

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

DEPARTMENT: Planning and Inspections Department

AGENDA DATE: August 25, 2015, Consent Agenda

CONTACT PERSON: Valerie Herrera, (915) 212-1517,
herreravm@elpasotexas.gov

DISTRICT(S) AFFECTED: 2

SUBJECT:

A Resolution that the sale and service of alcoholic beverages by Chuda Properties, LTD d/b/a Dewey's Corner Pub at the outdoor patio café located at 812 North Piedras Street, El Paso, Texas, is a permissible activity. (NESV2015-00010, District 2)

BACKGROUND / DISCUSSION:

The applicant is requesting permission to sell and serve alcohol beverages within one (1) outdoor patio café adjacent to the property 812 North Piedras Street. The application for a special privilege permit for one (1) outdoor patio café was approved administratively on July 1, 2015.

Written approval from City Council is required for the sale and service of alcoholic beverages within outdoor patio cafés as per Title 15.08.120(N)(5)(a) of the El Paso Municipal Code. The applicant is required to maintain all applicable TABC licenses and insurance for the duration of the five (5) year term of the special privilege permit.

Attachments:

NESV2015-00010

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD/COMMISSION ACTION:

N/A

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD:

Larry F. Nichols, Director
Planning and Inspections Department



RESOLUTION

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

WHEREAS, Chuda Properties, LTD d/b/a Dewey's Corner Pub (hereinafter referred to as "Grantee") has received administrative approval for a Special Privilege Permit for the use of portions of City right-of-way for the property located at 812 North Piedras Street to install one (1) outdoor patio café; and

WHEREAS, the Grantee shall obtain and maintain a public liability insurance for personal injuries and death, and a liquor liability insurance policy at all times during the term of the Special Privilege, with the City named as additionally insured in conjunction with the outdoor patio cafe; and

WHEREAS, the Grantee shall provide the City at all times during the term of the Special Privilege, the current copy of the annual mixed-beverage permit, and mixed-beverage late hours permit issued by the Texas Alcoholic Beverage Commission for the sale and service of alcoholic beverages; and

WHEREAS, the Texas Alcoholic Beverage Commission requires that the City Council for the City of El Paso approve, as a permissible activity, the sale and service of alcoholic beverages within any City right-of-way.

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

That the sale and service of alcoholic beverages by Chuda Properties, LTD d/b/a Dewey's Corner Pub at the outdoor patio café located at 812 North Piedras Street, El Paso, Texas, is a permissible activity.

APPROVED this ____ day of _____, 2015.

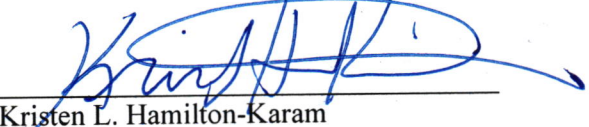
THE CITY OF EL PASO

ATTEST:

Oscar Leaser
Mayor

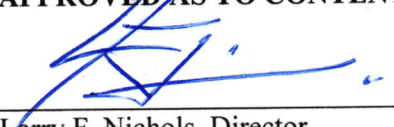
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Kristen L. Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Larry F. Nichols, Director
Planning & Inspections Department

EXHIBIT A

STATE OF TEXAS)
)
COUNTY OF EL PASO)

Special Privilege Agreement

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 **Chuda Properties, LTD d/b/a Dewey's Corner Pub**, 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 one (1) outdoor patio café encroaching four (4) feet into City right-of-way with a length of fourteen (14) feet parallel to the property. The total amount of the outdoor patio café is fifty-six (56) square feet at Lots 28 to 32 & W 18.9ft of 27, Block 81, East El Paso Addition, City of El Paso, El Paso County, Texas more commonly known as 812 North Piedras Street; and
- B. The City may grant a special privilege permit for use of City right-of-way for specified uses; and
- C. The proposed outdoor patio café does not impair the primary public purpose of the affected right-of-way; and
- D. Planning and Inspections Department has received a favorable recommendation from the Development Coordinating Committee (DCC) regarding the request to install the outdoor patio café;

2. **DESCRIPTION.** This Special Privilege Agreement (hereinafter the "Permit") authorizes Grantee the right to encroach over portions of City right-of-way at 812 North Piedras Street (hereinafter "Permit Area") with one (1) outdoor patio café (hereinafter "Permit Area") 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 five (5) years from the date of execution of this Permit. The City shall have the sole option to renew this Permit upon the request of the Grantee for one (1) additional five (5) year term. If the Grantee desires that the City renew this Permit for the one (1) additional five (5) year term, Grantee shall submit a request in writing to the City at least three (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 ONE HUNDRED SIXTY-ONE AND 00/100 DOLLARS (\$161.00) per year 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.

