



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the Urbana City Council

FROM: William R. Gray, P.E., Director of Public Works
Barbara Stiehl, Assistant to the Director

DATE: September 22, 2016

RE: City Council Questions about Access to Curbanas (Parklets) and Sidewalk Cafés

City Council requested information regarding public access to Curbanas and sidewalk cafés. The Curbana program was structured after the City of Urbana's sidewalk café program where access was open to the public. The license holder was allowed to provide table service if they had the appropriate sidewalk café and sidewalk café liquor licenses. The public could not remove open containers of alcohol from the premises nor could they bring open containers of alcohol onto the premises.

From the Curbana License Agreement:

B. Maintenance and Use.

(3) Licensee may not restrict ingress and egress to the Property during the time periods of such license except as needed as to comply with current liquor laws.

This section allows the public to access the City right-of-way which applies to Curbanas and sidewalk cafes. The license agreement is reviewed with potential license holders during the application stage. (For information about policies in other communities, please refer to Access and Advertising in Parklets/Curbside Cafés, which was included under a separate memo.)

ORDINANCE NO. 2016-09-088

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 20, SECTION 20-615

(Advertising on or in a curbana)

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council heretofore has enacted Urbana City Code Section 20-615 to establish minimum requirements for license agreements giving the consent of the City to use City right-of-way for outdoor cafés; and

WHEREAS, the City Council finds that amending said section to authorize advertising on or in an outdoor café licensed pursuant to the City's curbana pilot program will protect the public health, safety, and welfare; and

WHEREAS, the City Council desires to make certain other changes to Section 20-615 to delete obsolete language.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Article VI, "Franchise and License Agreements," Section 20-615, "Consent to license agreements," subsection 12, is hereby amended with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

Sec. 20-615. - Consent to license agreements.

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- (12) Advertising shall be permitted on or in a sidewalk café having a valid city license to operate a curbana or parklet pursuant to the curbana pilot program. No other advertising shall be permitted on or in any sidewalk café except a sandwich board portable sign. Such sign shall not be located in the traveled roadway or block pedestrian traffic and shall be moved indoors daily at the end of business hours. Such sign shall be permitted only in the B-1, B-2, B-3U, B-4, B-4E, or MOR zoning districts and shall not exceed eight (8) square feet in area and four (4) feet in height. If applicable, a scale drawing of the sign shall be included as part of the license agreement.

Section 2.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the Urbana City Council

FROM: William R. Gray, P.E., Director of Public Works
Barbara Stiehl, Assistant to the Director

DATE: September 22, 2016

RE: City Council Request to Consider Signage on Curbanas (Parklets)

Background

The Curbana program began as a pilot program in 2014 with the installation of two parklets--one located in front of the Crane Alley Restaurant, located at 115 West Main Street, and the other in front of the Pizza M Restaurant, located at 208 West Main Street. The City's cost for the materials and construction for both of the Curbana structures was approximately \$25,000. The owners of Crane Alley and Pizza M were charged an annual fee of \$250 each for the Curbana license. The program was structured after the City of Urbana's sidewalk café program where the license holder was not allowed to attach advertisements on the Curbana structure. Sandwich boards were allowed as long as the placement of the boards did not impede public access per current Public Right of Way Access Guidelines (PROWAG). (Section 20-615(12) of the Urbana City Code provides specific guidance for signage.)

Following the first year of the pilot program, Economic Development Division staff conducted a survey of downtown patrons and business owners to determine the viability of the program. Staff reported that most of the survey respondents had positive reactions about the Curbanas and recommended continuing the program.

The next year both of the businesses renewed with their licenses to use the Curbanas. This year (2016), the owner of Pizza M decided not to renew the Curbana license. At that time, the owner of Sipyard, LLC (Matt Cho) asked to move the Curbana to a parking space in front of the Sipyard, located at 204 West Main Street. Recently, Mr. Cho asked to place signage around the railing of the Curbana. Mr. Cho's request was denied since the Curbana license agreement prohibits advertising on the Curbana. (See attached copy of the Curbana license agreement.)

Members of City Council directed staff to look into revising the Curbana license agreement so license holders would be able to attach advertising to the Curbana structure. Attached is a listing of several communities that allow parklets and/or curbside cafés. The listing includes information about public access to those areas and about advertising and signage in the parklet/curbside cafés.

