

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, AMENDING CHAPTER 70, “STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES,” BY ADDING ARTICLE VI “USE OF STREETS AND SIDEWALKS” REQUIRING [add additional language upon finalizing text amendment].

WHEREAS, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council finds the unregulated use of use of City streets, sidewalks, and other rights-of-way can be a detriment to the health, safety and general welfare of the City and its citizens, as such use is not permitted and inadequately planned, so that provisions are not made for adequate pedestrian protection, traffic control, access, and maintenance; and

WHEREAS, the City Council desires to allow for amenities for the convenience of the public in the use of municipal streets for pedestrian travel, including seating available for any member of the public to use; and

WHEREAS, the City Council desires to set forth a framework for processing requests to use the municipal streets, and generally prescribe the terms and conditions for the use of municipal streets or sidewalks for private purposes; and

WHEREAS, the City Council desires to add Article VI, “Use of Streets and Sidewalks,” to Chapter 70, “Streets, Sidewalks, and Public Places,” of the Code of Ordinances to regulate the use of streets, sidewalks, and other rights-of-way as provided herein; and

WHEREAS, the City Council further finds that the provisions set forth in this ordinance are for the benefit of the health, safety and general welfare of the City and its citizens; and

WHEREAS, the City Council finds that the provisions set forth in this ordinance are in the best interest of the citizens of the municipality, for a public purpose, for the good government, peace, and order of the municipality, and for the trade and commerce of the municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS:

**SECTION 1
AMENDMENT**

That Chapter 70 of the Burleson Code of Ordinances is hereby amended by adding Article VI “Use of Streets and Sidewalks,” to read as follows:

“ARTICLE VI. USE OF STREETS AND SIDEWALKS

Sec. 70-190. - Definitions.

When used in this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person who has filed a formal written application with the City for the purpose of obtaining a Right-of-Way Use Agreement.

City means the City of Burleson, Texas.

City Engineer means the city engineer of the City.

City Manager means the city manager of the City.

Director means the director of the City’s Development Services department.

Municipal Street means the entire width of a way held by the City in fee or by easement or dedication for public use for vehicular travel, whether or not the street has a part open. The term does not include a designated state or federal highway or road or a designated county road.

Old Town Development Standards Review Committee means the committee created in Division 5 “Burleson Old Town Development Standards Review Committee” in Article IV of Appendix C of the City of Burleson Code of Ordinances.

Old Town District means the defined area set forth in Section 100 “OT, old town overlay district” of Appendix “B” of the City of Burleson Code of Ordinances and shown on the zoning district map for the City.

Public Parking means part of a Municipal Street that is not part of the Roadway or Sidewalk, and is improved, designed, or ordinarily used for or associated with the parking of vehicles. The term does not include any portion of a designated state or federal highway or road or a designated county road.

Right-of-Way Use Agreement means the agreement entered into by the City and Applicant for use of the Municipal Street in accordance with this article.

Roadway means the portion of a Municipal Street that is improved, designed, or ordinarily used for vehicular travel. The term does not include a curb, berm, or shoulder.

Sidewalk means the portion of a Municipal Street between the curb lines or lateral lines of a roadway and the adjacent property lines that is improved and designed for or is ordinarily used for pedestrian travel.

Sidewalk Café means an outdoor dining area that: (a) is associated with a property that includes a restaurant or a food sales use, (b) is located on a Sidewalk or Public Parking adjacent to and within the span of the façade of the property described in Subsection (a); and (c) contains seating, tables, chairs, planters, or other appurtenances.

Sec. 70-191. – Right-of-Way Use Agreement Authorized.

- (a) The City shall enter into Right-of-Way Use Agreements to use the Municipal Street for public or private amenities in accordance with this article.
- (b) The granting of the use of a Municipal Street pursuant to a Right-of-Way Use Agreement under this article is not a property right.
- (c) Nothing in this article shall be construed as giving an Applicant the right to receive a permit to use a Municipal Street, even if the Applicant meets all of the minimum requirements set forth herein. The City reserves the right to enter into any Right-of-Way Use Agreement for the benefit of its citizens pursuant to its absolute and uncontrolled discretion.

