

Memorandum



CITY OF DALLAS

Date: February 8, 2013

To: Quality of Life Committee: Angela Hunt (Chair), Sandy Greyson (Vice Chair),
Mónica R. Alonzo, Dwaine Caraway, Carolyn R. Davis

Subject: Streetscape Licenses Briefing

On Monday, February 11th, you will be briefed on potential revisions to Chapter 43, "Streets and Sidewalks," of the Dallas City Code to permit streetscape amenities in the public right-of-way. A copy of the briefing is attached. Please contact Theresa O'Donnell at 670-4127 should you have any questions.

A handwritten signature in blue ink, appearing to read 'Ryan S. Evans'.

Ryan S. Evans
Assistant City Manager

cc: Honorable Mayor and Members of the City Council
Mary K. Suhm, City Manager
Thomas P. Perkins, Jr., City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel Solis, Administrative Judge
A.C. Gonzalez, First Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest E. Turner, Assistant City Manager
Joey Zapata, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Theresa O'Donnell, Director, Sustainable Development and Construction
Stephanie Cooper, Assistant to the City Manager

Streetscape Licenses

Quality of Life Committee
February 11, 2013



Purpose

- Discuss use of public right-of-way for streetscape improvements
- Present possible amendments to Chapter 43, “Streets and Sidewalks” as it relates to permitting certain street amenities in the right-of-way
- Identify next steps

Background

- Current approaches in utilizing right-of-way for landscaping and/or streetscape improvements
 - License Ordinances
 - MOWmentum program agreements

Background

- Public right-of-way is held in trust by municipalities for the public
 - Cities do not always “own” public right-of-way
 - They do, however, have control and authority over rights-of-way
- Dallas City Charter Chapter XIV, Section 10 requires an ordinance approved by City Council for licenses of private use of public right-of-way
- Section 43-112 of the Dallas City Code allows a person or entity to apply for a license to use public right-of-way for certain surface, subsurface and aerial “private” uses

Background

- Most common license uses:
 - Landscaping and appurtenant irrigation systems
 - Sidewalk cafes
 - Awnings/canopies
 - Signs and monuments
 - Subsurface communication cables
 - Pedestrian tunnels
 - Aerial walkways

Background

- Last amendment was in December 2009
- CC approved Right-of-Way License Revisions
 - 5-year pilot program became permanent
 - Reduced license fees for certain right-of-way uses by HOA's and residential communities
 - Established one-time license fees for commercial and business enterprises for some types of streetscape improvements
 - Retained license fees for commercial and business communities for other streetscape improvements
 - Established an annual license fee for awnings and canopies with a premise sign

Place-making Focuses on Use of Public Areas



Pedestrian-scaled lighting

On-street parking

Planting area

Street trees

Outdoor dining

Wide sidewalk

Active storefronts

Wall sign

Mixed use building pulled up to the street

License

- Annual fees to use the public right-of-way are provided by Section 43-115 of the Dallas City Code
 - Fees are based on the per square foot value (DCAD) of the area to be used.
 - Minimum License Fee is \$1,000 or calculated in accordance with one of the following formulas (whichever is greater)
 - Surface Use: $\text{area} \times \text{market value} \times 85\% \times 12\%$
(maximum fee of \$2,500 for a sidewalk café)
 - Subsurface Use: $\text{area} \times \text{market value} \times 30\% \times 12\%$
 - Air Rights: $\text{area} \times \text{market value} \times 85\% \times 85\% \times 12\%$
(Including awnings and canopies with premise sign)

License

- Exceptions to the annual fee requirement are outlined in Section 43-115.1. It allows for special “one-time” fees to be charged for particular uses.
 - Landscaping and appurtenant irrigation systems: \$1,000 – one-time fee
 - Awnings and canopies without premise sign: \$1,000 – one-time fee per awning or canopy
 - Subdivision sign - \$1,000 – one-time fee per sign
 - Streetscape amenities - \$5,400 – one-time fee
 - Streetscape improvement projects - including, but not limited to, landscaping as part of a streetscape improvement project, planters, crosswalk texturing and coloring, artwork, lighting, benches, and trash receptacles

