

ORDINANCE NO. 019276

AN ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES) OF THE EL PASO CITY CODE TO ADD A NEW CHAPTER 15.24 (ACQUISITION, USE, AND DISPOSITION OF CITY PROPERTY) TO AUTHORIZE THE ESTABLISHMENT OF POLICIES AND FEES FOR THE USE, PURCHASE, AND DISPOSITION OF CITY PROPERTY.

WHEREAS, the City of El Paso owns property that is not dedicated to the use of the public; and

WHEREAS, the City of El Paso receives requests for the use or purchase of such property; and

WHEREAS, the City incurs costs to process requests from the public related to the use or purchase of such property;

WHEREAS, in order to better the service provided to the community when it comes to these types of requests, the City wishes to authorize the establishment of procedures and fees applicable to requests for the use or purchase of City Property.

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

SECTION 1. Title 15 (Public Services) of the El Paso City Code is amended to add a new Chapter 15.24 (Acquisition, Use, and Disposition of City Property) that reads as follows:

Chapter 15.24 – Acquisition, Use, and Disposition City Property

Section 15.24.010 – General Provisions

A. Definitions. The following definitions apply to this Chapter only.

1. “Applicant” means a person that submits an application under this Chapter.
2. “City Property” means real property, and improvements on real property, owned by the City of El Paso that is not (i) dedicated for public use as a park or public right of way, (ii) managed by the El Paso International Airport, (iii) managed by the El Paso Water Utilities, (iv) managed by other departments of the City of El Paso as specified in the El Paso City Code, ordinance, or resolution enacted by the El Paso City Council, and (v) managed by a third party pursuant to a contract with the City of El Paso.
3. “Person” means an individual, corporation, organization, government, or governmental subdivision or agency, business, trust, estate, partnership, association, utility, or any other legal entity.
4. “Policies” means any policies adopted by the Real Estate Division as

provided under this Chapter.

5. "Real Estate Division" means the division or department within the City of El Paso that is responsible for handling Real Estate Transactions for the City.
6. "Real Estate Transaction" any request by a person or applicant related to the use or purchase of City Property.
7. "Right of Entry" a temporary use of City Property for the purpose of conducting surveys, measuring, testing, staging, parking, measuring, photographing, inspecting, mowing, general clean-up, and other due diligence purposes.
8. "Special Event Rental" means a temporary use of City Property for private events.

B. Prohibition. No Person will use or enter City Property without acquiring rights under this Chapter or without being authorized by a person that has acquired rights to the subject City Property under this Chapter. Notwithstanding anything to the contrary, no rights are deemed granted or acquired unless a Person submits an application that complies with all requirements of this Chapter and policies adopted by the Real Estate Division, an application has been approved by the Real Estate Division, an agreement has been signed by the City and the Applicant, and the Applicant has paid all required fees, consideration, due diligence, and other costs.

C. Agreement Requirements.

1. City Manager, or designee, is authorized to sign any agreements approved by the City Attorney's Office as to form pertaining to Special Event Rentals and Rights of Entry.
2. All Real Estate Transactions must be accompanied by an agreement or document approved as to form by the City Attorney's Office. The City Attorney's Office may approve a standard form agreement for each type of transaction. Any agreements or documents by the City Attorney's Office must comply with the minimum requirements set forth in this Chapter.
3. All grants of rights to use City Property may be revoked by the City Council if necessary to secure efficiency of public service at a reasonable rate, or to assure that the property is maintained in good order throughout the life of the grant.

D. Insurance.

1. All grants of rights to use City Property must require insurance in the amounts that meet the minimum amounts established by the City's Risk Management Division. The Real Estate Division will include in the Policies the minimum amounts established by the Risk Management Division. The Real Estate Division, in consultation with the Risk Management Division and the City Attorney's Office may require higher insurance amounts depending on the proposed activities that will take place on the City Property.

E. Indemnification.

1. All grants of rights to use City Property must require indemnification by the Applicant in the manner determined by the City Attorney's Office.