Advantages of Allowing Advertising on or in Curbanas

Increased street visibility

It was mentioned that advertising hung around the Curbanas would provide more visibility for the business from the street. The examples of signage presented by Mr. Cho, which were pictures from sidewalk cafés located in New York City, could either be attached to the Curbana structure or placed on a stand-alone frame. It could be made of an awning/canvas-type or vinyl material, be no taller than the existing structure, and surround three sides of the Curbana area.

Created Sense of Privacy

With the advertising signage surrounding the Curbana, the café area would be screened from the street more than currently is provided.

Connection to the Sidewalk Café and Business

Providing a physical closure around the Curbana with the name of the business on it will help identify the Curbana area with the licensed business adjacent to the Curbana.

Disadvantages of Allowing Advertising on or in Curbanas

Other Communities within the United States

Although parklets or curbside cafés exist in many communities within the United States, staff was unable to find a community that allowed advertising on the exterior of its parklets or curbside cafés. There were some communities that allowed small signs on the sides of the structures that indicated such things as the parklet was a public space, smoking was prohibited, or table service and alcohol were not allowed. Those signs were controlled by the government agency which regulated the right-of-way.

Distraction for Drivers in High Pedestrian Areas

Placing advertising on the street side of the Curbana would draw more attention to the Curbana, but the area's close proximity to vehicular and pedestrian traffic may create an unsafe situation. In downtown Urbana, one Curbana is located close to an intersection controlled by traffic signals; the other Curbana is located near a pedestrian crosswalk.

Use of Public Property for Private Purposes

Under the City of Urbana's current program, individual businesses do have access to public right-of-way, but the areas are considered to be public areas. The Curbanas and sidewalk cafés draw business to downtown Urbana, which provide tax revenue. The businesses do pay to use the structures, but the structures were constructed and purchased with City of Urbana dollars.

Free Speech Restrictions

The City may prohibit signs from being displayed on public property, as long as it does so in a content-neutral manner. "Content-neutral" means the City cannot distinguish between signs based upon the messages they convey. Once the City allows signs to appear on the Curbanas, the City's regulations must be content-neutral, unless there is a compelling reason for the regulation. The City's desire to preserve the aesthetic appeal of the community or to promote traffic safety are legitimate but not compelling reasons to impose content-based sign regulations. However, the City may regulate such aspects of sign display as size, location, lighting, and message display (fixed or changing).

Requests for Advertising in Other Public Areas

Allowing signage in public rights-of-way for Curbanas may bring requests for other types of advertising within public areas. City Council has the ability to restrict the advertising to areas within the Curbana area, but others may question the right of the businesses with Curbana licenses to use public right-of-way for advertising.

May Conflict with Current Accepted Manual for Roadway Signage

The City has adopted the Manual on Uniform Traffic Control Devices (MUTCD) as its standard for installing signage and traffic control devices within the City right-of-way. The type of signage recommended for the Curbanas does not comply with the signage recommendations of the MUTCD. (Part 1 General, Chapter 1A. General, Section 1A.01 Purpose of Traffic Control Devices, “The purpose of traffic control devices, as well as the principles for their use, is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets, highways, bikeways, and private roads open to public travel throughout the Nation.” Section 1A.03 Design of Traffic Control Devices, “Standard: Signs and other devices that do not have any traffic control purpose that are placed within the highway right-of-way shall not be located where they will interfere with, or detract from, traffic control devices. *Guidance: Any unauthorized traffic control device or other sign or message placed on the highway right-of-way by a private organization or individual constitutes a public nuisance and should be removed. All unofficial or non-essential traffic control devices, signs, or messages should be removed.*”

Although the signage is not recommended by the MUTCD, once the signage has been authorized by the City Engineer, the signage becomes authorized signage within the public right-of-way.

Proposed Signage Regulations for Curbanas

If City Council wishes to allow advertising on or in Curbanas, it is recommended that:

- All sides of the signage must be tautly secured by using plastic fasteners that go through grommets on the signs and connect to sturdy, stand-alone frames or connect directly to the Curbana’s frames.
- The signage within the public right-of-way is only allowed on the two Curbanas located in downtown Urbana.
- If the signage shows any signs of disrepair, the signage shall be removed and only be returned to the Curbana when the sign has been repaired or replaced.
- The signage must be maintained in a neat and orderly condition.
- Any graffiti on the signs must be removed promptly.
- The licensee is responsible for the maintenance, installation, purchase and removal of the signage.
- The signage must be made of a non-reflective, non-flammable material.
- The size and placement of the signage shall be limited to the area around the three outside edges of the Curbana. In no case shall the signage protrude above the top of the Curbana railings or hang down below the Curbana flooring.

