RETAIN FOR SUBSEQUENT CITY COUNCIL HEARING

CITY OF EL PASO, TEXAS
DEPARTMENT OF PLANNING, RESEARCH & DEVELOPMENT

MEMORANDUM

TO: The Honorable Mayor and City Council
Jim Martinez, Chief Administrative Officer
Patricia D. Adauto, Deputy Chief Administrative Officer
Laura Uribarri, Executive Assistant to the Mayor
Adrian Ocegueda, Executive Assistant to the Mayor

FROM: Raymond Bonilla, Plan Reviewer I

SUBJECT: City Council Agenda Item

Introduction: August 24, 2004
Public Hearing: September 7, 2004

DATE: August 19, 2004

The following item has been scheduled for City Council action as noted above. Should you have any questions, I may be contacted at 541-4720.

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO KERN PLACE MERCHANTS ASSOCIATION TO TEMPORARILY CLOSE A PORTION OF CINCINNATI AVE BETWEEN MESA STREET AND STANTON STREET FOR A "ICE CREAM SOCIAL" CELEBRATION ON SUNDAY, SEPTEMBER 12, 2004. (*Consideration: $137.50, SP-04019,* ***District 1****)*

This Special Privilege will permit the temporary closure of a portion of public right-of-way along Cincinnati Avenue between Mesa Street and Stanton Street for a "Ice Cream Social" celebration.

Office Use Only			
Mayor's Office (5 copies):	*date:* _____	*time:* _____	*by:* _____
Representative District 1:	*date:* _____	*time:* _____	*by:* _____
Representative District 2:	*date:* _____	*time:* _____	*by:* _____
Representative District 3:	*date:* _____	*time:* _____	*by:* _____
Representative District 4:	*date:* _____	*time:* _____	*by:* _____
Representative District 5:	*date:* _____	*time:* _____	*by:* _____
Representative District 6:	*date:* _____	*time:* _____	*by:* _____
Representative District 7:	*date:* _____	*time:* _____	*by:* _____
Representative District 8:	*date:* _____	*time:* _____	*by:* _____

Street closure will be from 12:00 p.m. on Sunday, September 12, 2004 through 4:00 p.m. on Sunday, September 12, 2004. The festival will be from 12:00 p.m. on Sunday, September 12, 2004 to 4:00 p.m. on Sunday, September 12, 2004.

Entertainment will include live music, food, beverage and other event festivities.

As consideration for this Special Privilege License the applicant shall provide prior to City Council action the following:

- Submittal of a detailed traffic control plan and proposed use diagram on or before August 12, 2004 and distribution of the approved plans to the Building Permits and Inspection Department for review and distribution;
- Applicant shall temporarily close premises by using the materials and methods approved by the City Engineering Department-Traffic Division;
- Provide written letters of support of proposed use of public right-of-way from abutting property owners;
- Provide appropriate number of security personnel;
- Provide a twenty (20) foot wide traffic lane for emergency vehicle access on all temporarily closed streets; and
- Coordinate with any applicable City Departments, state or federal agencies to obtain any necessary permits and approvals required for the Event or proposed use of the Premises, including but not limited to, sound amplification and the sale of alcoholic beverages; and
- Providing liability insurance.

c: R. Alan Shubert, Director of Building Permits and Inspections
Terry Cullen-Garney, First Asst. City Attorney
Matt Watson, Asst. City Attorney
Lisa A. Elizondo, City Attorney

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO KERN PLACE MERCHANTS ASSOCIATION TO TEMPORARILY CLOSE A PORTION OF CINCINNATI AVE BETWEEN MESA STREET AND STANTON STREET FOR AN "ICE CREAM SOCIAL," CELEBRATION ON SUNDAY, SEPTEMBER 12, 2004.

WHEREAS, Kern Place Merchants Association (hereinafter referred to as "Grantee") is sponsoring a "Ice Cream Social" celebration (hereinafter referred to as "Event"), on Sunday, September 12, 2004.

WHEREAS, the Grantee is requesting the use and closure of a portion of public right-of-way on Sunday, September 12, 2004. in conjunction with the proposed Event;

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

That the Grantee is hereby granted a Special Privilege to temporarily close a portion of the following public right-of-way, as shown within the attached and incorporated Exhibit "A" and hereinafter referred to as "Premises":

Cincinnati Ave between Mesa Street and Stanton Street; for the Event from 12:00 p.m. on Sunday, September 12, 2004 through 4:00 p.m. on Sunday, September 12, 2004

.

The grant of this Special Privilege is subject to the following conditions:

1. Grantee shall pay for all costs associated with the temporary closing of the Premises. The Premises shall be temporarily closed, by using the materials and methods approved by the City Engineering Department-Traffic Division as outlined in Paragraph 2 of this Special Privilege.

2. Grantee shall submit a detailed traffic control plan to the City Engineering Department-Traffic Division. The City Engineering Department-Traffic Division on or before September 2, 2004 shall approve the detailed traffic control plan. Grantee shall submit copies of the approved detailed traffic control plan to the City Departments of Police, Fire and Sun Metro no later than September 3, 2004. Failure to submit, obtain the approval, or distribute the approved detailed traffic control plan as herein provided shall result in an automatic termination of this Special Privilege.

