

License Agreements



What's a "license?"

Formal agreement giving permission to commit some act that would be otherwise unlawful; especially an agreement making it lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal.

➤ Who is a licensee?

- One to whom a license is granted.
- One who has permission to enter or use another person's premises.

➤ Who is a licensor?

- One who grants a license to another.

Examples of licenses:

- Movie ticket.
- Concert ticket.
- License to cut lumber on someone's property.
- License to collect soil samples for research purposes on King Ranch.
- License to use Disney's logo on merchandise I sell.
- License to play Garth Brook's music in my restaurant.
- License to allow a vendor to sell alcohol at their restaurant.
- License to use a pavilion for my birthday party at West Guth Park.
- License to put a submarine sail for display on public property.

What's a "use agreement?"

- License gives the licensee use of the land at issue in the agreement.
 - Includes duties and responsibilities of each party to the agreement.
 - Enforceable in the event of a breach of the agreement.
 - Lays out remedies in the event of a breach.

- Use agreement *also* gives the user permission to use the land at issue.
 - *Just another type of license.*
 - Generally more limited, either for a shorter period of time or a more limited scope (like only during certain hours) and rental agreements are generally limited to a single day (or maybe a weekend) and charged at the rates approved in the City's fee ordinance.

Are these just really all “leases?”

- No.
- A lease is a *property interest (or property right)* that is conveyed to someone for a period of time in exchange for something of value (like cash), with a right to quiet enjoyment of the property, excluding everyone from the property during the term of that lease.

A license is *not* a property interest: the City keeps all property interests. We allow someone to *use* the property for a specific purpose.

Could you call this an “easement?”

- Also no.
- An easement is a *property interest (or property right)* in land giving the right to use or control the land for a specific limited purpose. Unlike a lease or license, an easement may last forever, but it does not give the person who holds the easement the right to possess, take from, improve, or sell the land the easement lies on.
- Examples: utility easements; sidewalk easements

Can't we just use MOUs?

- A “Memorandum of understanding” is more formally called a “letter of intent.”
- A written statement detailing the preliminary understanding of the parties to plan to enter into a contract or some other agreement; a noncommittal writing preliminary to a contract.
- A letter of intent or MOU is **NOT** meant to be binding and does not stop the parties from bargaining with a third party.

**COURTS DO NOT ENFORCE MOUs OR
LETTERS OF INTENT.**

But we've done MOUs in the past and everything was fine...

- The City Attorney's office has a duty to the City to create agreements and enter into contracts, license agreements, leases, management agreements, interlocal agreements, etc. that are in the best interest of the City.
- The correct legal document to create and enforce these types of agreements is a license agreement when allowing third parties to use public property.

Who cares what the agreement is called?

LAWYERS DO.

A rose by any other name...

...is still a rose.

- The City has some license agreements in existence with titles other than “license.”
- We can call an agreement anything we want so long as the terms within it make it clear it’s a license.
- Best practices is to title a license agreement a “license agreement.”
- Everything is fine when everyone is getting along. These agreements protect the City and the licensee should everyone stop getting along.

If it looks like a duck and quacks like a duck, it’s a duck.

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