Staff Summary Report

Tempe

Council Meeting Date: 10/16/08 **Agenda Item Number:** _____

SUBJECT: This is the **introduction** and **first public hearing** to adopt an ordinance amending Article II of Chapter 29 of the Tempe City Code relating to Streets and Sidewalks. The second public hearing is scheduled for **November 6, 2008**.

DOCUMENT NAME: 20081016PWWS11 **STREETS AND SIDEWALKS (0503-29) ORDINANCE NO. 2008.56**

SUPPORTING DOCS: No

COMMENTS: This ordinance amends Article II of Chapter 29 of the Tempe City Code by amending Sections 29-18, 29-19 and 29-23, to implement a bifurcated process for approval of encroachments. This ordinance maintains the existing encroachment permit process for temporary, removable encroachments (such as awnings and signs), and introduces a license for special use applicable to permanent encroachments (such as buildings and underground parking facilities).

PREPARED BY: Wendy Springborn, Engineering Services Administrator (x8250)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8779)

LEGAL REVIEW AS TO FORM: Cynthia McCoy, Assistant City Attorney (x2187)

FISCAL NOTE: Note that a separate resolution will be submitted for Council approval to establish the fee structure for the issuance of licenses for special use.

RECOMMENDATION: Adopt Ordinance No. 2008.56 and authorize the Mayor to execute any necessary documents.

ORDINANCE NO. 2008.56

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 29, ARTICLE II OF THE TEMPE CITY CODE RELATING TO STREETS AND SIDEWALKS, BY AMENDING SECTIONS 29-18, 29-19 and 29-23.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 29-18 of the Tempe City Code is hereby amended to read as follows:

Sec. 29-18. Administration; enforcement.

(a) The city engineer or his authorized agent is designated as administrator and enforcing officer of this article.

(b) Any person who commences or causes to be commenced any work in the public right-of-way for which a permit OR LICENSE is required by this code without first having obtained a permit OR LICENSE therefore, AS APPLICABLE, shall pay, in addition to the permit OR LICENSE fee for such work, an investigation fee. The amount of the permit OR LICENSE fee and the amount of the investigation fee shall be as established by the city council by resolution (see Appendix A).

(c) Any person who works in the public right-of-way with or without a permit OR LICENSE shall defend, indemnify and hold harmless the city, its officials, officers, agents, volunteers and employees against any and all damages which may arise out of such work and shall comply with all requirements of the permit OR LICENSE.

(d) The city engineer may revoke any license or permit issued or may impose an investigation fee under the provisions of this article. The decision to revoke a permit or license or impose an investigation fee may be appealed directly to the city manager. Any such appeal shall be in the form of a written petition to the city manager and shall be filed with the city engineer not later than ten (10) days after the date the license or permit is revoked or investigation fee is imposed.

Section 2. That Section 29-19 of the Tempe City Code is hereby amended to read as follows:

Sec. 29-19. General regulations.

(a) No work of any nature shall be performed in a public right-of-way, except under a permit OR LICENSE issued by the city engineer, unless otherwise allowed by this code or any other ordinance of the city. The city engineer shall provide the forms for and set forth the rules, regulations and procedures governing the issuance of permits AND LICENSES.

(B) AN ENCROACHMENT PERMIT MAY BE ISSUED FOR ENCROACHMENTS OF A TEMPORARY AND REMOVABLE NATURE, INCLUDING BUT NOT LIMITED TO, AWNINGS AND COMMERCIAL SIGNS. A LICENSE SHALL BE ISSUED FOR ENCROACHMENTS OF A MORE PERMANENT NATURE, INCLUDING BUT NOT LIMITED TO, BUILDINGS AND UNDERGROUND PARKING FACILITIES THAT IMPAIR THE CITY'S ABILITY TO USE THE RIGHT-OF-WAY. THE REGULATIONS AND PROCEDURES ESTABLISHED BY THE CITY ENGINEER SHALL INCLUDE PROCEDURES FOR EVALUATING WHICH FORM IS TO BE USED.

(~~b~~ C) The standard specifications and details of the city are made a part of this article and incorporated in this article by reference. All work performed in a public right-of-way shall be accomplished in accordance with these specifications and details.

(~~c~~ D) All permittees AND LICENSEES shall give the city engineer twenty-four (24) hours' notice before commencing any work within a public right-of-way.

(~~d~~ E) Permit AND LICENSE fees shall be set by the city council by resolution. The city engineer with the concurrence of the city manager shall provide the city council with a list of the various classes of permits AND LICENSES and the recommended charge for each class (see Appendix A).

(~~e~~ F) A notice of completion shall be prepared by the city engineer and filed by the city clerk in the office of the county recorder on all work performed for the city by contract in a public right-of-way, the total contract price of which exceeds two thousand dollars ($2,000).

Section 3. That Section 29-23 of the Tempe City Code is hereby amended to read as follows:

Sec. 29-23. Signs, other advertising structures in right-of-way.

No lights, banners or advertising structures shall be placed within, upon or across a public right-of-way, except by permit OR LICENSE granted upon application to the city engineer. Signs placed outside of the public right-of-way and near thereto shall not encroach upon the right-of-way, except as provided by the sign encroachment diagram incorporated by reference in this article, and on file with the city clerk, entitled "Right-of-Way Sign Encroachment". Such a permit shall be granted upon a showing that the public safety and welfare will not be endangered thereby.

Section 4. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

This _____day of November, 2008.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney