

Memorandum



CITY OF DALLAS

Date: November 15, 2013

To: Honorable Members of the Quality of Life & Environment Committee: Dwaine Caraway (Chair), Sandy Greyson (Vice Chair), Rick Callahan, Carolyn Davis, Lee Kleinman, Adam Medrano

Subject: Streetscape Licensing

On Monday, November 18, you will be briefed on potential revisions to Streetscape Licenses. This is a follow-up briefing to a briefing provided to the Quality of Life Committee in June 2013. A copy of the briefing is attached. Please contact David Cossum at 670-4127 should you have any questions or need additional information.

A handwritten signature in black ink, appearing to read 'Theresa O'Donnell'. The signature is fluid and cursive.

Theresa O'Donnell
Interim Assistant City Manager

cc: Honorable Mayor and Members of the City Council
A.C. Gonzalez, Interim City Manager
Warren M.S. Ernst, City Attorney
Rosa A. Rios, City Secretary
Craig D. Kinton, City Auditor
Judge Daniel F. Solis, Administrative Judge
Ryan S. Evans, Interim First Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest E. Turner, Assistant City Manager
Joey Zapata, Assistant City Manager
Charles M. Cato, Interim Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Frank Libro, Public Information Officer
David Cossum, Interim Director Sustainable Development and Construction
Rick Galceran, Director, Public Works
Elsa Cantu, Assistant to the City Manager – Mayor and Council

