

City of Scottsbluff, Nebraska

Monday, May 5, 2014

Regular Meeting

Item Resolut.2

Council to approve the Rules and Regulations for the use of the Right-of-Way in the City of Scottsbluff.

Staff Contact: Annie Folck, City Planner

**RULES AND REGULATIONS FOR APPLICATIONS
AND PERMITS FOR THE USE OF RIGHT-OF-WAY
IN THE CITY OF SCOTTSBLUFF**

These rules and regulations shall apply to all City owned lands and public rights-of-way, sidewalks, streets, alleys, and parking lots ("lands or right-of-way") located within the City of Scottsbluff ("City").

1. Definitions.

As used in these regulations, the following terms shall mean:

Sandwich board sign. Shall mean any portable sandwich board, hinged sign or other stand-alone sign intended for use upon any public sidewalks, alleys, streets or lands other right-of-way in the City.

Sidewalk. Shall mean any public sidewalk, right-of-way or land located within or directly abutting a City street, but shall not include any portion of a street, alley or public parking lot used for vehicular traffic and/or parking.

Store front. Shall mean a single tract of commercial property fronting upon a sidewalk. In the case of a corner property which contains more than one business establishment, one private usage will be allowed for each business.

2. Sidewalk displays.

(A) The following types of sidewalk displays shall be allowed:

1. Park benches usable by the public of a historic style or such style as is compatible with the identity and theme of the area in which it is located.
2. Decorative plants and planters. Decorative plants and planters may not be used for advertising.

(B) Sidewalk displays shall comply with the following conditions:

1. The area of private display usage must be on the sidewalk, immediately adjacent to the store front and shall not block or impede access to or from doors, emergency exits or fire escapes.
2. Displays must allow a clear sidewalk with not less than five (5) feet for pedestrians between the sidewalk display and any other impediment near the curb side of the sidewalk.

3. Displays, whether in one or more parts, shall be limited to a total length of not greater than ten (10) feet and a total square footage of not greater than thirty (30) square feet, for any single store front.
4. No part of any display may exceed a total height of forty-eight (48) inches.

(C) No sidewalk display may be placed on any sidewalk prior to issuance of a permit in conformity with the following:

1. An application for a permit must be filed with the Planning and Development Department ("Department"), using a form provided by the Department.
2. The application must be reviewed and approved by an Official of the Department.
3. Upon approval of the application and payment of the applicable fees, as are established from time to time by the City in its Municipal Code, the permit shall be issued to the applicant.
4. The permit issued pursuant to these rules and regulations shall remain in full force and effect until 11:59 p.m. on December 31 following the date of issuance.

3. Sidewalk Sandwich board sign permit.

(A) The following types of sidewalk Sandwich board signs may be allowed within the City:

1. Sandwich board signs may be used, subject to design review and approval by the Department of the City.
2. No walking Sandwich board signs are allowed.

(B) Sandwich board signs shall comply with the following conditions:

1. Sandwich board signs may be displayed only during the open hours of the business to which the sign advertises.
2. The Sandwich board sign must be located within the three (3) foot width of sidewalk immediately adjacent to the store front of which the sign advertises and must allow a clear sidewalk width of not less than five (5) feet for pedestrians between the Sandwich board sign and any other impediment near the curb side of the sidewalk.
3. Sandwich board signs shall be limited to a maximum height of forty-eight (48) inches and a maximum width of thirty-six (36) inches in order to maintain visibility for pedestrians.
4. Only one Sandwich board sign is allowable per store front.

(C) No Sandwich board sign may be placed on any sidewalk prior to the issuance of a permit in conformity with the following:

1. An application for a permit, including a photo or detailed drawing of the Sandwich board, must be filed with the Department, using a form provided by the Department.
2. The application shall be reviewed and approved by an Official of the Department.
3. Upon approval of the application and payment of applicable fees, as established by the City, the permit shall be issued to the applicant.
4. A permit issued pursuant to this subsection shall remain in full force and effect until 11:59 p.m. on December 31 following the date of issuance.

4. Sidewalk cafes

(A) The following types of sidewalk cafes may be allowed:

1. All sidewalk cafes shall function in conjunction with and adjacent to an operating restaurant or coffee shop and shall not exceed the width of the restaurant or coffee shop store front.
2. Sidewalk cafes may be bordered with removable bollards with connecting ropes or chains to define the perimeter; however, bollards, ropes, chains, tables, storage units, and any other equipment and furnishings must be removable and stored in a manner that will not impede pedestrians or their movement on the sidewalk, as determined solely by an Official of the Department.
3. All sidewalk cafes shall have and maintain at all times, in full force and effect, all applicable health, food and drink permits and all licences required by law.

(B) Sidewalk cafes shall comply with the following conditions:

1. Sidewalk cafes may occupy only the area of private usage on the sidewalk immediately adjacent to the store front to allow for safe pedestrian travel and as set forth by the City in the application for a permit.
2. The owner and/or operator of a sidewalk café is responsible for maintaining a clean sidewalk café area during business hours and at the close of each operating business day.
3. Sidewalk cafes must allow a clear sidewalk width of not less than five (5) feet for pedestrians between the perimeter of the sidewalk café area and any other impediment near the curb side of the sidewalk.