EXHIBIT A

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 SEVEN HUNDRED EIGHTY AND 85/100 DOLLARS (\$780.85) prior to the execution of this Permit. Said (\$780.85) 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.

Both the annual consideration and the advance payment shall be exclusive of, and in addition to all general municipal taxes of whatever nature, including, but not limited to, ad valorem taxes, and assessments for public improvements, except hereinafter provided, as may be enacted during the term of this Permit or any renewal. The fee established in this section shall not be affected by any relocation of the outdoor patio café required by the City pursuant to this Permit.

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 City regulations.

5. USE OF PROPERTY. This Permit is granted solely for the encroachment onto public right-of-way with the outdoor patio 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 outdoor patio 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. Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, its assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Permit.
- C. The Sign installed by the Grantee shall comply with the provisions of Section 20.18 (Sign Regulations) of the El Paso City Code.

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

EXHIBIT A

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 outdoor patio café.

C. If the City requires Grantee to remove, alter, change, adapt, or conform its outdoor patio 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 outdoor patio 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 outdoor patio 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 outdoor patio café and Permit Area in good repair during the term of this Permit. Grantee shall repair any damage to the outdoor patio café and/or Permit Area regardless of the cause of such damage at Grantee's sole expense.

9. MAINTENANCE. Grantee shall maintain the outdoor patio 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 outdoor patio 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 EXPESE, (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

EXHIBIT A

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.

11. 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 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, its 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.

12. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which the outdoor patio 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 its 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 outdoor patio 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.

13. 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.

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

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15. 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 outdoor patio 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 outdoor patio 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 City Manager.

D. **NOTICES:** 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: City Manager
300 North Campbell Street
El Paso, Texas 79901-1196

with copy to:

City of El Paso
Attn: Planning and Inspections Department
811 Texas Avenue
El Paso, Texas 79901-1196

and:

City of El Paso
Attn: Financial Services
300 North Campbell Street
El Paso, Texas 79901-1196

and:

Chuda Properties, LTD
ATTN: Luis X. Dominguez
812 North Piedras
El Paso, Texas 79903

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.

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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.

16. 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.

17. 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.

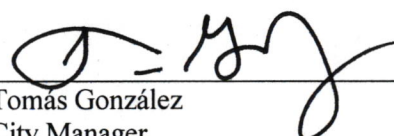
18. WARRANTY OF CAPACITY TO EXECUTE CONTRACT. If Grantee accepts the terms and conditions of this License, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do 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.

19. 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.

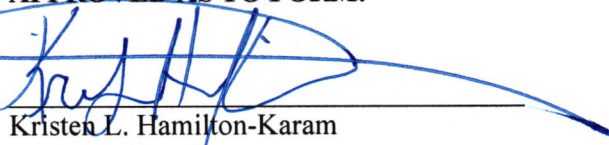
WITNESS THE FOLLOWING SIGNATURES AND SEALS:

APPROVED this 1st day of July, 2015.

THE CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:


Kristen L. Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Larry F. Nichols, Director
Planning & Inspections Department

EXHIBIT A

APPROVED this 1st day of July, 2015.

GRANTEE: CHUDA PROPERTIES, LTD
D/B/A DEWEY'S CORNER PUB

[Signature]
By: LUIS X. DOMINGUEZ
Title: CEO

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 1st day of July, 2015, by LUIS X. DOMINGUEZ, as CEO, on behalf of Chuda Properties, LTD d/b/a Dewey's Corner Pub, as Grantee.

[Signature]
Notary Public, State of Texas

My Commission Expires:

