



# EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

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City Council: March 4, 2024

# Discussion Topics

The following topics will be discussed during this presentation:

- ❖ Easement and Right-of-way use agreements
- ❖ How many do we currently have?
- ❖ Current Old Town Use Agreements
- ❖ Council Policy and Valuation Committee
- ❖ Revised Review and Approval Process
- ❖ Process Flow Chart
- ❖ Revised Application
- ❖ New Form Agreement Provisions
- ❖ Criteria for Plan Submittals
- ❖ OTDSRC Feedback
- ❖ Council's Direction
- ❖ Next steps

# EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

The City utilizes an easement and right-of-way (R-O-W) use agreement for any improvement or use within a publicly dedicated right-of-way or easement. The current process is detailed Section 3.3 of the City's Design Manual.

The following list identifies examples of items that require an agreement:

- ❖ Masonry fences or any part of a fence that is masonry
- ❖ Retaining walls greater than 3 feet or, if the wall supports a structure, less than 3 feet
- ❖ Private storm drains or area drains
- ❖ Swimming pool decks
- ❖ Wood decks, patios, and gazebos
- ❖ Buildings, signs, or other permanent improvements

# EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

- ❖ An easement is the legal right to use a part of another owner's land for a specific purpose. Easements can be recorded and conveyed via a separate dedication instrument, or as part of a filed subdivision plat.
- ❖ The City's typically utilizes the following four types of easements:
  - ❖ Sewer easement is used for the installation or maintenance of public sewer facilities upon or under private land.
  - ❖ Utility easement is used for installing or maintaining public utilities across, over or under private land.
  - ❖ Water easement is used for public water facilities upon or under private land.
  - ❖ Drainage easement is used for the installation or maintenance of public drainage utilities upon or under private land.

# EASEMENT AND RIGHT-OF-WAY USE AGREEMENT

- ❖ A right-of-way is generally defined as a legal right of access and passage over land.
- ❖ Rights-of-way can be used for railroad use, franchise utility use, vehicular (traffic) use and pedestrian-only use.
- ❖ Access can be legally conveyed and recorded via a separate instrument or plat dedication.
- ❖ A right-of-way can also be acquired via condemnation.

# HOW MANY DO WE CURRENTLY HAVE?

- ❖ There are approximately 121 easement and right-of-way use agreements for pipelines, fences, pools, gazebos, sheds, signs, irrigations lines, etc.
- ❖ 112 of these agreements are for properties located within Johnson County, with the remaining 9 agreements for properties within Tarrant County.
- ❖ Roughly 57 to 62 of the approved agreements involve right-of-way use encroachments.

# CURRENT OLD TOWN USE AGREEMENTS

❖ The following Easement and R-O-W Use agreements have been approved in Old Town:

2011- Grumps- balcony with columns at sidewalk

2012-JJ Oyster Bar- dumpster pad

2012- Dalton's Corner- dumpster enclosure

2014-Babe's-2 'to-go' parking signs in sidewalk

2014-Old Texas Brewing Company-grease trap

2015-Old Texas Brewing Company-use of four parking stalls for dining

2019-Old Town Station-patio area

2021-Spice Rack- seating area

2022-Depot on Main- stone retaining wall

2024-Spice Rack- metal awning and wood columns for searing area

2024-Old Texas Brewing Company-metal canopy, bollards, metal and wood fence

# COUNCIL POLICY AND VALUATION COMMITTEE

- ❖ The Council Policy and Valuation Committee discussed easement and right of use agreements at two separate meetings held on November 20, 2023 and January 24<sup>th</sup> and provided direction and recommendations, which will be detailed on the next slides.



