

Right-of-Way Use Agreement

Old Texas Brewing Company
112 W. Ellison Street

City Council
February 5, 2024



History



July 21, 2015 - City Council approved a pilot program

- Allowed table top seating within four parking spaces (approximately 850 sf)
- Included potted plants and other material as physical barrier between patrons and drivers
- Considered as a means to evaluate potential for similar uses in the Old Town District

March 1, 2016 - City Issued a Letter Agreement

- Formally accepted OTB's request for a perpetual right-of-way use agreement subject to city's approval each year.

Right-of-way Use Agreements:

Used to officially permit certain private uses of rights-of-way

Document that the City is not responsible for private improvements in the request area

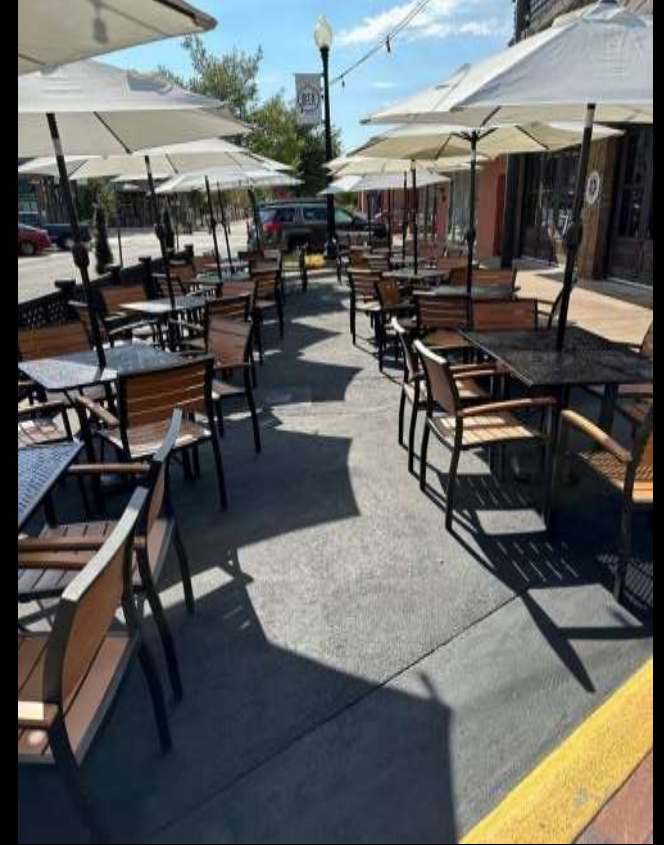
Confirm that the applicant must remove the improvements at the request of the City