4/15/19

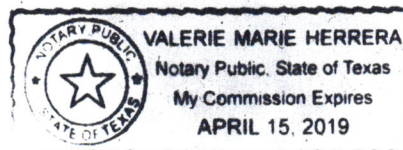


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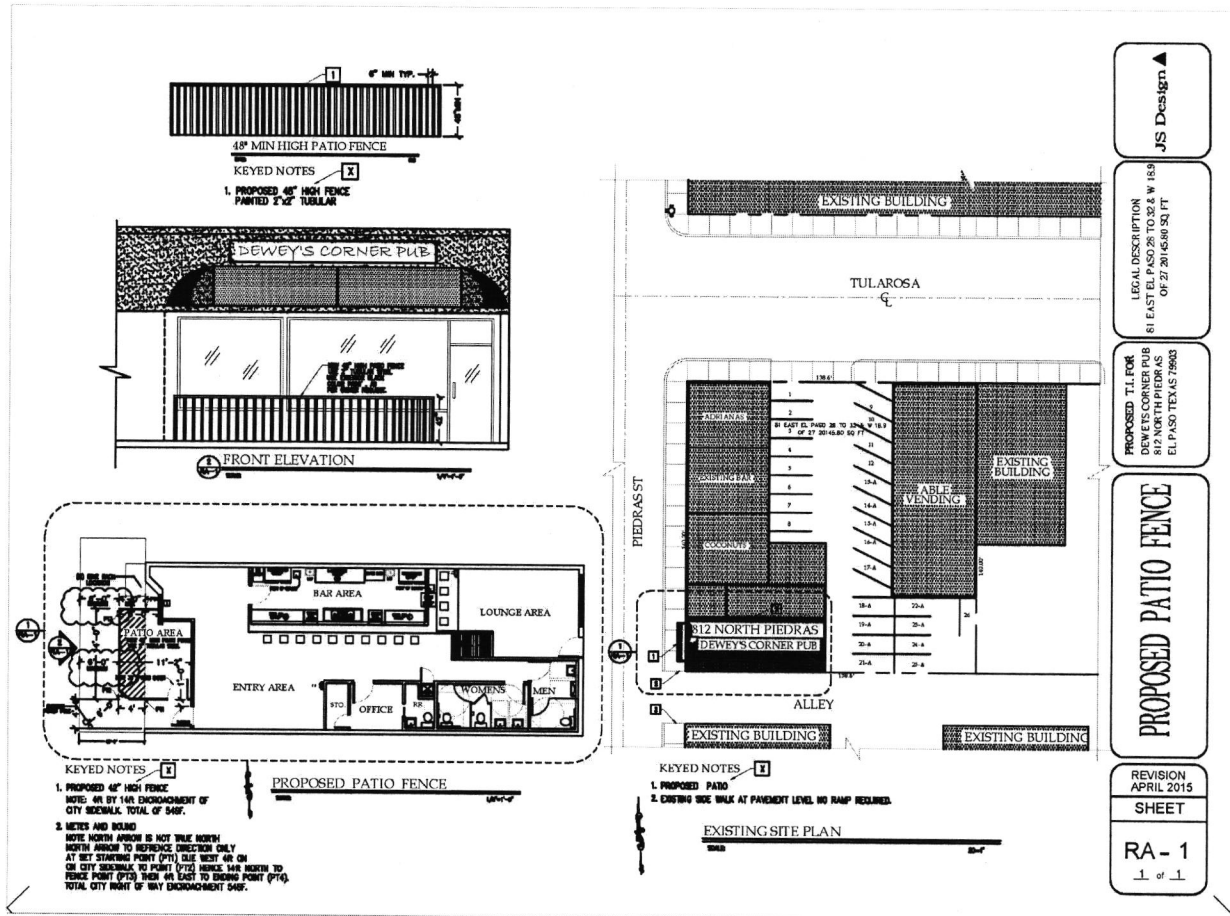


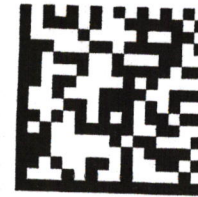
EXHIBIT A

TEXAS ALCOHOLIC BEVERAGE COMMISSION

THIS PERMIT IS NOT TRANSFERABLE, MUST BE PUBLICLY DISPLAYED AT ALL TIMES AND USED ONLY IN THE PLACE OF BUSINESS INDICATED HEREON
THE ACCEPTANCE HEREOF CONSTITUTES AN EXPRESS AGREEMENT TO PERMIT ANY AUTHORIZED REPRESENTATIVE OF THE COMMISSION OR ANY PEACE
OFFICER TO FREELY ENTER UPON PERMITTEE'S PREMISES TO PERFORM ANY DUTY IMPOSED UPON HIM.

MIXED BEVERAGE PERMIT
BEVERAGE CARTAGE PERMIT
MIXED BEVERAGE LATE HOURS PERMIT

MB912027 NEW



ISSUED - 06/24/2015 EXPIRES - 06/23/2017

SIGN = RED

DEWEY'S CORNER PUB
812 N PIEDRAS
EL PASO EL PASO

MAIL

DEWEY'S CORNER PUB
MANHATTAN HEIGHTS CAPITAL INVESTMENTS
PO BOX 12511
EL PASO TX 79913

MANHATTAN HEIGHTS CAPITAL INVESTMENTS INC.

Sherry K. Cook

EXECUTIVE DIRECTOR