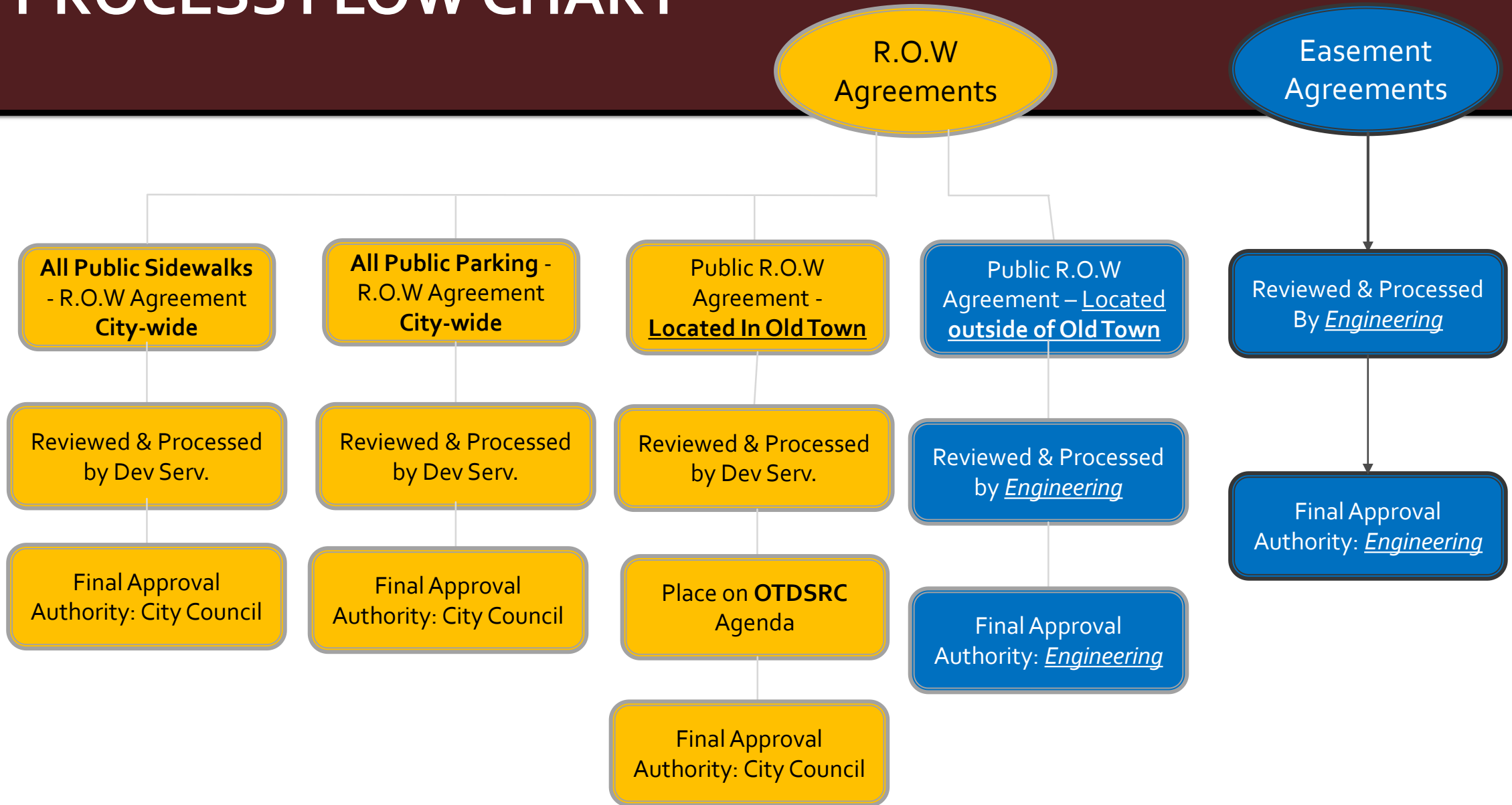
# REVISED REVIEW AND APPROVAL PROCESS

- ❖ The Committee has proposed the following changes:
  - Public Works- Engineering will review and administratively approve easement use agreements (city-wide) and right-of-way use agreements that are located outside of Old Town.
  - All right-of-way use agreements located in Old Town will proceed to the Old Town Design Standards Review Committee for review and then to City Council for consideration. All public parking and public sidewalks use agreements will proceed directly to City Council for consideration.
  - Approved right-of-way use agreements will be filed with the City Secretary's office instead of the County Clerk.