The attached amendment to Urbana City Code Chapter 20, Section 20-615 is included for Council consideration.

Attachments: An Ordinance Amending Urbana City Code Chapter 20, Section 20-615 (Advertising on or in a curbana)
Curbana License Agreement
Access and Advertising for Parklets/Curbside Cafés

ADMINISTRATION • ARBOR • ENVIRONMENTAL SUSTAINABILITY
ENGINEERING • EQUIPMENT SERVICES • OPERATIONS

AGREEMENT FOR LICENSE
TO USE CERTAIN PORTIONS OF A PUBLIC WAY
(Adjacent to *Address*, Urbana)
BUSINESS NAME

WHEREAS, *Business Name* (hereinafter "Licensee"), desires to utilize a portion of the public right-of-way adjacent to *Address*, Urbana, for movable outdoor furniture and space for the consumption of food and/or beverages.

NOW, THEREFORE, in consideration of the mutual benefits to the parties and the covenants hereinafter stated, the parties do agree as follows:

A. Grant of License. The City of Urbana, Illinois (hereinafter "City") hereby grants to the Licensee, subject to the terms hereinafter set forth, a license for the sole purpose of maintaining movable outdoor furniture and providing space for the consumption of food and/or beverages on the property at the address commonly known as *Address*, Urbana including the adjacent public right-of-way to the extent shown on Exhibit A (attached), the licensed portion of public right-of-way hereinafter called "Property." Said license shall be in effect only during the hours of **Days and Hours of Operation** at *Address*, Urbana. The Public Works Director may limit or modify this license for those dates on which other approved activities may conflict with this use. Said license is given only to the Licensee as a personal privilege and not to any of its successors in interest and may not be transferred voluntarily or involuntarily. All license fees shall be due and payable upon the signing of this agreement.

B. Maintenance and Use.

(1) The Licensee, at its sole expense, shall properly supervise and maintain the Property in a clean, orderly and safe condition and in such a manner as to protect the public health and safety. The Licensee shall use positive action to assure that its use of the Property in no way interferes with sidewalk users or limits their free unobstructed passage. All tables, chairs, umbrellas, and any other objects provided with a Property shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(2) The Licensee shall, at all times hereunder, prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused or permitted by Licensee's use of the Property or by any person's use of the Property during the time periods of said license. Licensee shall retrieve and properly dispose of any debris scattered on to adjacent property caused by any use of the Property under the license, and, additionally, shall maintain its own trash containers upon the Property for disposal of any debris.

(3) Licensee may not restrict ingress and egress to the Property during the time periods of such license except as needed as to comply with current liquor laws.

(4) Licensee shall be strictly responsible that no customer, employee, or other person, be permitted to remove alcoholic liquor from the area designated in the Property license.

(5) Licensee shall not erect, attach or affix any permanent barrier or fixture upon the Property without written approval by the City.

(6) Licensee shall remove or secure all outdoor furniture from the Property during any time period when the license for the Property is not in effect. No furniture or any parts of the Property shall be attached, chained or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant or other public fixture within or near the licensed area. Furnishings may be chained together to prevent theft or damage.

(7) Licensee shall not impede any maintenance activity conducted by the City or impair ingress or egress to the premise of any other person.

(8) Licensee shall not be permitted to use or operate any public address system, or similar device.

(9) Licensee shall be allowed to provide amplified or piped-in music within the permit area during the hours of operation, but no earlier than 11:00 a.m. and no later than 1:00 a.m., so long as such sound otherwise complies with the noise regulations in Chapter 16 of the City of Urbana's Code of Ordinances.

(10) No advertising shall be permitted on or in any Property except a sandwich board: a portable sign that advertises daily specials or sales for a business. Such sign shall not be located in the traveled roadway or block pedestrian traffic, and shall be moved indoors at the end of business hours. Such sign shall be permitted in the B-1, B-2, B-3U, B-4, B-4E, or MOR Zoning Districts, and shall not exceed eight square feet in area and four feet in height. If applicable, a scale drawing of the sign shall be included as Exhibit B (attached).

(11) Should the Licensee breach any section of this paragraph, the City may perform such cleaning or removal as it considers in its best interests and the Licensee shall reimburse the City for the cost thereof.