Sec. 70-192. – Authorized Applicant.

Only the owner or tenant of real property adjacent to where the proposed use is to occur may apply to enter into a Right-of-Way Use Agreement to use the Municipal Street for public or private amenities.

Sec. 70-193. – Application.

- (a) The application for a Right-of-Way Use Agreement shall include, at a minimum, the following:
 - (1) The name, address, e-mail address and telephone number of the Applicant.
 - (2) If the Applicant is the fee title owner of the property adjacent to the Municipal Street, a copy of the deed or other document evidencing ownership.
 - (3) If the Applicant is not fee title owner of the property adjacent to the Municipal Street, a copy of the current written lease agreement with the fee title owner of the adjacent property.
 - (4) The type and purpose of the proposed use of the Municipal Street.
 - (5) A schematic design or site plan of the area to be used or, at the City Manager’s or City Manager’s designee’s request, a certified design completed by an architect or engineer. The schematic design or site plan must show the facility details and/or cross section of the private facilities to be placed in the Municipal Street, and vertical alignment of existing, if any, and proposed facilities must be shown. At a minimum, such schematic design or site plan shall be colored architectural or technical renderings that detail any proposed improvements, building materials specifications, height, and coverage.

- (6) The name, address, e-mail address of the adjacent business that would serve the proposed area, if different than the Applicant.
- (7) If loudspeakers are to be used, the location and orientation of those speakers shall be shown on the site plan.
- (8) Whether electrical, mechanical, or plumbing work will be conducted to prepare for the proposed use and, if so, evidence showing how it will be done in accordance with the City's adopted building codes.
- (9) Any other information required by the Director.
- (10) An application fee as established by separate ordinance.

(b) The Applicant must file a written application on a form approved by the Director.

Sec. 70-194. – Right-of-Way Use Agreement Requirements and Restrictions on Uses of the Sidewalk or Public Parking.

- (a) The terms and provisions of a Right-of-Way Use Agreement shall include, at a minimum, the following:
- (1) A provision that the Applicant will solely be responsible for the maintenance of the area of the Municipal Street covered by the agreement.
 - (2) A provision authorizing the City or a public utility to remove, without liability, the amenities allowed under the agreement if necessary to obtain access to a City or public utility facility or improvement.
 - (3) A provision that Applicant pay the cost to relocate a City or public utility facility or improvement in a Municipal Street in connection with the installation of amenities allowed under the agreement, if necessary.
 - (4) A provision that the Applicant will comply with all local, state, and federal laws, including the Americans with Disabilities Act.
 - (5) A provision that the agreement is revocable by the City at any time for any reason.
 - (6) A provision that the Applicant will defend, indemnify, and hold the City harmless against all damages, costs, and expenses resulting from any activity carried out under the terms of the agreement.
 - (7) A provision that the Applicant will provide the City with a cash or surety bond sufficient to cover the cost to the City or public utility to remove the amenities allowed under the agreement, if necessary.
 - (8) A provision that the Applicant must maintain general liability insurance coverage in the amount established by the City Manager to protect the City's interest continuously during the term of the Agreement.
 - (9) If applicable, a provision that the Applicant must maintain liquor liability insurance coverage in the amount established by the City Manager to protect the City's interest continuously during the term of the Agreement.
 - (10) A provision that the Applicant must obtain insurance or bonds through carriers that are authorized to do business in the State of Texas.
 - (11) If the use under the agreement is for a Sidewalk Café, a provision that the Sidewalk Café will be open to any member of the public to use.

