

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

CITY CLERK DEPT.
2018 JAN 20 PM 1:23

DEPARTMENT: Parks and Recreation

AGENDA DATE: February 6, 2018

CONTACT PERSON/PHONE: Joel McKnight, Assistant Director Parks and Recreation (212-1719)

DISTRICT(S) AFFECTED: 1

STRATEGIC GOAL:

Goal 2 – Set the Standard for a Safe and Secure City

SUBJECT:

Discussion and action on a Resolution that the City Manager be authorized to sign a Temporary Right of Entry between the City of El Paso and Mark Crosby for right to enter and use a portion of the City's property commonly known as Bear Ridge Park located at Franklin Crest Drive in conjunction with construction located at 1348 Franklin Wind Place.

BACKGROUND / DISCUSSION:

A Temporary Right of Entry (ROE) is proposed to allow for construction/ improvements at a residence located adjacent to bear Ridge Park. The ROE provides requirements for Mark Crosby to follow, including fencing between the use area and the remaining parkland, and restoring the park back to its pre-ROE condition. The City Planning Commission and Parks and Recreation Advisory Board have both reviewed and recommended approval of this Temporary Right of Entry request.

PRIOR COUNCIL ACTION:

March 21, 2017 (Cavalryman Park/FT James)

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

- 12-11-17 - Park and Recreation Advisory Board recommended approval (unanimous)
- 01-17-18 - Community Meeting held with no opposition
- 01-25-18 – CPC recommended approval (unanimous)

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: T. Norde

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Temporary Right of Entry between the CITY OF EL PASO and MARK I. CROSBY, for the right to enter and use a ten foot (10') portion of the City's property which is designated as parkland, located at _____, El Paso, Texas for the ingress and egress of trucks and equipment required to build a small building and playing field on the back of Mr. Crosby's property.

APPROVED this _____ day of _____, 2018.

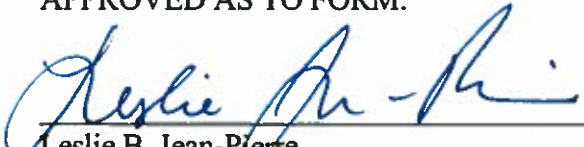
CITY OF EL PASO

ATTEST:

Dee Margo
Mayor


Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy Novak, Director
Parks and Recreation Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

This Temporary Right of Entry is granted on this _____ day of _____, 2018, by the CITY OF EL PASO (the "City") to MARK I. CROSBY, a resident of El Paso County, Texas (herein called "CROSBY" or the "Rightholder").

WHEREAS, the City is the owner the park land ("the Park"), located adjacent to the property under contract to CROSBY, and more particularly depicted in Exhibit "A" attached hereto and made a part herein and referred herein as "City Property."

WHEREAS, CROSBY has entered into an earnest money contract for the property located at 1348 Franklin Wind Place, El Paso, Texas 79912 (more particularly described on Exhibit "B"), which has an existing house and pool. CROSBY desires to build a playing field and a small accessory building for storage and a gym (the "Building") at the rear of this property.

WHEREAS, the Rightholder has requested access to a ten foot (10') portion of the City Property to use said Property as a staging area for CROSBY's construction of a playing field and a small accessory building for storage and a gym (the "Building") at the rear of his property;

WHEREAS, CROSBY's construction site directly abuts by the Park and a public safety concern regarding the Park's proximity to the construction will be minimized by providing a buffer between the construction and the public's continued use of the remaining portion of the Park which will remain open for the duration of CROSBY's construction;

WHEREAS, CROSBY's construction site is bordered by the public thoroughfares known as _____; both thoroughfares are highly trafficked and any long-term encroachment will likely increase the congestion in and around the immediate area;

WHEREAS, the City and the Rightholder agree that granting this Temporary Right of Entry will assist and expedite the Rightholder in its construction of its Building and that it will assist City in addressing public safety concerns, while minimizing the potential for traffic congestion associated with the construction of the Building, and that this Right of Entry is in their mutual best interest, and