C. Indemnity. Notwithstanding any other provisions of this license and irrespective of any insurance carried by the Licensee for the benefit of the City, the Licensee agrees to protect and defend the City and any of its officers or employees from any and all claims, suits or actions of whatever nature, arising out of or in connection with the use or maintenance of the Property as herein defined and further with regard to any activity of the Licensee in connection with this license other than claims or actions based solely upon allegations of negligence of the City. Additionally, Licensee agrees to indemnify the City, including reasonable attorney fees, for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees or officers.

D. Insurance. The Licensee shall maintain, at its sole expense for the duration of the license term, public liability and property damage insurance which insurance shall name the City as an additional insured. The insurance shall be in at least the amounts as follows:

\$1,000,000.00 commercial type, combined single limit, for bodily injury or death and property damage with a \$1,000,000.00 aggregate.

Additionally, if the Licensee holds a liquor license in that area, the Licensee shall maintain, at its sole expense for the duration of the license term, liquor liability (dram shop) insurance which names the City of Urbana as an additional insured.

The Licensee shall file with the City Finance Department a current Certificate of Insurance evidencing such coverage at the inception of the license and annually thereafter upon renewal of the license agreement.

- E. Termination. In the event of cessation of business by the Licensee at 208 West Main Street, Urbana for a period exceeding seven (7) consecutive days, the license granted hereunder shall automatically terminate at the end of such seven (7) days.

Additionally, the Public Works Director may revoke or suspend this license for the violation(s) of any article of this license agreement. In any event, the City through the Public Works Director, may alter, suspend, or revoke the license upon demand at any time that the Public Works Director in his/her judgment concludes that it would be necessary or convenient for the City to perform any work in that area of the public property or right of way, or to reclaim that area for pedestrian or other public use, or if the use of that area causes public disruption or if alcoholic liquor is removed from that designated area, or if the use of amplified music is abused, or if the permit is otherwise violated, or if the required fees are not properly and timely paid, or if required insurance is not maintained, or for any other reason in the public interest at any time, and its use discontinued, with no recourse against the City for any loss or damage by any such alteration, suspension, revocation, or termination.

If any such space is not vacated and such use not discontinued by the time specified, the City may remove from such space any property left thereon at the risk and expense of the Licensee. This license shall be construed as a privilege granted to Licensee and shall not create any vested rights to renewal or continuation. Additionally, the Licensee agrees that such use is temporary and the Licensee acquires no right, title or interest in the space permitted to be used. The required fee for the license, as set forth under Chapter 14 of the Urbana City Code shall be due and payable upon the signing of this agreement.

Unless revoked or terminated under the terms of this agreement, this license shall remain valid indefinitely if all required fees are properly and timely paid to the City.

F. Other Ordinances. The grant of this license shall not be construed to waive the application of any other ordinance or law to the use of the Property by the Licensee. No person shall possess any open container of, or consume alcoholic liquor on any public property including the Property granted a Licensee hereunder, without the possession of a valid City liquor license for the establishment named herein.

G. Notices. Notices shall be effective when mailed, certified mail, postage prepaid, to each of the parties as follows:

City

Licensee

Public Works Director
City of Urbana
706 S. Glover Avenue
Urbana, Illinois 61802

Business Name
Address
Urbana, Illinois 61801

IN AGREEMENT, the parties do set their hands.