- (12) A provision that the Applicant shall remain current on all taxes due to the City, subject to the Applicant's appeal rights under law.
 - (13) A provision that the Applicant shall not bring, store, or keep hazardous materials to the area of the Municipal Street covered by the agreement.
 - (14) A provision prohibiting the assignment of the agreement.
- (b) No Right-of-Way Use Agreement shall allow for use of the Sidewalk that reduces the unobstructed use of the Sidewalk for pedestrians to less than six feet.
- (1) Overhangs above the Sidewalk may be allowed so long as the overhang is of a sufficient height as to not interfere with the pedestrian use of the Sidewalk.
- (c) No Right-of-Way Use Agreement shall allow for the use of the Roadway.
- (d) The term of a Right-of-Way Use Agreement shall not exceed five years.

Sec. 70-195. – Application Review.

- (a) The Director or the Director's designee shall deliver copies of the application to the following for comment: (1) the City Engineer, (2) affected City departments, (3) affected utility franchise holders, and (4) property owners and tenants whose property or businesses are immediately adjacent to the proposed area. Comments for the various parties will be requested to be received within twenty calendar days of receipt.
- (b) Not later than the thirtieth calendar day after receipt of the application, the Director or the Director's designee will make a report based on the requirements of Chapter 316 of the Texas Transportation Code and the comments received by Subsection (a)(1) above.
- (c) The Director or the Director's designee shall deliver his report to the parties specified in Section 70-196 below based on the location of the Municipal Street described in the application.

Sec. 70-196. – Findings and Determination.

- (a) The person or body charged with making the requisite findings and determination regarding an application and whether the City should enter into a Right-of-Way Use Agreement depends on the location of the Municipal Street described in the application.
 - (1) *Municipal Streets in Old Town.* Applications for a Right-of-Way Use Agreement for a Municipal Street located in the Old Town District shall be considered by the City Council at a duly called meeting after receiving comments from the Old Town Development Standards Review Committee.
 - (2) *Sidewalks and Public Parking Outside of Old Town.* Applications for a Right-of-Way Use Agreement for the Sidewalk or Public Portion of the Municipal Street located outside of the Old Town District shall be considered by the City Council at a duly called meeting.

(3) *Portions of Municipal Streets Other than Sidewalks and Public Parking Outside of Old Town.* Applications for a Right-of-Way Use Agreement for portions of Municipal Streets other than Sidewalks and Public Parking outside of the Old Town District shall be considered by the City Manager or the City Manager's designee.

(b) *Review by the Old Town Development Standards Review Committee.* The committee shall meet and conduct business under the same requirements as set forth in Section 4-95 of Appendix C of the City's Code of Ordinances. In addition to its other duties and functions set forth in the City's Code of Ordinances, the committee is hereby charged with the duty and invested with the authority to:

- (1) Review and comment on all proposed applications for a Right-of-Way Use Agreement for a Municipal Street located in the Old Town District. Specifically, on the compatibility of the proposed amenity's or use's design with the Burleson Old Town Design Standards as codified in Article IV (Old Town Design Standards), Appendix C (Urban Design Standards) of the City of Burleson Code of Ordinances.
- (2) At its discretion, recommend modifications to the proposed design or use set forth in the application.
- (3) Forward all comments on an application to the City Council.

Comments and recommendations of the committee do not constitute approval by any authority and do not constitute permission to enter into a Right-of-Way Use Agreement.

(c) *City Council Consideration of Applications Concerning Municipal Streets in Old Town.* After receiving and reviewing the comments received from the Director and the Old Town Development Standards Review Committee, the City Council shall review the application and the City may enter into a Right-of-Way Use Agreement with the Applicant concerning a Municipal Street in the Old Town District only if the City Council finds:

- (1) The proposed amenity or use is not located on, extend onto, or intrude on a portion of the Roadway or a Sidewalk necessary for pedestrian use;
- (2) The proposed amenity or use does not create a hazardous condition or obstruction of vehicular or pedestrian traffic on a Municipal Street;
- (3) The proposed amenity or use is planned to minimize potential harm or injury to the public or interference to public use of a Municipal Street;
- (4) The proposed amenity or use does not interfere with the public use of the street or Sidewalk; and
- (5) The proposed amenity or use does not create a dangerous condition on the street or Sidewalk.

