

RESOLUTION CSO#5367-01-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, APPROVING A RIGHT-OF-USE AGREEMENT WITH SPICE RACK SPORTS BAR AND GRILL FOR RIGHT-OF-WAY NEAR 133 S WILSON STREET.

WHEREAS, the City of Burleson, Texas (“City”), is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, Derek Scheler and Spice Rack Sports Bar and Grill (“Applicant”) have filed an application to use a portion a portion of the City public right-of-way in the corporate limits of the City near 133 S Wilson Street as set forth in their application; and

WHEREAS, the City and Applicant desire to enter into an easement and right-of-way use agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference for all purposes (the “Agreement”);

WHEREAS, after reviewing the Application and Agreement, the City finds that the right-of-way use described in the Application and Agreement will not extend into any part of the roadway used for vehicular traffic, will not extend into any part of the sidewalk needed for pedestrian use, and will not create a hazardous condition or obstruction of vehicular or pedestrian travel;

WHEREAS, after reviewing the Application and Agreement, the City further finds that the design and location of the right-of-way use described in the Application and Agreement includes all reasonable planning to minimize potential injury and interference to the public use of the street; and

WHEREAS, after reviewing the Application and Agreement, the City further finds that entering into the Agreement with the Applicant is in the best interest of the City and its citizens, and is for the good government, peace, and order of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:

Section 1.

The City Manager, Tommy Ludwig, is authorized to execute on behalf of the City the Agreement between the City and the Applicant, substantially in the form attached as Exhibit “A”.

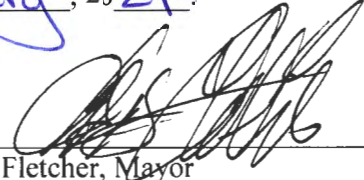
Section 2.

The foregoing recitals are adopted and incorporated herein for all purposes.

Section 3.

This resolution shall take effect immediately from and after its passage.

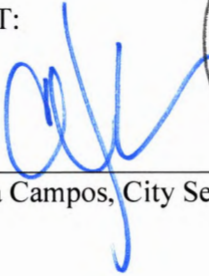
PASSED, APPROVED, AND SO RESOLVED by the City Council of the City of Burleson, Texas, on the 8th day of January, 2024.



Chris Fletcher, Mayor
City of Burleson, Texas

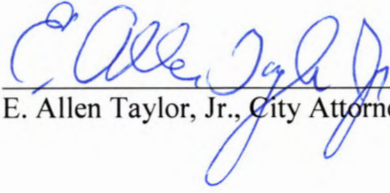


ATTEST:



Amanda Campos, City Secretary

APPROVED AS TO LEGAL FORM:



E. Allen Taylor, Jr., City Attorney

INSTRUCTIONS FOR COMPLETING
EASEMENT & RIGHT-OF-WAY USE AGREEMENT

CSO#5367-01-2024

The forms shall be signed (in black ink only) by a legal partner, corporate officer, or individual owner(s) of the land. An authorized agent of the landowner must submit a Power of Attorney.

- APPLICATION:** The application shall be completely filled out, signed and notarized.
- EASEMENT AND RIGHT-OF-WAY USE AGREEMENT:** The Agreement shall be completed, signed and notarized. All signatures and notary acknowledgments must be originals, no copies. In the second blank of the first paragraph, please describe specifically the intended use of the easement or right-of-way.
- EXHIBIT NO. 1:** Provide a general vicinity map indicating the project location. The map should be of small enough scale to include at least one (1) major intersection in the City of Burleson. The map may be hand drawn, aerial, from GIS or from an internet mapping program such as yahoo maps.
- EXHIBIT NO. 2:** Provide an accurate, to scale drawing of the proposed area of usage of the easement/right-of-way, including all dimensions as required to accurately stake the area in the field. If needed to accurately describe the area, include metes and bounds. Please limit the requested area of usage to the minimum required to accommodate your needs. Additional pages may be attached, but all drawings must be no larger than 11" x 17". Reducing large plans or plats to use as the base drawing is acceptable, providing the final document is legible to City staff. Include all existing easements, overhead or underground utilities, drainage facilities or other improvements within 50' of the proposed area of usage and show the location of the proposed improvements.
- EXHIBIT NO. 3:** Provide a detail and/or cross-section of the private facilities to be placed in the right-of-way/easement. Vertical alignment of existing and proposed facilities must be shown. Information on existing public water, sewer and drainage facilities can be obtained from Engineering Services.
- EXHIBIT NO. 4:** Signatures are required from Burleson staff and each franchise utility, regardless of whether or not they have utility equipment in the easement. Each utility can sign on a separate sheet. **The City will obtain these signatures.** Applicant need only complete the top portion of the page.

- NOTES:**
1. Contact the Development Engineering Division at 817-426-9611 to discuss any questions regarding the right-of-way/easement agreement application.
 2. Please provide the complete application with the \$125 review fee and allow approximately 3 to 4 weeks for city staff review of the agreement and collection of all franchise utility signatures.
 3. Once complete, staff will compose the document to be filed and assess the County filing fee (Johnson Co. 1st page \$26 + \$4 for each additional page). This fee is to be paid by the applicant prior to city staff filing the document.
 4. Staff will email applicant with the filing information and final PDF of the document.