CITY OF URBANA

Business Name

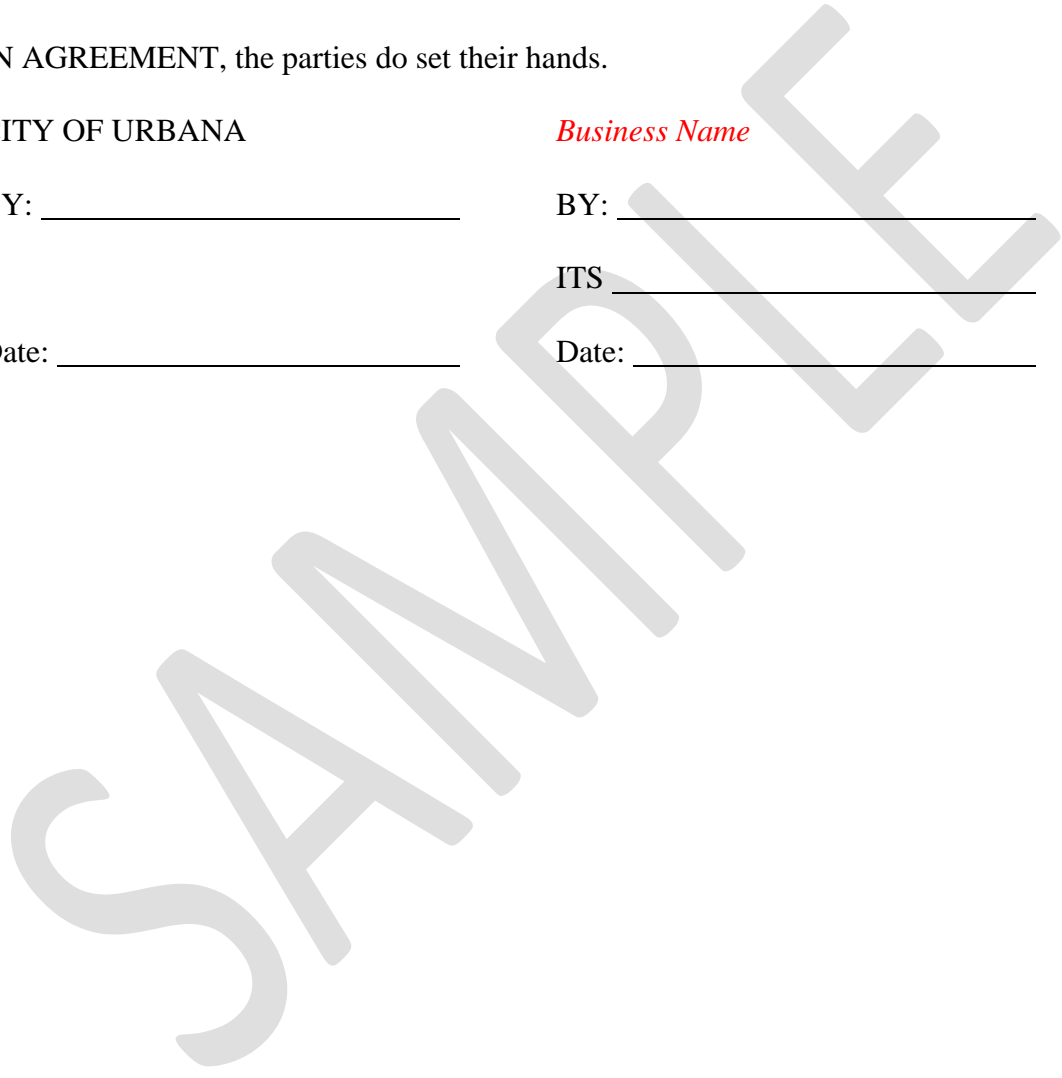
BY: _____

BY: _____

ITS _____

Date: _____

Date: _____



ACCESS AND ADVERTISING FOR PARKLETS (CURBANAS AND CURBSIDE CAFES)

AGENCY	ACCESS	ADVERTISING
Boston, MA	All public. No table service or alcohol allowed.	Must have signage indicating that it is a public space.
Champaign, IL	No Parklets. Sidewalk cafés do have exclusive space.	No advertising allowed within ROW, including sidewalk cafés. (Might allow temporary signage for specific event.)
Charlotte, NC	All public.	None allowed
Chicago, IL	Private for adjacent restaurant. Only allowed in areas where sidewalk is less than 8 feet.	None allowed. No signs allowed that are mounted on or alongside fence or barricade of curbside café .
Evanston, IL	All public.	None allowed.
Jacksonville, FL	All public.	None allowed, except to acknowledgement of sponsor and signage to define rules for use.
Los Angeles, CA	All public. No table service allowed.	None allowed
Minneapolis, MN	All public. No table service allowed.	None allowed
New York City, NY	All public.	None allowed. Signs only indicate no smoking, no alcohol. <i>Advertising only allowed on valance of awnings for sidewalk café.</i>
Oakland, CA	All public. Can't serve alcohol	None allowed
Phoenix, AZ	If privately used, name of establishment is allowed on one wall. Must have approval of 51% of adjacent property owners.	None allowed
Providence, RI	All public. No table service or alcohol allowed.	None allowed
Raleigh, NC	All public.	None allowed. Can include sign with sponsor's name. No logos. Maximum size 12" x 12".
San Francisco, CA	All public. Can't ask someone to leave. No table service.	None allowed
Seattle, WA	All public.	None allowed, except to acknowledgement of sponsor and signage to define rules for use.

Parklets are public spaces on the streets where parking spaces are converted into other uses.