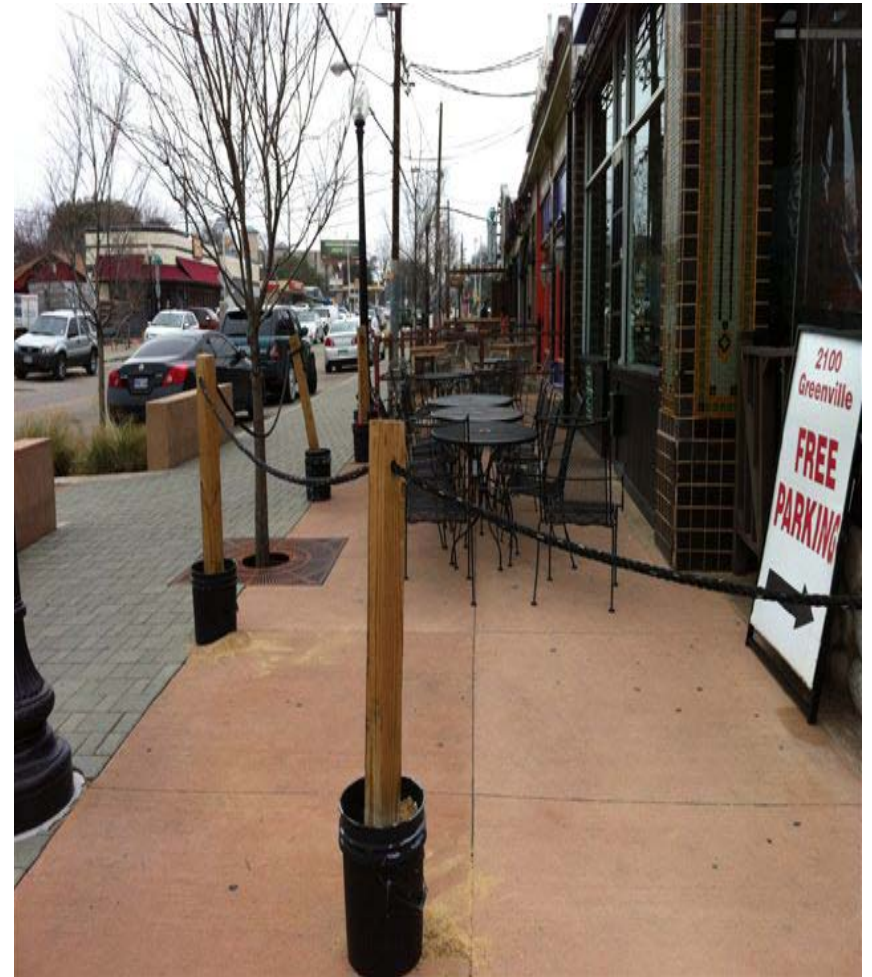
Bishop Arts



Bishop Arts (Cont'd)



2100 Greenville Avenue



License Fee History

License Type	Prior to March 24, 2004	Mar 2004 – Dec 2009	Dec 2009 – Present	Proposed Permit Program
Awning/Canopy	Annual Fee - Air rights formula or the Minimum fee of \$1,000 – whichever is greater	One-Time Fee - \$1,000 per awning /canopy	\$1,000 One-Time Fee per awning/canopy - <u>without</u> premise sign With premise sign: Annual Fee -Air rights formula or the Minimum fee of \$1,000 – whichever is greater	No License Fee required. Application/recording fee - \$1,000 plus Cash or Surety Bond required for removal of improvements
Sidewalk Café	Annual Fee – Surface use formula or Minimum fee of \$1,000 – whichever is greater	Annual Fee - Surface use formula or Minimum fee of \$1,000 – whichever is greater <u>(maximum fee of \$2,500)</u>	No change	No License Fee required Application/recording fee - \$1,000 plus Cash or Surety Bond required for removal of improvements

License Fee History (Cont'd)

License Type	Prior to March 24, 2004	Mar 2004 – Dec 2009	Dec 2009 – Present	Proposed Permit Program
<ul style="list-style-type: none"> Landscaping and appurtenant uses Subdivision Sign 	Annual Fee - Surface rights formula or the Minimum fee of \$1,000 – whichever is greater	One-Time Fee - \$1,000	No change	<p>No License Fee required.</p> <p>Application/recording fee - \$1,000 plus Cash or Surety Bond required for removal of improvements</p>
Streetscape Improvements	Annual Fee - Surface use formula or the Minimum fee of \$1,000 – whichever is greater	NO change	One-Time Fee - \$5,400	<p>No License Fee required.</p> <p>Application/recording fee - \$1,000 plus Cash or Surety Bond required for removal of improvements</p>

MOWmentum Program

- MOWmentum Program is maintained by the Street Services Department
 - Allows homeowner associations, businesses and individuals the opportunity to adopt portions of public rights-of-way for the purposes of maintaining and improving the property (i.e. landscaping).
 - Rights-of-way include medians, triangles, circles and curb extensions.