WHEREAS, the City consents to and approves of the entry onto City Property by the Rightholder and his agents, contractors, subcontractors, employees, invitees, or licensees (collectively, "Authorized Agents"), subject to the provisions noted herein, for the completion of the construction of CROSBY's Building.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. **Access.** Access to City Property shall be granted solely to allow the Rightholder and its Authorized Agents the right to use the City Property as a staging area during the construction of the Building. Access shall be limited to the portion of the Park shown in Exhibit B. The remaining portion of the Park shall remain open to the public at all times.
2. **Term.** The rights granted herein shall expire four (4) months after the execution of this Agreement, without regard to whether the construction of CROSBY's Building has begun or been completed. This Temporary Right of Entry may be extended with 30 days' written notice to City by CROSBY for two (30 day) extensions, pursuant to the payment amounts discussed below.
3. **Amount.** CROSBY shall pay to City the sum of **THREE HUNDRED TWELVE DOLLARS AND FIFTY-FIVE CENTS (\$312.55)** in consideration of City granting the Temporary Right of Entry described in this Agreement. This initial, non-refundable payment will be due immediately upon execution of this Agreement. For the initial term, the amount is calculated as follows: (The total number of days requested divided by (7) which is the number of inspections performed by staff during the initial term. Plus one preliminary inspection of the area upon execution of this Agreement and one final inspection to ensure there is no other damage to the City Property and that the agreed upon restorations took place. Then multiply the total number of visits by the cost per inspection (\$16.45 per hour)).
4. **Insurance.** The Rightholder agrees to be responsible and liable for any damages, including mechanic's and materialmen's liens, caused or arising out of or in connection with the Rightholder's use of the City Property. The Rightholder shall obtain, and maintain the following insurance throughout this Temporary Right of Entry:
 - A. **Commercial General Liability.** The Rightholder, at its sole cost and expense shall, throughout this Temporary Right of Entry, provide and keep in force for the benefit of Rightholder and with the City as an additional insured, comprehensive general liability insurance in an amount not less than One Million and no/100Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million and no/100 Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and Five Hundred Thousand and no/100 Dollars (\$500,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.
 - B. **Automobile Liability.** The Rightholder, at its sole cost and expense shall throughout this Temporary Right of Entry, provide and keep in force for the benefit of the Rightholder with the City as an additional insured, automobile

liability insurance, covering allowed, non-owned, and hired vehicles used by the Rightholder for all operations with a minimum limit of One Million and no/100 Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.

The policy or policies shall include a waiver of subrogation with respect to the City. Loading and unloading of any motor vehicle must be covered by endorsement to the automobile liability policy or policies.

All policies of insurance required herein shall be in a form and with a company or companies reasonable satisfactory to the City and shall name the City as an additional insured. Each such policy shall provide that such policy may not be materially changed (e.g., coverage limits reduced below the minimum specified in this Temporary Right of Entry) or otherwise materially altered, or canceled by the insurer during its term without first giving at least thirty (30) days written notice to the City. Policies of insurance with required coverage shall be delivered to the Director of the Park and Recreation Department prior to any entry by the Rightholder or the Rightholder's representative on the City Property and all required coverage must be in full force and effect throughout the Inspection Period. The provisions of this Section shall survive the Temporary Right of Entry.

- C. Workers' Compensation Insurance. Rightholder shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for Rightholder's and its Authorized Agents' employees to be engaged in work at or near the Park. Rightholder shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the City, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

- D. So long as the Rightholder's net worth exceeds \$100,000,000.00, the Rightholder shall be permitted to self-insure with respect to all insurance requirements contained in this Agreement; provided, however if at any time Rightholder's net worth falls below \$100,000,000.00, this Agreement shall terminate if Rightholder does not provide the insurance coverage within ten (10) days.

4. **Indemnification. THE Rightholder AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING CONSTRUCTION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR**

MANAGEMENT OF ACTIVITIES BY THE RIGHTHOLDER, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES ON THE CITY PROPERTY, OR FROM ANY BREACH ON THE PART OF THE RIGHTHOLDER, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES OF ANY TERMS OF THIS TEMPORARY RIGHT OF ENTRY, OR FROM ANY ACT OR NEGLIGENCE OF THE RIGHTHOLDER, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, THE RIGHTHOLDER, UPON NOTICE FROM THE CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY.