F. Policies and Application Forms.

1. The Real Estate Division will adopt policies and application forms for Real Estate Transactions pertaining to City Property. Such policies must be consistent with this Chapter. The Real Estate Division will process all applications in accordance with the policies adopted by the Real Estate Division. The Policies adopted by the Real Estate Division provide guidelines for processing of Real Estate Transactions and do not confer any rights to any person submitting an application for a Real Estate Transaction. The Real Estate Division may amend the Policies as needed, provided that such amended Policies comply with this Chapter. The Real Estate Division may deny applications if the Real Estate Transaction is not in the best interest of the City or for any other reasons set forth in the Policies.

G. Fees.

1. All Applicants will pay a fee for a Real Estate Transaction at the time of submitting an application under this Chapter. The City Council will set through the annual budget process the fees that an Applicant is required to pay for a Real Estate Transaction related to City Property.
2. Payment of fees does not guarantee that a right will be granted under this chapter. The fees are assessed to recover the costs incurred by the City in reviewing an application.
3. Except as otherwise provided in this Chapter, all fees are non-refundable.
4. No fees will be charged to third party contractors for any Real Estate Transaction that is needed to complete a City project or that is related to the provision of services by a contractor hired by the City.

H. Consideration.

1. In addition to other charges under this Chapter, all Applicants will pay a consideration amount for a Real Estate Transaction. The consideration amounts will be set by City Council through the annual budget process, provided however, that consideration amounts may not be lower than the fair market value as determined by the methods established by the Real Estate Division in the Policies.

I. Due Diligence Costs.

1. In addition to other charges under this Chapter, Applicants may be required to pay any due diligence costs as determined by the Real Estate Division. Due diligence costs will be set at the actual amounts charged by the contractors hired by the City. Applicants must pay due diligence costs in advance prior to the hiring of contractors by the City. Due diligence costs are non-refundable once the City is obligated to pay the contractor.

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J. Other costs.

1. In addition to other charges under this Chapter, Applicants may be required to pay other costs for services related to the use of City Property including but not limited to utilities, security, and traffic control as required under the Policies.

K. No guarantee. The payment of fees or other charges under this Chapter does not guarantee any rights or act as a reservation of City Property for certain dates. The Real Estate Division may determine that a City Property is not available or that it is not prudent for the City to enter into a particular Real Estate Transaction.

L. No Waiver. The acquisition of City Property under this Chapter or the use of City Property under this Chapter does not relieve the person or applicant from complying with any other requirements under the El Paso City Code or other laws (local, state, or federal) including but not limited to building permit requirements, zoning requirements, platting requirements, environmental requirements, health and safety requirements, temporary use requirements, special event permit requirements, and noise ordinance requirements. The acquisition of City Property under this Chapter or the use of City Property under this Chapter does not relieve the person or applicant from obtaining permits or licenses from other entities such as federal or state entities.

M. This Chapter does not affect any rights granted prior to the enactment of this ordinance.

Section 15.24.020 – Civil Remedies

- A. Nothing in this chapter limits the City's right to enforce any property rights or seek remedy under the law as it pertains to City Property.

Section 15.24.030 - Public Forum

- A. No Public Forum. No rental or use of a City Property will constitute a designation of such facility as a public forum. Unless sponsored by the City, all events occurring on City Property are considered private events.

SECTION 2. Except as herein amended, Title 15 of the El Paso City Code shall remain in full force and effect.

SECTION 3. This Ordinance will take effect starting on January 1, 2022.

ADOPTED this 14th day of Dec. 2021.

[Signatures begin on the next page]

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ATTEST:

Laura D. Prine

Laura D. Prine
City Clerk

THE CITY OF EL PASO:

Oscar Leese
Oscar Leese, Mayor

APPROVED AS TO FORM:

Omar A. De La Rosa

Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:

Mary Lou Espinoza

Mary Lou Espinoza, Real Estate
Capital Improvement Department

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