Issues

- ❑ Current license fees can be considered a barrier by some potential users
 - Downtown and other entertainment area entrepreneurs are seeking to encourage street life
 - Enclaves of restaurants and shops spurring revitalization of urban neighborhoods
- ❑ Small percentage of default on license fee obligations

Issues

- Landscape, streetscape and sidewalk cafés enrich the city environment. Promoted through Complete Streets Initiative, TOD mixed-use developments, and sustainability projects.
- Sound argument for allowing developers to provide these amenities for no fee.

Issues

- ❑ Counter argument is that abutting owners reap financial benefit, especially from street cafes, signs, and parking uses.
- ❑ From this perspective, the City should be compensated for the private use of public-right-of-way.

Potential Policy Change

- State Law, Chapter 316.001 -Transportation Code “Use of Municipal Streets and Sidewalks for Public Conveniences and Amenities” expressly authorizes certain uses of municipal right-of-way
 - Authorizes a permit program for same.

- Chapter 43, “Streets and Sidewalks” of the Dallas City Code could be amended to establish such a permit program for certain uses in the public right-of-way.

Potential Policy Change

- City could continue to regulate but:
 - Charge a reduced fee for potential uses
 - Avail itself of the more streamlined permit process
- Implementing such change would impact General Fund through loss of license revenue
- City staff would still process applications to ensure the proposed uses of right-of-way are safe, legal, and desirable

Potential Permitted Uses

- ❑ Decorative landscaping, including landscaping lighting, tree grates, watering systems, or other accessories for the maintenance of trees or landscaping.
- ❑ Sidewalk cafe that is contiguous to a restaurant and open to the air, and not enclosed by fixed walls.
- ❑ Subdivision sign that may also have an ornamental arch column, wall or other ornamental work denoting the entrance to a subdivision.
- ❑ Awning or canopy without a premise sign.
- ❑ Structural or decorative feature of a building that is of historical value or of an unusual architectural design, character, or significance; and 50 or more years old at the time of application for a permit.

Potential Permitted Uses (Cont'd)

- ❑ Trash Receptacle
- ❑ Bench
- ❑ Drinking Fountain
- ❑ Light Fixture
- ❑ Sandwich board sign
- ❑ Transit passenger shelter
- ❑ Bicycle Parking
- ❑ Planters
- ❑ Stands for sale of merchandise

General Fund Impact

- Total license revenue received (2012): \$1.6M
- Projected loss of revenue: \$315K

Chapter 43 Amendment

- Possible Amendment to Chapter 43, “Streets and Sidewalks”:
 - Section 43-157. Permits for Street Amenities
 - Similar to existing provisions for bike racks and valet stands
 - Provide for a revocable, non-exclusive license granted to owners abutting right-of-way or tenants (with consent) authorizing certain uses of the abutting right-of-way.
 - Permit required prior to installation or use of amenities

Chapter 43 Amendment

- Permit Program
 - Permit application
 - Metes and bounds description
 - Indemnity Agreement
 - Payment of application fee of \$1,000 (recommended)
 - Staff recovery costs
 - Filing of Indemnity

Chapter 43 Amendment

- Permit Program (cont'd)
 - Application routed to all affected departments for review and approval
 - Cash or surety bond required (new feature, not currently a part of license process)
 - Reimburse costs of City or Utility if amenities have to be removed
 - Commercial General Liability Insurance required
 - Residential Communities allowed to obtain Commercial General Liability Insurance through the homeowners' association insurance program administered by City of Dallas Risk Management

Chapter 43 Amendment

- Permit Program (Cont'd)
 - Permit Holder to follow construction, operation and maintenance requirements
 - Permits can be transferred to new owners or tenants
 - Permit terminable by written notice if necessary
 - Amenities must be removed within 30 days after notice
 - Penalty for failure to obtain permit

Next Steps

- Committee guidance is requested on potential changes to the current policy.