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**City Council Regular Meeting**

**DEPARTMENT:** Development Services  
**FROM:** Tony McIlwain, Development Services Director  
**MEETING:** February 5, 2024

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**SUBJECT:**

Consider approval of a resolution authorizing a right-of-way use agreement for a removable metal canopy with removable decorative metal and wood fence and bollards for an existing outdoor seating patio at 112 W. Ellison Street, Old Texas Brewing Company. *(Staff Presenter: Tony McIlwain, Development Services Director)*

**SUMMARY:**

Phillip Waddell, an owner of the Old Texas Brewing Company restaurant (OTB), submitted a Right-of-Way Use Agreement application for a removable patio canopy with decorative metal and wood fencing and removable bollards to be constructed within the City's right-of-way.

There is existing outdoor tabletop patio seating located in approximately 850 sf of the City right-of-way within four existing parking spaces. This outdoor patio seating was approved in July 2015 as a temporary right-of-way use agreement from July 21, 2015 to December 31, 2015. That agreement's purpose was to temporarily allow the installation of tabletop dining and potted plants to create a public space. The agreement also required OTB to create a physical barrier between patrons of the public space and drivers on W. Ellison Street. The agreement's purpose was to create a public space and evaluate the potential for similar uses in the Old Town District.

On March 1, 2016, the City issued a Letter Agreement formally accepting OTB's request for a permanent right-of-way use agreement with the City of Burleson, allowing the permanent installation of tabletop dining and potted plants, creating a public space upon an annual review to be conducted by March 1<sup>st</sup> of each calendar year. This Letter Agreement also included the requirement to create a physical barrier between the patrons of the public space and drivers along the roadway.

The proposed Right-of-Use Agreement includes a new removable patio canopy with standing metal seam roofing and a decorative metal fencing and will include removable bollards to create a safer environment for the patrons within the patio seating. The removable bollards will include a locking mechanism to prevent them from being removed. The existing poles where lights currently hang will be replaced and incorporated into the canopy. These poles shall also be removable. The owner intend to replace the patio lighting once the improvements are made.

The owner has stated the current concrete planters are deteriorating and will need to be replaced. If the decorative metal fencing and bollards are approved, the owner does not intend to replace the planters along the roadway and will remove them. The owner also recently replaced existing tabletop patio tables, chairs, and umbrellas. New black and white awnings replaced existing awnings that were ripped and deteriorated. A thin layer of black sealant was applied to the patio seating area to provide a uniform color.

There is an existing water line within the patio seating area. The proposed canopy, decorative metal and wood fence and bollards are removable and should not inhibit the maintenance of the water line.

The agreement (corresponding exhibit) includes a number of conditions such as:

- Applicant shall bear all costs of tables, plants, and any other materials required including the cost of repair or replacement.
- Applicant shall maintain a physical barrier between patrons of the public space and drivers on Ellison Street.
- Applicant is responsible for ADA compliance within the request area. All exit pathways, sidewalks and any public access routes shall remain unobstructed at all times.
- Additional measures for public safety for patrons, pedestrians and drivers in the area may be required by the City at any time.
- Applicant shall be responsible for addressing any issues of compliance with the Texas Alcohol Beverage Commission (TABC) and remains solely responsible for compliance.
- Applicant shall clear the area of all debris and trash throughout the day and at the end of the day.
- Applicant shall be responsive to concerns expressed by business owners or property owners in the Old Town District.
- Applicant acknowledges that users of the public space are not required to be patrons.
- Applicant shall be responsible for removing and replacing the metal canopy, decorative metal and wood fencing and bollards at its own expense in the event the City or any Franchise Utility needs perform replacement or maintenance on any existing infrastructure within the designated area.
- Applicant shall be responsible for any expense incurred by the City or any Franchise Utility for removal of the canopy, decorative metal and wood fence and bollards in the event of an emergency repair of the existing water line or any other existing public infrastructure within the designated area. Applicant agrees the City will not be responsible for any damage to the awning, tables, chairs, and any other materials belonging to Applicant.
- Applicant agrees to obtain and maintain a certificate of insurance for the right-of-way area and to name the City as an additional insured.

**PRIOR ACTION/INPUT (Council, Boards, Citizens):**

July 21, 2015 – Temporary Right-of-Way Use Agreement approved for table top dining tables, plants and other materials to provide a barrier between patrons and drivers.

March 1, 2016 – Permanent Right-of-Way Use Agreement approved for table top dining tables, plants and other materials to provide a barrier between patrons and drivers.

September 5, 2023 – Right-of-Way Use Agreement to include a removable awning to the existing patio seating area was presented and no action was taken.

October 16, 2023 - Right-of-Way Use Agreement to include a removable decorative fence and bollards to the existing patio seating area was presented and tabled until a future date the applicant request the item back on the agenda.

**REFERENCE:**

<https://www.burlesontx.com/DocumentCenter/View/954/Chapter3-Miscellaneous?bidId=>

**FISCAL IMPACT:**

None

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