(d) *City Council Consideration of Applications Concerning Sidewalks and Public Parking Outside of Old Town.* After receiving and reviewing the comments received from the Director, the City Council shall review the application and the City may enter into a Right-of-Way Use Agreement with the Applicant concerning Sidewalks and Public Parking outside of the Old Town District only if the City Council finds:

- (1) The proposed amenity or use is not located on, extend onto, or intrude on a portion of the Roadway or a Sidewalk necessary for pedestrian use;
- (2) The proposed amenity or use does not create a hazardous condition or obstruction of vehicular or pedestrian traffic on a Municipal Street;
- (3) The proposed amenity or use is planned to minimize potential harm or injury to the public or interference to public use of a Municipal Street;
- (4) The proposed amenity or use does not interfere with the public use of the street or Sidewalk; and
- (5) The proposed amenity or use does not create a dangerous condition on the street or Sidewalk.

(e) *City Manager Consideration of Applications Concerning Portions of Municipal Streets Other than Sidewalks and Public Parking Outside of Old Town.* After receiving and reviewing the comments received from the Director, the City Manager or designee shall review the application and the City may enter into a Right-of-Way Use Agreement with the Applicant concerning portions of Municipal Streets other than Sidewalks and Public Parking outside of the Old Town District only if the City Manager or City Manager's designee finds:

- (1) The proposed amenity or use is not located on, extend onto, or intrude on a portion of the Roadway or a Sidewalk necessary for pedestrian use;
- (2) The proposed amenity or use does not create a hazardous condition or obstruction of vehicular or pedestrian traffic on a Municipal Street;
- (3) The proposed amenity or use is planned to minimize potential harm or injury to the public or interference to public use of a Municipal Street;
- (4) The proposed amenity or use does not interfere with the public use of the street or Sidewalk; and
- (5) The proposed amenity or use does not create a dangerous condition on the street or Sidewalk.

(f) *Execution of the Right-of-Way Use Agreement.* If a Right-of-Way Use Agreement is approved in accordance with Subsections (c), (d), and (e) above, the City Manager may execute the Right-of-Way Use Agreement on behalf of the City; however, the City Manager shall not execute the agreement until the Applicant has executed the agreement and provided proof of insurance as required by the agreement.

Sec. 70-197. – Exception for City Uses.

This article does not apply to the City's use of a public street or real property held by the City.

Sec. 70-198. – Agreement Required.

(a) A person may not keep a public or private amenity in a Municipal Street without a Right-of-Way Use Agreement.

- (b) A person may not operate a Sidewalk Café in a Municipal Street without a Right-of-Way Use Agreement.

Sec. 70-199. – Offense and Penalty.

- (a) A person commits an offense if the person establishes, operates, or maintains a public or private amenity in a Municipal Street without a Right-of-Way Use Agreement.
- (b) A person commits an offense if the person establishes, operates, or maintains Sidewalk Café in a Municipal Street without a Right-of-Way Use Agreement.
- (c) An offense under this article is a Class C misdemeanor punishable by a fine not to exceed \$500.”

**SECTION 2.
PENALTY CLAUSE**

Any person, firm, association of persons, company, corporation, or their agents, its servants, or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), and each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in Texas Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

**SECTION 3.
CUMULATIVE CLAUSE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 4.
SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.
RECITALS INCORPORATED**

The findings and recitals set forth above in the preamble of this ordinance are incorporated into the body of this ordinance as if fully set forth herein.

**SECTION 6.
OPEN MEETING**

It is hereby officially found and determined that the meetings at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meetings was given as required by law.

**SECTION 7.
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

AND IT IS SO ORDAINED.

PASSED AND APPROVED the _____ day of _____, 20_____.

First Reading: the _____ day of _____, 20_____.

Final Reading: the _____ day of _____, 20_____.

Chris Fletcher, Mayor
City of Burleson, Texas

ATTEST:

APPROVED AS TO FORM:

Amanda Campos, City Secretary

E. Allen Taylor, Jr., City Attorney