Streetscape Licensing

Quality of Life Committee

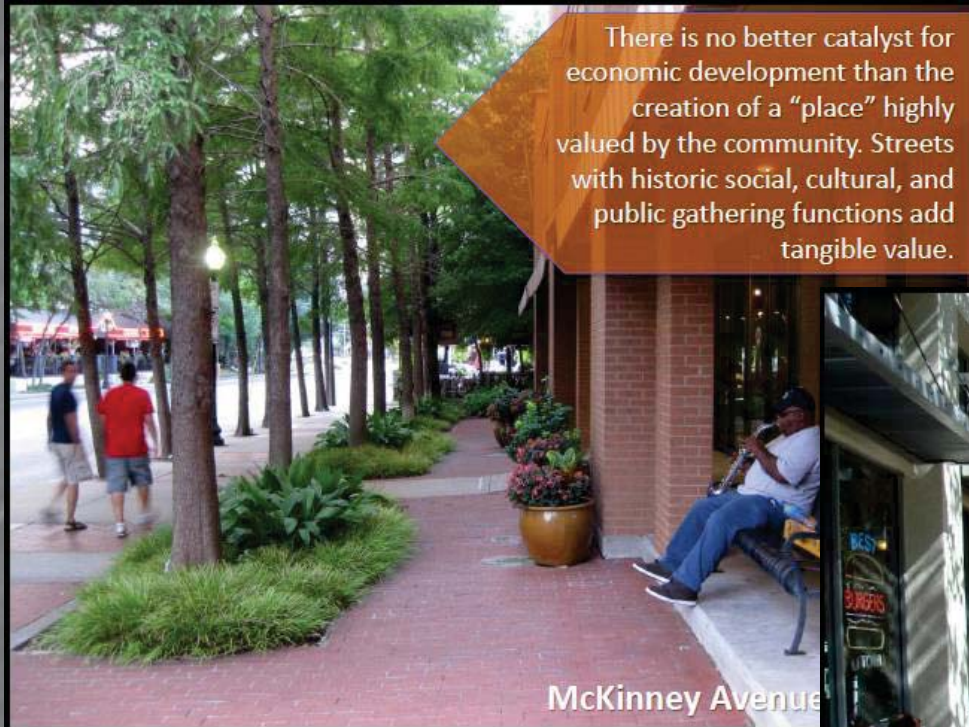
November 18, 2013



Purpose

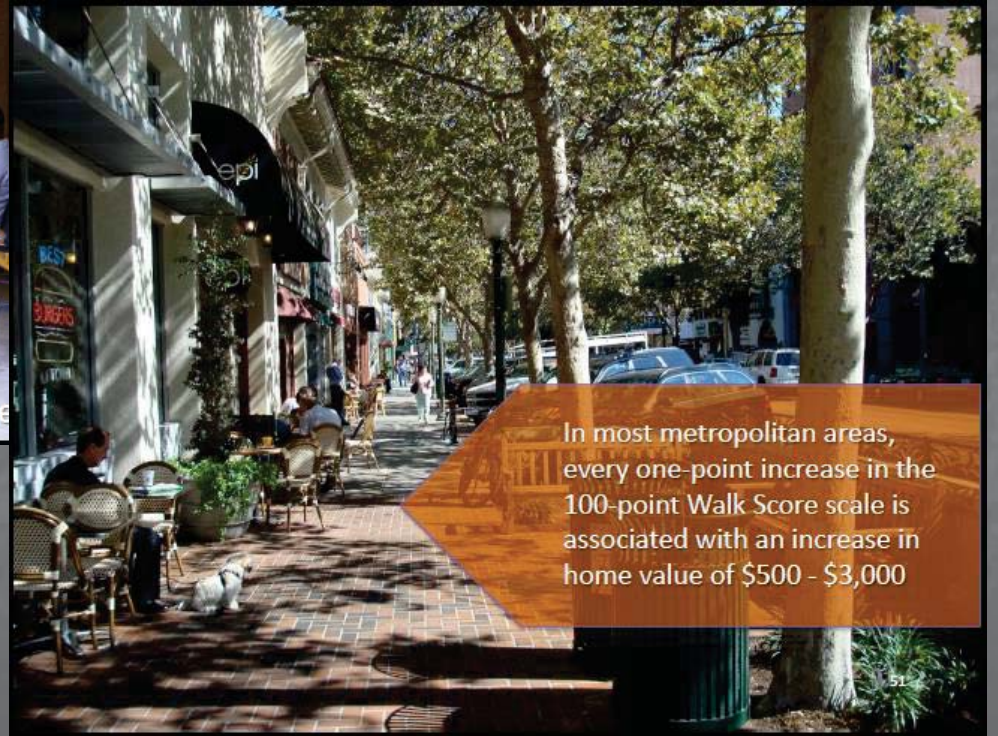
- Follow-up to Committee briefing June 10, 2013
 - Committee requested staff to move forward with reduced fee options
 - Encourage increased use of street amenities
 - Encourage economic development
- Discussion of key concerns

Why Accommodate Use of Right-of-Way?



There is no better catalyst for economic development than the creation of a "place" highly valued by the community. Streets with historic social, cultural, and public gathering functions add tangible value.

McKinney Avenue



In most metropolitan areas, every one-point increase in the 100-point Walk Score scale is associated with an increase in home value of \$500 - \$3,000

Compliments Complete Streets Vision

Examples



Why Licenses Are Required

- Home rule cities hold the right-of-way (ROW) in trust for the public
 - Public has the right of free and full use / passage
 - City may or may not own underlying fee title

Why Licenses Are Required

- Licenses best fit the type of “rights” that can be granted in the right-of-way
 - Right to use; not an interest in land
 - Terminable
 - Non-exclusive
 - Not assignable without consent

Why Licenses Are Required

- State statute (Texas Transportation Code Section 316.001 et seq) provides that:
 - Governing body of city may permit use of ROW
 - For decorative landscaping, sidewalk cafés, ornamental features and street amenities (like benches, water fountains, bus shelters, planters)
 - To abutting owner of underlying fee title or tenant with permission to use

Why Licenses Are Required

- State statute provides that Governing body must find that:
 - Encroachment into roadway or part of sidewalk is not needed for pedestrian use
 - Encroachment will not create a hazardous condition or obstruct travel
 - Design and location of encroachment includes reasonable planning to minimize potential injury and interference

Why Licenses Are Required

- Dallas City Charter and Article VI, Sec. 43 of the Code require license:
 - Be granted by Council ordinance
 - To abutting property owners
 - Not be inconsistent with or unreasonably impair public use
 - City retaining right to terminate as necessary

Why Licenses Are Required

- Enables staff to perform due diligence required by State and City statutes
 - Confirms grant to appropriate party
 - Location and coordination with other uses in ROW (especially utilities)
 - Insurance protection of public & City
 - Indemnification and defense of City
 - Confirm no hazards, interference, obstructions, etc.
 - Removal from and restoration of ROW upon termination