3. Grantee shall keep open a twenty (20) foot wide traffic lane for emergency vehicle access on all temporarily closed streets. Grantee acknowledges that the temporarily closed Premises must be opened for use by emergency vehicles upon

demand by City Police and Fire personnel. Grantee shall ensure that no structures are placed within fifteen (15) feet of any fire hydrant, nor directly over any water valve or sanitary sewer manhole in the Premises. In addition, should the City of El Paso for any reason decide that portions of the Premises that have been temporarily closed must be reopened, the Grantee, at no cost to the City, shall immediately after notice from the City Engineering Department-Traffic Division, reopen for public use the temporarily closed Premises.

4. Grantee shall be permitted to use the Premises for the Event purposes, including but not limited to all of the following: food and retail vending, entertainment staging, booths, event displays, public gathering areas (table and seating), and other festival-related activities.

5. Grantee shall not use any portions of other City public rights-of-way or City-owned property, without the express written consent of the City or an official authorized to grant such approval.

6. The City assumes no responsibility for maintenance of the Premises during the temporary closing by the Grantee.

7. The Premises shall be used by the Grantee solely for the Event purposes.

8. As an express condition of this Special Privilege, Grantee shall meet and coordinate emergency access for the Event, including but not limited to, first-aid stations, emergency response, and manned security, with the City Departments of Fire and Police.

In addition, Grantee shall complete all of the following:

a. Provide on or before August 31, 2004, satisfactory written proof to the Department of Building Permits and Inspections, that the property owners and tenants within and adjacent to the Premises have no adverse objections to the temporary closing;

b. Obtain any permission, permit, license or lease to utilize any portion of City facilities used in connection with the Event prior to the use of the Premises;

c. Coordinate with any applicable City Departments, state or federal agencies to obtain any necessary permits and approvals required for the Event or proposed use of the Premises, including but not limited to, sound amplification and the sale of alcoholic beverages;

d. Provide sufficient refuse containers within the Premises for the litter generated by participants and patrons of the Event. After the Event has ended, Grantee,

at no cost to the City, shall clean up all litter and debris within the Premises, leaving the public rights-of-way in a clean and orderly condition;

e. No equipment, tables, booths, electrical lines, or other structures shall be placed within fifteen (15) feet of any connections to sprinkler systems and water hydrants and water valves and sanitary sewer manholes on or near the Premises; and

f. No equipment, tables, booths, electrical lines, or other structures shall be placed in such a manner that access is obstructed to any entrance or exit of any adjacent business.

g. Lights shall be shielded. Lights and speakers shall point downward and toward the Event and shall not point in the direction of the neighborhood lying to the east of Stanton Street.

9. The Grantee assumes full responsibility for the planning, coordination, management and production of the Event. Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between the City and the Grantee, and the Grantee shall be deemed at all times to be an independent contractor. The grant of this Special Privilege shall in no way be construed as co-sponsorship of the Event.

10. Grantee expressly agrees that should any improvements, within the Premises, including but not limited to landscape planters, plants, street paving, or traffic identification signs and devices, be destroyed or damaged during the Event, Grantee shall replace or repair such improvements at Grantee's sole expense, and at no cost to the City.

11. As consideration for this Special Privilege, Grantee shall pay the City the a total sum of One Hundred Thirty Seven and 50/100 Dollars ($137.50), which shall be due prior to the execution of this Special Privilege by the El Paso City Council. The advance payment shall be in the form of a cashier's check delivered to the office of the Department of Building Permits & Inspections for remittance to the office of the City Comptroller. If the Special Privilege is disapproved by the City Council, the office of the City Comptroller shall make a full refund of the payment within fifteen (15) days of the denial action.

The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable ordinances and regulations.

12. Upon termination of this Special Privilege, the grant hereof shall cease, any property of the Grantee situated upon the Premises shall be removed by the Grantee without cost or expense to the City, and the Premises shall be restored to its original condition.

13. Grantee agrees to indemnify and hold the City harmless from any claims for injury, death, loss or damage of any kind or character, and by whomsoever suffered or asserted, occasioned by or in connection with the temporary closing of the Premises by Grantee, its agents, servants or employees or any organizations contracted by the Grantee either while the Event is in progress or as the result of the temporary closing of the Premises.

Grantee shall, prior to execution of this Special Privilege by the El Paso City Council, provide public liability insurance for personal injuries and death growing out of any one (1) accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one (1) accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one (1) accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insureds. Grantee shall file a copy of the policy or certificate of insurance with the City Clerk, the Department of Building Permits & Inspections and the City Attorney prior to City Council enactment of the Special Privilege.

14. This Special Privilege is subject to the governmental powers of the City.

15. This Special Privilege shall not take effect unless Grantee files its written acceptance with the City Clerk. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of Grantee warrants to City that Grantee is a duly authorized and existing corporation, that Grantee is qualified to do business in the State of Texas, that Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of Grantee is authorized to do so. Upon the City's request, Grantee shall provide evidence satisfactory to the City confirming these representations.

PASSED AND APPROVED this 7th day of **SEPTEMBER, 2004.**

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert Director Building Permits & Inspections

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 19 day of August, 2004.

GRANTEE: **KERN PLACE MERCHANTS ASSOCIATION**

By: JORGE CISNEROS / MEMBER
(printed name/title)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 19 day of August, 2004, by Jorge Cisneros as, Member on behalf of Kern Place Merchants Association Grantee.

Notary Public, State of Texas

Notary's Printed or Typed Name: Lucy C. Martinez

My Commission Expires: 4-29-08

LUCY C. MARTINEZ
NOTARY PUBLIC
In and for the State of Texas
My Commission expires
April 29, 2008

3393/BPI/17/ORD-SpePrivilege - Cincinnati Ave 04019 MW