

## CHAPTER 61

## S.B. No. 641

An Act relating to authorizing cities, towns, and villages to use or permit certain uses of the right-of-way of certain public streets for trees and decorative landscaping, sidewalk cafes, ornamental entrance facilities, structures of historic buildings and bus shelters, drinking fountains, and other amenities for the convenience of the public; providing that permits may be issued for such uses of the public streets; providing for the adoption of ordinances in furtherance of such uses and permits; and declaring such permit programs and uses to be governmental functions.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** In this Act:

- (1) "City" means an incorporated city, town, or village, including a home-rule city.
- (2) "Public street" means the entire width between the boundary lines of every way which is held by a city in fee or by easement or dedication when any part thereof is open to the use of the public for purposes of vehicular travel; provided the term "public street" shall not include any designated state or federal highway or road or any designated county road.
- (3) "Roadway" means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two or more separate roadways, "roadway" means each such roadway separately.
- (4) "Sidewalk" means that portion of a public street which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for or is ordinarily used for pedestrian travel.
- (5) "Sidewalk cafe" means an outdoor dining area located on a sidewalk and containing removable tables, chairs, planters, or related appurtenances.

**SECTION 2.** The governing body of any city may, subject to the provisions of this Act, permit any person owning the underlying fee title to any real property upon which any public street within its corporate limits is situated, or any association or other entity acting with a lease or other express written permission of the said fee title owner, to make use of said property, notwithstanding its being part of a public street, for any one or more of the following improvements or facilities:

- (1) the establishment or maintenance or both of trees and decorative landscaping, including landscaping lighting, watering systems, and other appurtenances for the maintenance thereof;
- (2) the establishment or maintenance or both of sidewalk cafes; provided that a sidewalk cafe may not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy; provided further that a sidewalk cafe must be abutting and contiguous to a restaurant in which food preparation, sanitation, and related services for the sidewalk cafe will be performed;

(3) the establishment or maintenance or both of ornamental gates, columns, or other ornamental works of wood, iron, masonry, earth, or other materials denoting the entrance to a neighborhood or a platted and recorded subdivision; provided that such improvements may display the name of the subdivision or neighborhood but shall not contain any commercial advertising or other signage;

(4) the establishment or maintenance or both of any supportive or decorative columns, arches, or other structural or decorative feature of any building which is 50 or more years old at the time of filing an application for a permit hereunder and of unusual architectural design, character, or significance or of historical value; or

(5) the establishment or maintenance or both of transit bus shelters, drinking fountains, benches, and other related amenities for the convenience of the public in the use of the public streets for pedestrian or vehicular transportation.

**SECTION 3.** No improvement or facility described in Section 2 of this Act shall be established except upon a finding by the governing body of the city or upon finding by an official of the city who has been designated by ordinance to make such determination:

(1) that the improvement or facility will not be located on, extend onto, nor intrude upon any portion of the roadway;

(2) that the improvement or facility will not be located on, extend onto, nor intrude upon any portion of the sidewalk which is needed for pedestrian use;

(3) that the design and location of the improvement or facility includes all reasonable planning to minimize potential harm, injury, or interference to the public in the use of the public street;

(4) that the improvement or facility will not create any hazardous condition or obstruction of vehicular or pedestrian travel upon the public street.

**SECTION 4.** No city shall be required to establish a permit program pursuant to this Act. Any city may by ordinance establish a permit program under this Act. Such ordinance shall include regulations the governing body of the city deems necessary or desirable for the protection of the public and utility companies and other persons or firms having the right to use the public street at the site of the applicant's proposed facility. Such regulations may include, without limitation, construction, maintenance, operation, and inspection requirements; requirements for indemnity agreements by abutting fee owners, which agreements shall be covenants running with the title of said abutting land; public liability insurance requirements; requirements for traffic and safety studies to be provided at the expense of the applicant or permittee; authority for the governing body to terminate the permit at its discretion and without notice to the permittee; and provision for conducting public hearings on the issuance, renewal, or revocation of permits, with notice and reporting expenses thereof to be borne by the applicant or permittee. Such regulations shall provide that the city or any utility company or other person authorized by the city may remove all or any part of any facility for which a permit has been issued without liability therefor in the event of lawful need for the site or for access thereto, that all facilities or improvements shall comply with clearances required from structures to utility lines as provided in a nationally recognized building code, that the permittee shall provide a cash or surety bond in sum sufficient to cover the costs of removal of its facilities or improvements by the city or any public utility upon terms and in an amount which is approved by the city, and that the costs of any relocation of city facilities and improvements or public utility facilities and improvements within the public streets which may be associated with the installation of any permittee's authorized facilities and improvements shall be borne by the permittee. The renewal of any permit issued prior to the effective date of this Act must comply with the provisions of this Act. No city shall use or permit to be used any of its funds or employees with respect to a facility operated by permit, except for inspections or removal purposes.

**SECTION 5.** Without regard to whether it establishes a permit program under this Act, any city may establish or maintain, with its funds, materials, equipment, and personnel, any of the improvements or facilities described in Subdivisions (1) and (5) of Section 2 of this Act, and the provisions of this Act shall not be construed to require the issuance of a permit for any such improvement or facility established or maintained by a city; provided that the provisions of Section 3 of this Act shall apply to any such improvement or facility placed by a city upon any public street after the effective date of this Act.

**SECTION 6.** The actions of any city in granting any permit authorized hereunder and in permitting the use of any public street for any purpose authorized in Section 2 of this Act pursuant to a permit issued hereunder are hereby declared to be public and governmental actions and functions of a city, exercised for a public purpose and matters of public necessity. The actions of any city in establishing or maintaining, with its own funds, materials, equipment, and personnel, any of the improvements or facilities described in Subdivisions (1) and (5) of Section 2

of this Act also are declared to be public and governmental actions and functions of the city, exercised for a public purpose and matters of public necessity.

**SECTION 7.** The provisions of this Act shall not be construed to impair the right of any city or any other person to abate or cause to be abated any unlawful obstruction or use of any public street, nor to require any political subdivision of the state to obtain a permit to establish or maintain any improvement or facility which is otherwise authorized by law.

**SECTION 8.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 4, 1985, by the following vote: Yeas 31, Nays 0; passed the House on April 18, 1985, by the following vote: Yeas 139, Nays 0, two present not voting.

Approved: April 30, 1985

Effective: Immediately