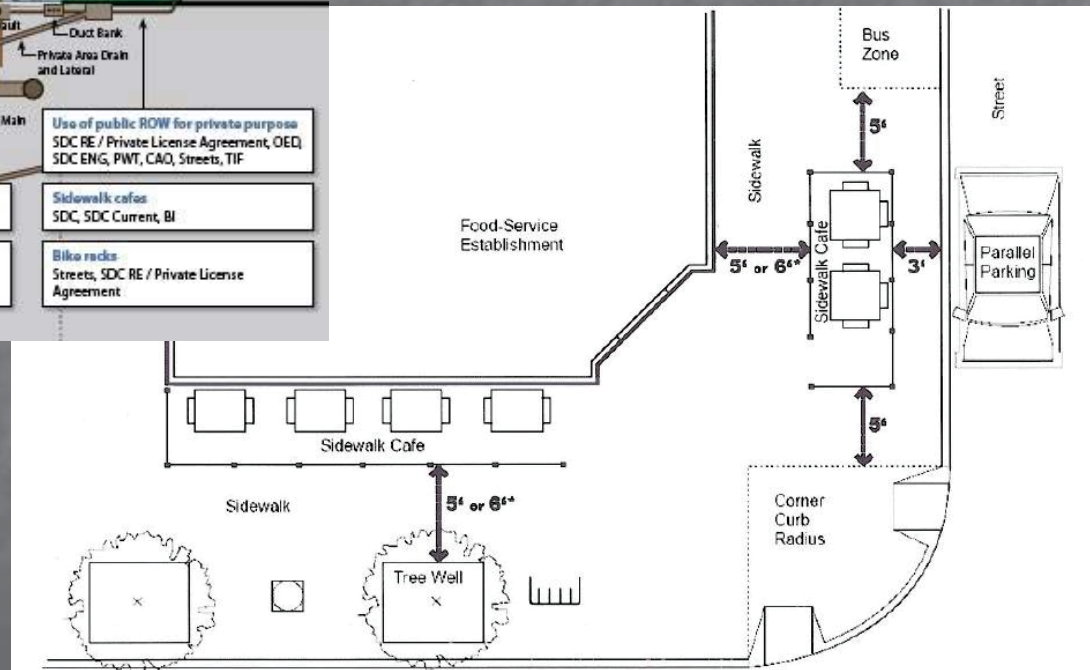
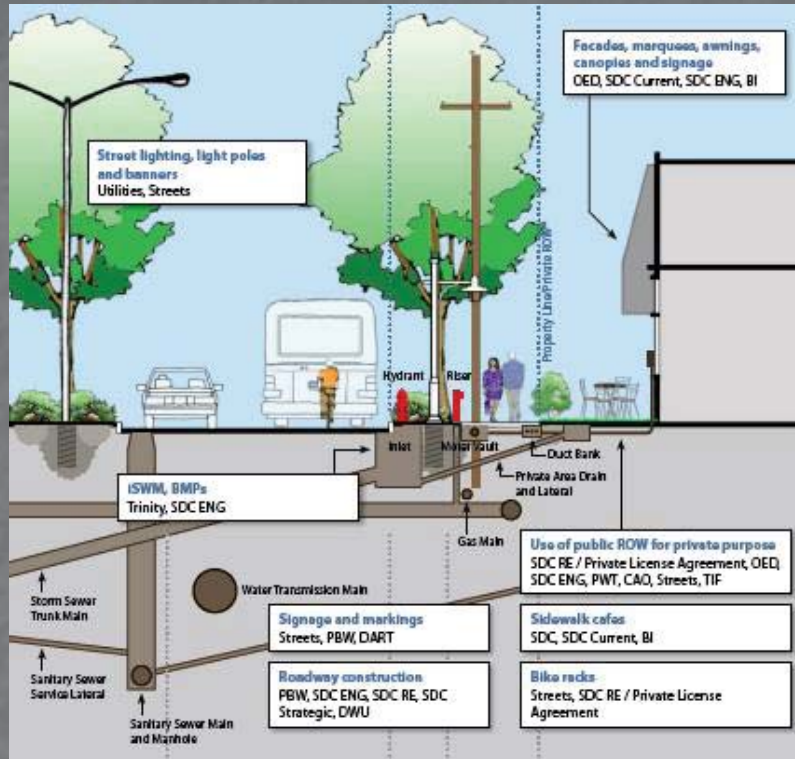
Current Process