4. Sidewalk café and furniture must be removable, durable and attractive and maybe stored in the café area outside of operating hours if it is stored so that it does not impede pedestrians and does not appear unkept or become a nuisance.
5. Sidewalk cafes must file and maintain at all times during operation on sidewalks, proof of liability insurance with the Department in an amount of not less than one million (\$1,000,000) per person per occurrence.

(C) No sidewalk café may be operated or located on any sidewalk prior to issuance of a permit in conformity with the following:

1. The application for a permit must be filed with the Department, using a form provided by the Department.
2. The application shall be reviewed and approved by an Official of the Department, in conjunction with the Scottsbluff Fire Department and Scottsbluff Police Department.
3. Upon approval of the application and payment of applicable fees, as are established by the City, the permit shall be issued to the applicant. The fee shall not be subject to proration or refund irrespective of the date of issuance or surrender.
4. The permit issued pursuant to this subsection shall remain in full force and effect until 11:59 p.m. on December 31 following the date of issuance.

5. License Agreement for permanent fixtures.

(A) In the event any person obtains a permit to occupy or obstruct any portion of any street, alley, sidewalk, easement, or other public right-of-way or lands owned by or under the control of the City, if that use will require placement of fixtures permanently attached to the lands or right-of-way, that person must, in addition to securing a right-of-way permit, agree to enter into a license agreement and pay a processing fee in accordance with the City's fee schedule, which fee shall not be refundable. The procedure for application and review of the request for a license agreement shall be as follows:

1. An applicant or their agent shall file an application and processing fee shall be paid to an Official of the Department on forms to be provided by the City.
2. An Official of the Department shall review the information provided on the application and shall distribute copies of said application to such departments and agencies within the City as may have an interest in or be affected by the proposed use set out in the application for review, and/or recommendations.
3. The application for license agreement shall be approved, unless a department or agency of the City finds that the proposed use and permanent fixtures violates any federal, state or local statute, regulation, ordinance, code, rule, regulation, or policy

or impedes, impairs, diminishes the use of the lands or right-of-way of the City, the public or other person which has a lawful right to and/or occupy said lands or right-of-way.

(B) An Official of the Department, upon receipt of comments and/or recommendations from the aforementioned departments and agencies may approve or disapprove, in whole or in part, an application for license agreement to place fixtures permanently on City lands or right-of-way. The Official of the Department may specify such conditions and terms to be included in the requested license agreement as are necessary and prudent to protect the interest of the City, public, or any person which has a lawful right to use and/or occupy the lands or right-of-way. The Official shall inform the applicant or their agent in writing on any decision disapproving in whole or in part the application for license agreement, said decision to be sent to the address shown on the application.

(C) In the event an application submitted under (A) above is disapproved in whole or in part, the applicant, within fifteen (15) days of the date of the decision by the Official of the Department, may request that the application be placed on the agenda at a regular meeting of the City Council for review and final decision. The request for review shall be made in writing and filed with the Department, along with the appeal fee set out in the City's fee schedule.

(D) This shall not apply to personal property which is not affixed or attached to any real estate except movable buildings or structures.

(E) An owner of an underground sprinkling system encroaching into the public right-of-way on any improvement project that is to receive Federal Transportation funds shall obtain a license agreement subject to the requirements pursuant to these rules and regulations. A processing fee is not required for a license agreement for underground sprinkling systems encroaching into lands or public right-of-way so long as it is in connection with Federal Transportation funded projects.

(F) Underground vault spaces under public sidewalks or buildings constructed prior to 1975, within the City, are maintain solely at the sufferance of the City. The City reserves the authority to require structural upgrades or removal if it is in the interest of public safety.

(G) Any occupancy of lands or public right-of-way granted by the City under this section shall be at the pleasure of the City and shall be limited to the uses or occupancy set forth in these rules and regulations.

(H) All license agreements shall provide:

1. That such use or occupancy is at the licensee's sole risk;
2. The licensee shall waive any claim for damages against the City, its officials, employees, agents and contractors for any damage or injury that may result to the licensee's property within the area occupied pursuant to said license agreement;

3. The licensee shall indemnify and hold the City harmless from and against any and all loss or damage, and any and all claims, demands, suits, liabilities and payments and contract or tort, penal or otherwise, resulting from or in connection with the use or occupancy of lands and public right-of-way pursuant to said license agreement;
4. That such use or occupancy is at the pleasure of the City and may be revoked at any time;
5. Such other conditions as the City deems necessary to protect the interests of the City and the general public's use of the public right-of-way.

6. Suspension or termination of permit.

(A) Any Planning and Development Official may suspend or terminate the permit of any permit holder found to be in violation of any provision of the Scottsbluff Municipal Code or these Rules and Regulations with respect to the permit holder's use and/or occupancy of any part of the right-of-ways, sidewalks, streets, alleys or parking lots within the City.

(B) The Planning and Development Official shall deliver a notice of suspension or termination of permit to the permit holder which states the basis for and evidence underlying the termination or suspension.