Existing Conditions

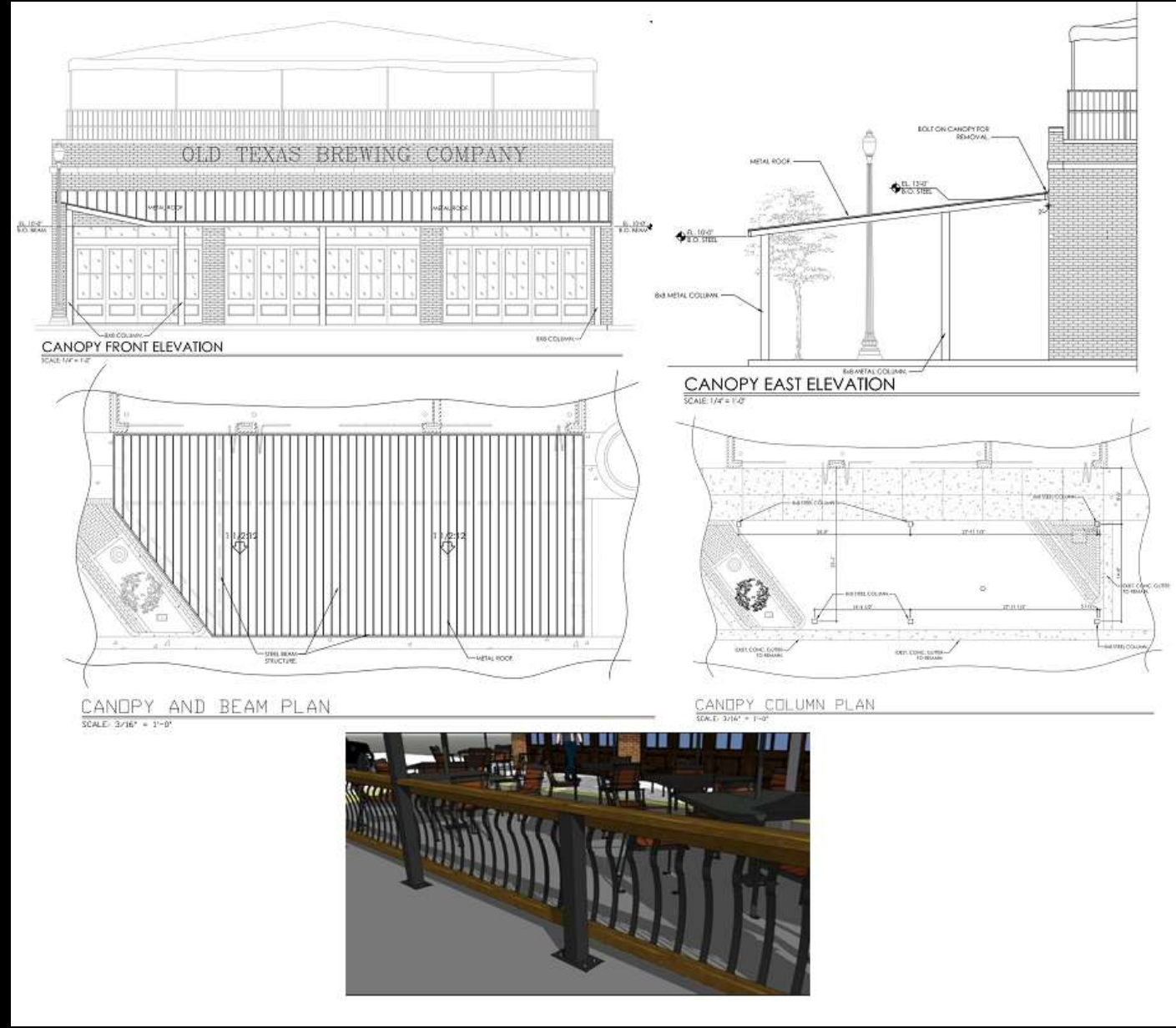


- 850 sf area currently used of table top dining.
- Concrete planters - owner has stated they are beginning to deteriorate.
- Tabletop patio seating with umbrellas.



Request

- The applicant proposes the following changes:
 - Install a removable canopy with standing metal seam roof.
 - Install a removable decorative metal and wood fence to replace the current plastic fence.
 - Install removable bollards to replace the existing cement planters.



Conditions within the Agreement



- 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.
- 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 TABC.
- 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 of its restaurant.
- Applicant shall be responsible for removing and replacing the improvements, including the metal canopy, decorative fencing, 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 any improvements, including the metal canopy, decorative metal and wood fencing 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 tables, chairs, and any other materials belonging to Applicant.
- Applicant agrees to obtain and maintain insurance in the following amounts at all times during the term of this Agreement: (i) Commercial General Liability \$1,000,000; (ii) Damage to Premises \$100,000; (iii) Medical \$1,000; (iv) Personal Injury \$1,000,000, (v) General Aggregate \$3,000,000; (vi) Excess Accident \$100,000 with a maximum \$50.00 deductible. Applicant is not required to obtain Automobile Liability insurance. Applicant shall provide certificates of insurance to City evidencing that Applicant has obtained all required insurance thirty (30) days prior to the start of each year of the agreement. Insurers for all policies must be authorized to do business in the state of Texas or be otherwise approved by City; and, such insurers shall be acceptable to City in terms of their financial strength and solvency. All policies shall be endorsed to name City as an additional insured. The insurance policies required by this Agreement shall cover all public risks related to Applicant's use of the easement/right-of-way. The Commercial General Liability insurance policy shall have no exclusions by endorsements unless City approves such exclusions. All policies required above shall be written on an occurrence basis. All policies shall be endorsed with a waiver of subrogation in favor of City. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to City. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Applicant's insurance policies. Notice shall be sent to City of Burleson, Attn: City Manager, 141 West Renfro, Burleson, Texas 76028-4261. City shall be entitled, upon its request and without incurring expense, to review Applicant's insurance policies including endorsements thereto and at City's discretion. Applicant may be required to provide proof of insurance premium payments. City shall not be responsible for the direct payment of any insurance premiums required by this Agreement. Any failure on part of City to request required insurance documentation shall not constitute a waiver of the insurance requirements.

Requested Action



**Approve the Right-of-Way use
agreement**



**Deny the Right-of-Way use
agreement**