- Applicant submits request along with:
 - \$750 non-refundable application fee
 - Field notes describing licensed area and drawings showing proposed use
 - Deed showing ownership, or tenant lease
 - Written concurrence of abutting owners

Current Process

- City routes request to departments and outside agencies / utilities for review and approval
 - Any concerns must be addressed by applicant
 - If concerns cannot be resolved, license does not progress
- License fee determined through formula based on assessed value or one-time fee
- Request submitted to City Council for authorization by ordinance

Typical Review Considerations



Key Concerns



Accessibility and sidewalk clearance



Key Concerns



Some design elements could diminish visual attributes of the public realm

Durability

Detectability for Visually Impaired



Why Fees are Charged

- Texas Constitution prohibits gifts of public funds exclusively for private benefit
 - There must be a definite public benefit to City articulated

Why Fees are Charged

- Fees pay for staff time and resources spent discussing requests with applicants, viewing details of proposed sites in the field, reviewing field notes and designs to ensure compliance, drafting legal documents and preparing agenda items for City Council consideration
- Based on existing workload and fees, annual license revenue into General Fund currently funds these FTEs at \$230,000

Committee Direction: Café Sliding Scale; \$250 for One-Time Fees

		Assumes Equal Requests for Café Sizes				
	One-Time Streetscape License Fee:	ANNUAL Sidewalk Café Max. 3 Tables and 6 Chairs	ANNUAL Sidewalk Café Max. 6 Tables And 12 Chairs	ANNUAL Sidewalk Café 7+ Tables and 13+ Chairs	Potential Combined One-Year Revenue Cafes & One-time (Rounded)	Annual Projected Streetscape Revenue
	\$250	\$300	\$600	\$1,000		
Based on Current Volume:	\$15,000 (59 streetscape elements)	\$22,800 36 total cafes (12 of each size café)			\$39,000	\$201,000
Projecting a 25% Increase:	\$21,000 (74 streetscape elements)	\$28,500 45 total cafes (15 of each size café)			\$50,000	\$212,000

Three Fee Approaches:

- **Market-Based – past model**
 - Until 2007, calculation based on assessed value
 - State law allows municipalities to receive market value (more than cost recovery)
- **Cost-Recovery – current model**
 - In 2009, reduced fees based on pilot program
 - FY 13-14 Fee Study to include Real Estate license fees
- **Public Subsidy – model under consideration**
 - Committee direction from June 2013
 - Encourage public amenities and Complete Street goals while meeting regulatory requirements

Budget Implications

Assuming 25% Increase in Applications

- Reduced fees with 25% increase in applications have potential to result in:
 - Revenue reduction
 - Current streetscape revenue: \$315,000
 - Potential revenue with reduced fees and sliding scale for sidewalk cafés: \$212,000
 - Reduction in annual revenue of \$103,000
 - Increased workload
 - May have staffing and associated cost implications to the General Fund in addition to any lost revenue

Next Steps

- Revise City Code to allow two-year trial period of the following:
 - One-time license fees of \$250 (vs. \$1,000)
 - Sidewalk café fees to a sliding scale based on number of tables / chairs of \$300 to \$1,000 (vs. formula determination based on square feet and appraised value, up to a maximum of \$2,500)
- Monitor impact of trial period on revenues and expenditures for upcoming budget year

Recommended Next Steps

- Establish and implement Sidewalk Café Design Standards
 - Ensure accessibility and conformance with ADA
 - Ensure adequate sidewalk clearance for pedestrian traffic volumes at a particular location
 - Minimize conflicts with other uses of the right-of-way (i.e. bus shelters)
 - Ensure design that enhances streetscape
 - Ensure durability of proposed improvements

Recommended Next Steps

- Survey all existing sidewalk cafes and determine which:
 - Are illegal and need to be licensed or terminated
 - Meet design requirements
 - Do not meet requirements and need to be brought into conformance