	9.12	9.12.050	Food And Food Handling Establishments-Permit-Contents
Title 12	12.20	12.20.090	Traffic Control Devices-Display of unauthorized signs
Title 12	12.30	12.30.030	Temporary Traffic Control-Permit required

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Title 12	12.30	12.30.040	Temporary Traffic Control-Failure to obtain a temporary traffic control permit
Title 12	12.30	12.30.050	Temporary Traffic Control-Permit application
Title 12	12.30	12.30.060	Temporary Traffic Control-Permit bond and insurance required
Title 12	12.30	12.30.070	Temporary Traffic Control-Permit fees
Title 12	12.30	12.30.120	Temporary Traffic Control-Correction of violations, removal of traffic control devices, fees
Title 12	12.30	12.30.160	Temporary Traffic Control-Violation
Title 12	12.36	12.36.030	One-Way Streets-Restricting direction at certain times
Title 12	12.44	12.44.030	Stopping, Standing, And Parking Generally-Proximity to curb
Title 12	12.44	12.44.180	Stopping, Standing, And Parking Generally-Regulations pertaining to certain special situations
Title 12	12.44	12.44.240	Stopping, Standing, And Parking Generally-Temporary no parking zones
Title 12	12.44	12.44.290	Stopping, Standing, And Parking Generally-Restrictions on parking in downtown parking districts
Title 12	12.52	12.52.010	Parking Restrictions on Certain Streets-Applicability
Title 12	12.56	12.56.020	Parking Meters-Installation
Title 12	12.56	12.56.040	Parking Meters-Operation—Time limits
Title 12	12.68	12.68.020	Visibility Obstructions-Plants, objects, vehicles over three feet
Title 12	12.76	12.76.070	Bicycles-Riding on right side of street
Title 12	12.76	12.76.120	Bicycles-Use of parking meters
Title 12	12.76	12.76.160	Bicycles-Effect of regulations
Title 12	12.76	12.76.170	Bicycles-Violation-Penalty
Title 12	12.80	12.80.150	Miscellaneous Traffic Regulations-Storing Vehicles in streets
Title 12	12.88	12.88.030	Schedules-Schedule III-Parking prohibited at all times on certain streets
Title 12	12.88	12.88.040	Schedules-Schedule IV-Parking prohibited during certain hours on certain streets
Title 12	12.88	12.88.150	Schedule XIV-Speed limits
Title 13	13.20	13.20.040	Miscellaneous Street And Sidewalk Use Regulations-Selling merchandise prohibited on and near public right-of-way
Title 13	13.20	13.20.060	Miscellaneous Street And Sidewalk Use Regulations-Receiving and forwarding goods on sidewalks
Title 13	13.24	13.24.200	City Parks and Recreation Areas-Park and recreation facility use and fee authorization
Title 13	13.32	13.32.010	Temporary Events-Definitions
Title 13	13.32	13.32.020	Temporary Events-Permit required
Title 13	13.32	13.32.030	Temporary Events-Permit application
Title 13	13.32	13.32.050	Temporary Events-Costs and fees
Title 13	13.32	13.32.090	Temporary Events-Violation-Penalty
Title 13	13.38	13.38.020	Special Events-Definitions
Title 13	13.38	13.38.030	Special Events-Permit required
Title 13	13.38	13.38.040	Special Events-Permit application
Title 13	13.38	13.38.050	Special Events-Permitting Criteria
Title 13	13.38	13.38.060	Special Events-Costs and fees
Title 13	13.38	13.38.110	Special Events-Violation-Penalty