5. **Penalties.** The Rightholder understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the City for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the Rightholder, its Consultants, employees, invitees, or licensees, the Rightholder will immediately reimburse the City in the amount of the civil penalty assessed.
6. **Authorized Agents.** The Rightholder shall provide written notice of contact information for the Authorized Agents to the City.
7. **Maintenance and Restoration of Park.** For the duration of this Agreement, Rightholder shall be responsible for the maintenance of the entire Park grounds described in Exhibit A. Rightholder will maintain (including but not limited to; utilities, landscaping, cleaning, trash removal, etc.) the portions of Park subject to this Agreement during the term of this Agreement (more specifically illustrated in Exhibit B). Maintenance of the Park will be in accordance with the standards of the City of El Paso's Parks and Recreation Department. Rightholder shall restore the entire park to its original conditions. Rightholder shall provide enhanced vegetative and shade amenities. These enhancements will reflect the expected vegetative growth and associated shade enhancements; both of which will be determined by Parks and Recreation Department staff.
8. **Texas Law.** This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
9. **Relationship.** Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.

10. **No Real Property Interest.** The City, by granting this Temporary Right of Entry, does not warrant or represent that any permission for any real property interest, use of the City Property, or other right shall be granted to the Rightholder. This instrument merely grants a temporary right of entry for the sole purpose of a staging area for CROSBY's construction of a playing field and the Building as referenced herein. The Parties expressly understand and agree that the granting of any related leasehold interest or other rights shall require the execution of additional instruments and/or proper legal action.

14. **Notices.** All notices to be given under this Temporary Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

The City: City of El Paso
 Attn: Director, Parks and Recreation
 300 North Campbell
 El Paso, Texas 79901

The Rightholder: Mark I. Crosby

 El Paso, Texas _____

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

15. **Assignment.** The Rightholder shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of the City. Any attempt to transfer or assign without the prior written consent of the City shall be void and may result in the termination of this instrument.

16. **Termination for Convenience.** Once CROSBY's construction project has reached Substantial Completion, the City may terminate this Agreement at any time if in the City's sole discretion it is convenient to do so. Upon receipt of such notice, CROSBY shall have 15 days to cease construction operations and shall thereafter have 30 days to restore the Park according to the above Section 7. **Maintenance & Restoration.** Any amounts paid by CROSBY will be refunded to CROSBY by City on a pro-rata basis according to the actual time CROSBY accessed the Park, with a month as the minimum period.

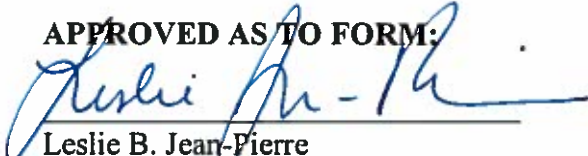
[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

EXECUTED THIS ____ DAY OF _____, 2018.

CITY OF EL PASO, TEXAS:

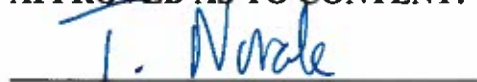
Tomás González
City Manager

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy A. Novak, Director
Parks and Recreation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this ____ day of _____ 2018, by Tomás González, as City Manager of the City of El Paso.

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

EXECUTED THIS _____ DAY OF _____ 2018.

THE RIGHTHOLDER:

MARK I. CROSBY

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2018,
by Mark I. Crosby.

Notary Public, State of Texas

EXHIBIT A

City Property

EXHIBIT "B"
CROSBY PROPERTY



Temporary Right of Entry Request

Bear Ridge Park
Franklin Crest Drive





Location





Background

- Applicant has purchased 1348 Franklin Wind, and desires to further develop the back of the lot to include a grassed yard and out-building. The home, that already exists is located so close to the existing property line that there is no way to access the back of the lot with equipment.
- The property abuts Bear Ridge Park, a natural open space park in The City of El Paso Park System
- There is a draft agreement completed.



What is an ROE?

- A temporary Right of Entry (ROE) is required anytime a third party wants to use or impact City of El Paso property. Establishment of an ROE:
 - holds the third party accountable to comply with insurance and liability requirements
 - requires them to restore the property to its original condition.
- The ROE will help to ensure safety of the park user and workers, and protect the public investment at Bear Ridge Park



What about the Cost?

- The associated fee for this ROE is Zero-Cost Based for the Department, while still being minimal for the Applicant.
- It is based on the cost to go out to the site and perform any pre-work, weekly inspections during the requested timeframe, and follow-up inspections to ensure restoration of any disturbed areas has been completed.



Timeline

This is roughly a 60-90 day process:

- Present to Parks & Recreation Advisory Board
- Community Informational Meeting
- Presentation to City Planning Commission
- Publish Public Notice: 30 days before public hearing
- Publish in EP Times once a week for 3 consecutive weeks with last publication more than 7 days, but less than 14 days before hearing.
- Presentation to City Council



QUESTIONS & COMMENTS