APPLICATION

DATE: 12-27-23

Application for the Use of a Portion of the City of Burleson Public Right-of-Way/Easement within Lot 2-9, Block 14 Burleson Addition Addition to the City of Burleson, Texas. Street Address: 133 S. Wilson St.

The undersigned hereby makes application for the joint use of that portion of the public utility easement/ drainage easement/ right-of-way situated in the above named addition, and particularly described in Exhibit No. 2 of the attached agreement. In support of this application, the undersigned represent and warrant the following:

- 1. The undersigned will hold the City of Burleson harmless, and indemnify it against all suits, costs, expenses, and damages that may arise or grow out of my use of the easement/right-of-way.
- 2. The proposed joint use of the easement/right-of-way is as follows:
Continue the current use as an outdoor seating area and obtain approval for the metal awning and wood columns recently installed over the outdoor seating located in the City's right-of-way.
- 3. Said public utility easement/drainage easement/right-of-way has been and is being used as follows (explain existing use of easement):
Has been used as an outdoor seating area since July 2021

I respectfully request your favorable consideration of this application for joint use of the easement/right-of-way described and will authorize the execution of the attached agreement.

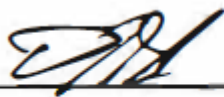
Printed Name: Derek Scheler

Phone No.: 817-295-7221

Mailing Address: 133 S. Wilson St.

Email : derek@tigtx.com

Burleson, Tx 76028

Signature: 

Date: 12-27-23

**CITY OF BURLESON
EASEMENT & RIGHT-OF-WAY USE AGREEMENT**

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

That the City of Burleson, hereinafter referred to as “City”, and its franchised Utility Companies, herein referred to as “Utilities”, do consent and agree to permit **The Spice Rack Sparts Bar/Patio and Grill**, herein after referred to as “Applicant”, to use an easement/right-of-way dedicated to City. Such easement/right-of-way being described in Exhibit Number 2, to be used for the purposes of **allowing an awning, columns, decorative fencing, and concrete pad as set forth in Exhibits 1 - 3** upon the following conditions:

I.

That Applicant, his successors or assigns shall maintain and keep in slightly condition all of the easement area and the improvements situated thereon; and, that City and Utilities shall not become responsible for such maintenance at any time in the future. Applicant shall repair any damage to City or Utility facilities caused by Applicant within a reasonable time. In addition, the following conditions shall apply:

- Subject ROW Use Agreement supercedes the Letter Agreement dated April 12, 2021.
- 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 S. Wilson 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 metal awning, decorative fencing, and concrete pad at its own expense in the event the City or any Franchise Utility needs to 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 awning, decorative fencing, and concrete pad the event of an emergency repair of any 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 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.

II.

That Applicant shall and does hereby agree to indemnify and hold harmless City and Utilities from any and all damages, loss or liability of any kind whatsoever by reason of injury to property or third person occasioned by its use of the easement/right-of-way or act of omission, neglect or wrong doing of Applicant, his officers, agents, employees, invitees or other persons, with regard to the improvements and maintenance of such improvements; and the Applicant shall, at his own cost and expense, defend and protect City and Utilities against any and all such claims and demands.

111.

That Applicant shall arrange for all activities and improvements in the easements to be discontinued and/or removed within thirty (30) days of notification by City. The cost associated with the discontinuing of such activities, and the removal of such improvements, as well as property adjacent to the easement/right-of-way necessitated by such discontinuation of the easement/right-of-way use, shall be borne by the Applicant.

IV.

That Applicant, his successors or assigns shall not seek compensation from City or Utilities for loss of the value of the improvements made hereunder when such improvements are required to be removed by Applicant.

V.

This agreement shall be filed of record in the Deed Records of Johnson County, Texas, and shall bind all future owners of this lot and shall for all purposes be considered a covenant running with the land.

IN TESTIMONY WHEREOF, Applicant executes this Easement/Right-of-Way Use Agreement on this 8th day of January, 2024.

CITY OF BURLESON:

By: [Signature]

Printed Name: Tommy Ludwig

Title: City Manager

APPLICANT:

By: Derek Scholer

Printed Name: Derek Scholer

Title: 12-27-23

THE STATE OF TEXAS §
COUNTY OF JOHNSON §

BURLESON ACKNOWLEDGMENT

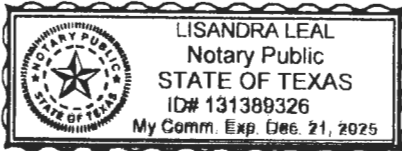
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Tommy Ludwig, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that same was the act of said City of Burleson, and that he executed same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 8th day of January, ~~2023~~ 2024

Notary Seal:

Lisandra Leal
Notary Public in and for the
State of Texas

My Commission Expires: 12-21-2025



APPLICANT ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared in person, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 27th day of December, 2023

Notary Seal:

Peggy Fisher
Notary Public in and for the
State of Texas

My Commission Expires: 4.19.2025

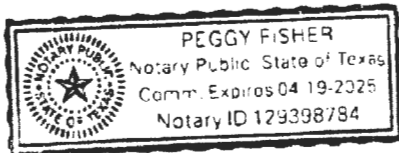


EXHIBIT NUMBER 1

Vicinity Map for Proposed Easement/Right-of-Way Use Area



EXHIBIT NUMBER 2

Graphic and/or Metes and Bounds Description of Proposed Easement/Right-of-Way Use Area

Show surrounding area to the nearest streets in all directions, abutting lots, the block(s) in which the portion of the utility easement/ drainage easement/ right-of-way sought to be the subject of joint use agreement is situated, and the addition or additions in which the portion of the easement/ right-of-way sought to be joint use is situated.

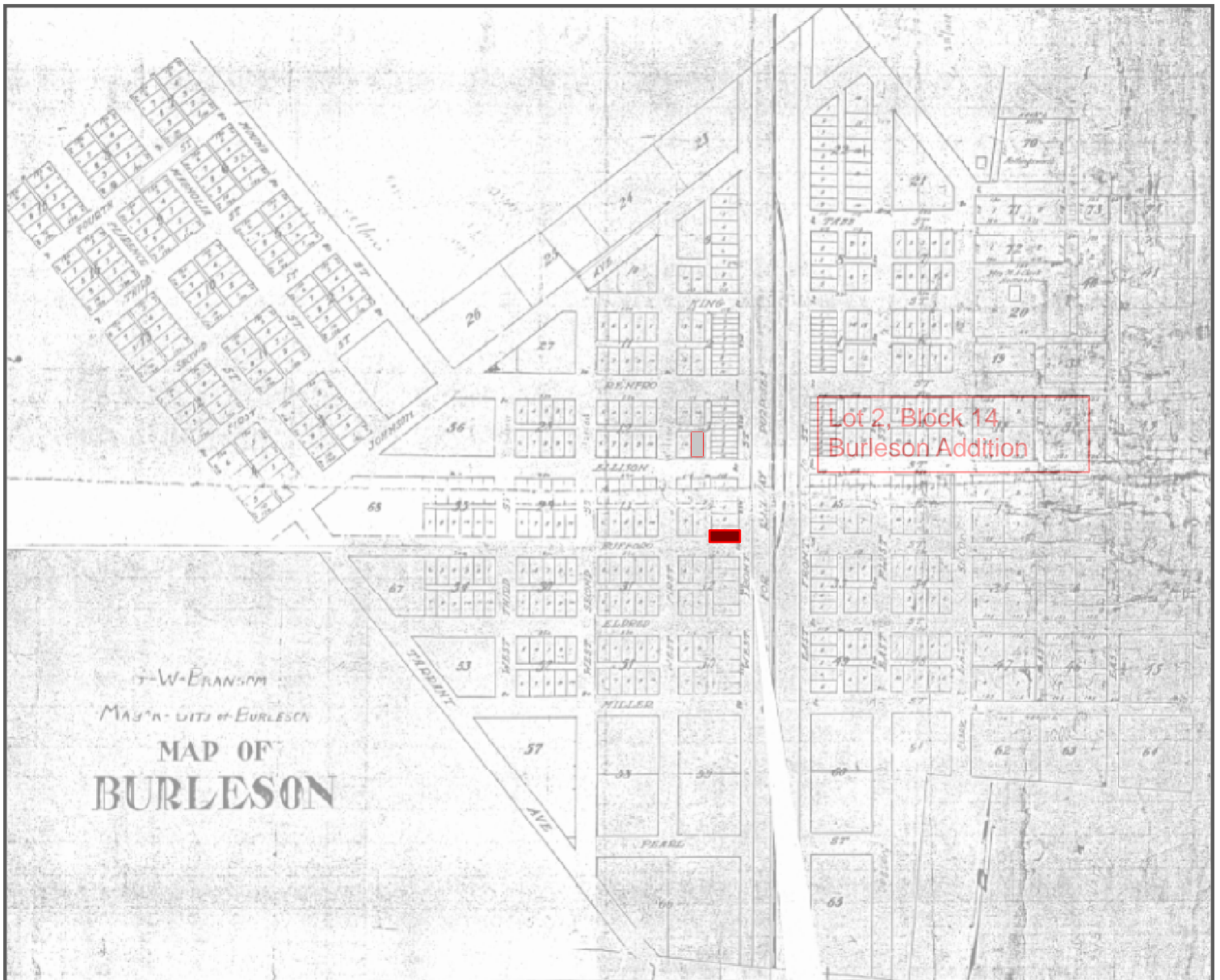


EXHIBIT NUMBER 3
Section/Detail of Improvements with Profile View

The following is a detail and/or cross section drawing of the improvement(s) in the easement/right-of-way to be subject of the joint use agreement in the above numbered application.



Paint current metal on Awning black to match esthetics of building and match Hei m BBQ or Replace with Standing seam to match Rozoo's if necessary