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Title 15	15.08	15.08.010	Street Rentals-Purpose
Title 15	15.08	15.08.120	Street Rentals-Special privilege licenses and permits
Title 15	15.08	15.08.125	Street Rentals-Violation and penalty
Title 18	18.02	18.02.106.22	Building And Construction Administrative Code-Temporary structures
Title 18	18.02	18.02.106.23	Building And Construction Administrative Code-Permit Fees-Sidewalk, street, alley, public right-of-way, and parking meter space, rental
Title 20	20.02	20.02.936	Definitions-Sign, special event directional
Title 20	20.02	20.02.1076	Definitions-Temporary events on public rights-of-way
Title 20	20.04	20.04.640	Administrative Provisions-Temporary Permits
Title 20	20.04	20.04.660	Administrative Provisions-Signs in public rights-of-way
Title 20	20.10	20.10.410	Supplemental Use Regulations-Off-street parking (serving another property)
Title 20	20.10	20.10.630	Supplemental Use Regulations-Storage of supplies (in connection with a permitted use)
Title 20	20.10	20.10.680	Supplemental Use Regulations-Temporary Uses
Title 20	20.10	20.10.720	Supplemental Use Regulations-Unenclosed parking space shelters
Title 20	20.14	20.14.020	Off-Street Parking, Loading And Storage Standards-Scope
Title 20	20.14	20.14.050	Off-Street Parking, Loading And Storage Standards-Parking requirements and standards
Title 20	20.14	20.14.060	Off-Street Parking, Loading And Storage Standards-Shared parking
Title 20	20.14	20.14.070	Off-Street Parking, Loading And Storage Standards-Parking reductions
Title 20	20.14	20.14.120	Off-Street Parking, Loading And Storage Standards-Bicycle parking on city right of way
Title 20	20.14	20.14.200	Off-Street Parking, Loading And Storage Standards-Applicability
Title 20	20.14	20.14.210	Off-Street Parking, Loading And Storage Standards-Standards

- B. Any other provisions of the El Paso City Code not mentioned above that may govern the temporary uses described in Section 2(B) below are also suspended.
- C. Any of the aforementioned provisions that do not apply to the temporary uses on public right of way and private property identified in Section 2(B) below as permitted by this Emergency Ordinance are not suspended or amended, and remain in full force and effect.

SECTION 2. ESTABLISHMENT OF A PILOT PROGRAM.

- A. The City Manager or designee (“City Administration”) has created temporary requirements, application, and permit to allow/facilitate the temporary uses described in Section 2(B) below for the duration of this Ordinance (“Pilot Program”). Any persons wishing to use public right of way or private property for any temporary uses allowed under Section 2(B) below must submit an application, receive a permit, and abide by all the requirements of this Ordinance and the permit. It is a violation of this Ordinance for a person to use public right of way or private property for any temporary uses described in Section 2(B) below in violation of the requirements of this Ordinance and/or an issued permit.

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B. The following are the temporary uses allowed under the Pilot Program:

1. Safe Streets. “Safe Streets” means the occupation of a portion of the public right of way that is currently used as on-street parking and/or automobile traffic that shall be utilized for additional outdoor public space. This space shall be used for the following purposes:
 - a. Ped-Way (Pedestrian Lane): “Ped-Way (Pedestrian Lane)” means the use and occupation of an area that is to be utilized for outdoor recreational purposes, including but not limited to, pedestrian movement, bicycling, and/or Shared Use Mobility Devices.
 - b. ROW Café: “ROW Café” means the use and occupation of an area that is to be utilized for businesses to provide additional space for outdoor dining and seating, space for patrons, and merchandise, which encompasses a partial street closure of the entire block, which may or may not include on-street parking, directly fronting only their establishment.
 - c. Parking-parklet: “Parking-parklet” means the use and occupation of an area that is to be utilized for businesses to provide additional space outdoor dining and seating, space for patrons, and merchandise, which encompasses on-street parking spaces directly abutting only their establishment.
2. Safe Business. “Safe Business” means the use and occupation of a portion of private property that is currently used as off-street surface parking spaces serving the abutting commercial establishment shall be utilized for additional outdoor dining space, outdoor queuing, and order pick-up and drop-off serving only their establishment.
3. Safe Food Court. “Safe Food Court” means the use and occupation of a portion of public right of way or the occupation of a portion private property currently used as shared off-street parking, that is to be utilized and shared by multiple restaurants and/or food trucks for the purpose of outdoor dining and seating, which may or may not abut their establishment.