# REVISED REVIEW AND APPROVAL PROCESS

- Prepare an ordinance to be codified in lieu of a policy.
- City Council to review and reconsider agreements annually.
  - General agenda item (first appearance) and Consent agenda report item for subsequent approval.
- Provide a new form agreement for right-of-way use requests requiring Council approval.
- Revise the application to reflect new workflow(s).
- Staff has prepared a flow chart that illustrates the proposed, new process for easements and right-of-way use agreements.

# PROCESS FLOW CHART



# REVISED APPLICATION

❖ Proposed application will include:

➤ Property owner authorization

➤ Adjacent property owner/tenant contact and comment information

➤ Applicable fee(s)

- \$525 fee for an initial five-year term of the agreement

# NEW FORM AGREEMENT PROVISIONS

- ❖ A requirement that the R-O-W permittee must be owner or lessee of property adjacent to R-O-W.
- ❖ A requirement that the permittee (i) will be responsible for the maintenance of the permitted area, (ii) allow all members of the public to use the permitted area, and (iii) will comply with all local, state, and federal laws.
- ❖ A provision stating that the agreement and use is revocable by the City for any reason and at any time.
- ❖ An indemnity provision for the benefit of the City.
- ❖ A requirement that the ROW permittee must maintain general liability insurance coverage during the term of the agreement.

# NEW FORM AGREEMENT PROVISIONS

- ❖ A requirement that the R-O-W permittee must maintain liquor liability insurance coverage during the term of the agreement, if alcohol is served by the permittee.
- ❖ A requirement stating that the R-O-W permittee shall remain current on all taxes (ad valorem, sales taxes, etc.) due to the City, subject to the permittee's appeal rights under law.
- ❖ Proposed improvements must comply with Americans with Disabilities Act (ADA).
- ❖ No storage of hazardous materials.
- ❖ A provision stipulating that the City or utility provider may remove the improvement/use at any time, without liability and at no cost.
- ❖ If necessary, a requirement for a bond or deposit necessary to cover the cost of the City or utility provider to remove the improvement and restore to original condition.

# CRITERIA FOR PLAN SUBMITTALS

- ❖ Staff is proposing the following plan submittal details:
  - Facility Details – provide a detail and/or cross-section of the private facilities to be placed in the R.O.W/easement. Vertical alignment of existing and proposed facilities must be shown.
  - Colored architectural or technical renderings that detail the proposed improvements, building materials specifications, height and coverage.
  - If applicable, standardized details for outdoor dining (e.g. colored renderings, number of tables, chairs, lighting, etc.)
  - If in Old Town, must adhere to the Old Town Design Standards

# OLD TOWN DESIGN STANDARDS REVIEW COMMITTEE FEEDBACK

- ❖ Staff conducted a February 14<sup>th</sup> meeting with the Old Town Design Standards Review Committee:
  - Members of the OTDSRC would like articulated permissible use and appearance standards, professionally prepared plans and renderings (i.e. no hand sketches).
  - Staff discussed possible expansion of membership to include an architect or design professional. They voiced no objection to this.
  - There was some discussion regarding the permanent nature of right-of-way uses.
  - Staff has asked for their continued feedback during this process.



# SEEKING COUNCIL'S DIRECTION

❖ Staff is seeking the Council's direction on:

- Application: How long is the permit good for and what does Council want to charge for an application fee?
  - *The Committee recommends a one time \$525 fee for a five-year period.*
  
- Council agenda: Does Council want a General briefing of the item, and then consideration as a Consent agenda item at subsequent meeting?
  - *The Committee recommends this approach.*
  
- Reviews: Does Council want to see annual reviews of Old Town use agreements all at once?
  - *The Committee recommends this approach.*

# SEEKING COUNCIL'S DIRECTION

- Existing Old Town Agreements: How would the Council like to process renewals of existing agreements in Old Town? Do they pay or are they grandfathered?
- Escrow: Is Council interested in considering cash escrow for improvements? If so, how would Council like this calculated (e.g. % of value of improvements)?
- OTDSRC: What are Council's thoughts on expanding the membership of the OTDSRC to include an architect or design professional?

# NEXT STEPS

- ❖ What does the Council want to consider as next steps in the process?
  - Ordinance Amendment – March 18<sup>th</sup> (first reading)
  - Ordinance Amendment- April 1<sup>st</sup> (second reading)
  - Implementation – Council’s discretion