(C) Any Planning and Development Official may suspend the permit of any permit holder for not less than one (1) day nor more than seven (7) days for violations. Upon termination of a permit, the permit holder may not reapply for a new permit until after December 31 following the date of issuance of the revoked permit.

(D) Any permit holder aggrieved by suspension or termination of said permit may request a hearing before the City Council at its next regularly scheduled meeting; provided, said request is filed in writing with the Department not less than four (4) business days prior to said meeting.

1. The hearing shall be conducted informally. The permit holder and the Planning and Development Official may present oral or written statements of evidence supporting or opposing the suspension or termination of the permit to the City Council. Presentations by each participant shall be limited to a total time of thirty (30) minutes or less.
2. Upon conclusion of the hearing, the City Council may reverse, modify or affirm the decision of the Planning and Development Official. Written notice of the determination of the City Council shall be given to the permit holder either personally or sent by United States Mail to the address listed on the permit application.

LICENSE AGREEMENT

This License Agreement (“Agreement”) is made by and between the City of Scottsbluff, Nebraska, a Municipal Corporation, hereinafter referred to as “Licensor”, and _____, hereinafter referred to as “Licensee”.

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions under which the Licensee may construct, maintain, repair, and utilize the following described improvement which will infringe upon real estate owned by the Licensor:

To install a sidewalk café enclosed with a three foot tall wrought iron railing system. Licensee must maintain five feet of access for pedestrian walkway from any obstruction, such as posts, tree grades, or flange plates. An 8' vertical clearance above the walkway must be maintained. This Agreement shall pertain to only the area in front of the property at _____.

2. **Description of Real Estate.** The Licensee owns the following described real estate adjacent to Licensor’s real estate to which this Agreement shall apply:

3. **Duties and Risks.** It is understood and agreed that the Licensee may construct, maintain, repair, and utilize the above described improvement at the Licensee’s sole risk. The Licensee hereby waives any claim for damages against the Licensor, its officers, employees, agents, and independent contractors, for any damage or injury that might result to said improvement. If the Licensor, in its sole discretion, determines that any part or all of the improvement must be removed or is damaged by the Licensor, its employees, agents or independent contractors working for Licensor during the course of their employment or duties with the Licensor, Licensee agrees to assume and pay all costs

relating to the replacement or repair of the improvement. The Licensee indemnifies and holds the City harmless from and against all claims arising out of the use or occupancy allowed under this Agreement.

4. Existing Utilities. The Licensee is responsible for locating and coordinating original construction and future maintenance work on the described improvement. No excavation work will be permitted in the area of underground utility facilities until all such facilities have been located and identified to the satisfaction of all parties. The excavation must be done with care in order to avoid any possibility of damage to the utility facility. The Licensee shall be responsible for any and all damage.

5. Restoration of Property. If the construction or maintenance of the improvement identified in paragraph 1 above requires the excavation of earth, removal of hard surfacing, grass, vegetation, landscaping, or any other disruption of the service of the public right-of-way or neighboring property, the Licensee shall restore the surface of the area to the same condition as it existed immediately prior to the Licensee's work in the area.

6. Effective. This License Agreement shall take effect on the date it is executed by the Mayor of the City of Scottsbluff as dated below. It shall continue for an indefinite term or until such time as it is terminated as provided hereinafter.

7. Termination. This Agreement shall terminate upon one or more of the following occurrences:

- (a) The service of written notice of intention to terminate by Licensee and the removal of any improvements infringing upon the City's lands or right-of-way.
- (b) The Licensee's application for a permit to occupy right-of-way, has expired.
- (c) The Licensee's construction or installation of any structure and improvement of any nature upon the real estate owned by the Licensor except that described in paragraph 1 above, or the Licensee's failure to apply for and obtain a permit to alter or make improvement to its property.
- (d) The City may revoke this Agreement at any time.
- (e) Upon the termination of this Agreement, the Licensee shall be required, and hereby agrees, to remove any improvements or fixtures from the Licensor's real estate at its own expense and without cost to the Licensor. Said removal shall occur no later than thirty (30) days after receipt of the notice of intention to terminate or of any occurrences set forth in this paragraph. Should the Licensee fail to do so, the Licensor may remove or cause the removal of any improvements or fixtures from the Licensor's real estate and the Licensee agrees to reimburse the Licensor for all of its costs.

8. Assigns. This Agreement shall be binding upon the parties hereto, their successors and assigns.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties notwithstanding any oral or written agreements to the contrary. This License Agreement shall be amended only in writing and executed by all parties.

10. Law. This Agreement shall be construed in accordance with the laws of the State of Nebraska and the City of Scottsbluff, Nebraska.

Dated: _____

CITY OF SCOTTSBLUFF, a
Municipal Corporation, Licensor,

By _____
Mayor

Attest:

City Clerk

Licensee

State of Nebraska, Scotts Bluff County:

This License Agreement was acknowledged before me on _____, 2014, by
Randy Meininger, Mayor of the City of Scottsbluff, Nebraska, Licensor.

Notary Public

State of Nebraska, Scotts Bluff County:

This License Agreement was acknowledged before me on _____, 2014, by
_____, Licensee.

Notary Public