C. Notwithstanding anything to the contrary, the requirements created by City Administration for the Pilot Program must require all applicants and participants:

1. To follow all applicable local, state, and federal orders and guidelines issued by the Centers for Disease Control pertaining to COVID-19,
2. Continue to allow for the passage of pedestrian traffic at all times,
3. Not allow encroachment into handicap parking/ramps or otherwise reduce the ADAAA accessibility of the site,
4. Require ADAA compliance for access to the outdoor area,

5. Not impede flow from building exits,
 6. Be in compliance with any fire and safety ordinances,
 7. Be in compliance with TABC rules and regulations,
 8. To indemnify, defend, and hold harmless the City for all claims resulting from the applicant's and/or the applicant's employees', contractors', licensees', and/or invitees' use of public right of way or private property for temporary uses,
 9. To release the City from all claims related to the applicant's use of public right of way or private property for temporary uses,
 10. To pay for any damage caused to the public right of way caused by the applicant or the applicant's employees', contractors', licensees', and/or invitees'.
- D. The City Attorney's Office is authorized to grant waivers of requirements in Section 2(C) (8), (9), and (10) above.
- E. All persons and businesses wishing to use the right of way or private property as described in the Pilot Program must comply with the requirements herein as well as any requirements established by City Administration for the Pilot Program.

SECTION 3. LIMITATIONS

- A. The provisions suspended by this ordinance remain applicable to any temporary uses not addressed by the Pilot Program. Any person wishing to use public right of way or private property not subject to the Pilot Program must comply with all requirements of the El Paso City Code.
- B. Nothing in this ordinance grants any permanent rights to any person pertaining the right of way. Nothing in this ordinance limits the City's control over municipal rights of way. Nothing in this ordinance constitutes a vacation of any portion of the public right of way.
- C. Nothing in this Ordinance allows for any permanent uses of the right of way.
- D. All authorizations to use the public right of way or private property under this Ordinance and/or the Pilot Program are revocable at any time for any reason at the sole discretion of the City Administration for the City of El Paso.

SECTION 4. ADMINISTRATIVE TERMINATION OF PILOT PROGRAM

Due to the uncertainty caused by this pandemic, the City Administration is authorized to terminate the Pilot Program and any uses of public right of way or private property under this order

if in the discretion of City Administration such termination is necessary for the health, safety, or welfare of the community. If City Administration terminates the Pilot Program, then all City Code provisions suspended under this order are reinstated as of the date of termination of the Pilot Program.

SECTION 5. DURATION OF SUSPENSION

The suspension or modification of the ordinances and regulations listed herein shall remain in effect for 30 days, unless re-enacted in accordance with City Charter Section 3.10 or until the state of disaster is terminated, whichever is sooner.

SECTION 6. PENALTIES

- A. These regulations shall have the effect of ordinances when duly filed with the City Clerk.
- B. A person who violates any provision of these regulations and/or the requirements established by the City Administration pertaining to the Pilot Program under this Ordinance, upon conviction, is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

SECTION 7. SEVERABILITY CLAUSE.

It is hereby declared to be the intention of the City Council that phrases, sentences, paragraphs and sections of this ordinance are severable. If any part of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect the remaining phrases, sentences, paragraphs and sections.

SECTION 8. EMERGENCY.

- A. This emergency ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor pursuant to City Charter Section 3.10.
- B. This emergency ordinance shall take effect immediately upon its adoption and publication and it is accordingly so ordained. This ordinance shall remain in effect for 30 days, unless re-enacted in accordance with City Charter section 3.10 or until a state of disaster is terminated, whichever is sooner.

(Signatures on the following page)

PASSED AND ADOPTED, this ____ day of October, 2021.


THE CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT:



For Sam Rodriguez, P.E.
City Engineer