



EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

Council Policy and Valuation Committee: January 24, 2024

MEETING TOPICS

- ❖ The Council Policy and Valuation Policy Committee last met on November 20th. Several topics were discussed and based on the consensus from that meeting, city staff will discuss the following:
 - ❑ Revised review and approval process
 - ❑ Flow chart
 - ❑ Revised Application
 - ❑ Revised form agreement
 - ❑ Criteria for plan submittals
 - ❑ Applicability of the Texas Transportation Code

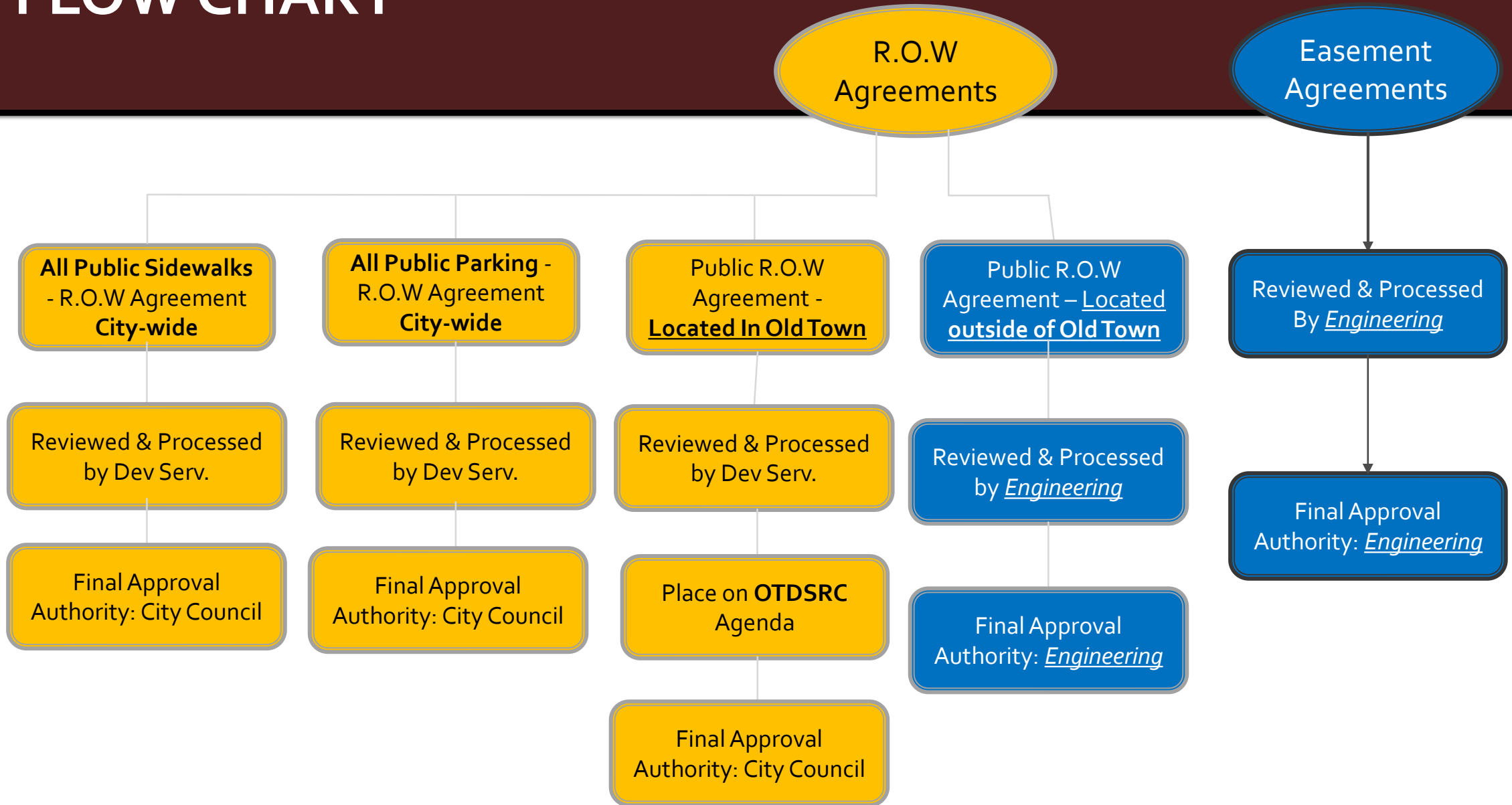
UNDERSTANDING OF PREVIOUS MEETING

- ❖ Based on the Committee's direction, staff has revised the approval process:
 - Public Works- Engineering will continue to 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.

REVISED REVIEW AND APPROVAL PROCESS

- ❖ Based on the previous Committee meeting, staff understands the following steps to be necessary:
 - An ordinance that is codified in lieu of a policy
 - City Council to review and reconsider agreements annually
 - General item first appearance and consent for subsequent approvals
 - One time fee, including cost to record
 - Provide a new form agreement for right-of-way use requests requiring Council approval.
 - Revise application to reflect new workflow(s)
 - The Old Town Design Standards Review Committee will review agreement requests for right-of-way use within Old Town.
 - Staff has prepared a flow chart that illustrates the proposed, new process for easements and right-of-way use agreements.

FLOW CHART



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.
- ❖ A provision stating that the agreement will be recorded on the Johnson County real property records.
- ❖ 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/use from the R-O-W.

REVISED APPLICATION

- ❖ Proposed application may include:
 - Property owner authorization
 - Adjacent property owner/tenant contact and comment information
 - Applicable fees
 - \$125 Application fee
 - \$75 Recording fee
 - \$100 Annual renewal fee

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

TEXAS TRANSPORTATION CODE

- ❖ Based on the Committee's previous discussion, staff researched the Texas Transportation Code, Title 6. Roadways, Subtitle E. Municipal Streets, Chapter 316.
- ❖ Chapter 316 of the Transportation Code covers municipal streets and sidewalks. The chapter has requirements that apply to all cities if certain improvements are made in the street or sidewalk, and offers non-mandatory frameworks for street and sidewalk use.

TEXAS TRANSPORTATION CODE

- ❖ Mandatory Requirements – Findings (To be incorporated into new agreements and ordinance)
- ❖ In order to allow the owner or lessee of property adjacent to a municipal street to use the abutting municipal street to establish and maintain five different public amenities [(1) trees and landscaping, (2) sidewalk cafés, (3) ornamental decorations designating neighborhoods, (4) certain decorative columns, arches, or parts of buildings, and (5) public amenities for use by the public, including benches, water fountains, and bus shelters], the City Council must find that the improvement (i) will not be located on the roadway or part of sidewalk needed for pedestrian use, (ii) will not create a hazardous condition or obstruct travel, and (iii) was designed and located to minimize potential injury and interference with the public use of the street.
- ❖ If a city places an improvement or facility in the municipal street, the City Council must find that the improvement (i) will not be located on the roadway or part of sidewalk needed for pedestrian use, (ii) will not create a hazardous condition or obstruct travel, and (iii) was designed and located to minimize potential injury and interference with the public use of the street.

TEXAS TRANSPORTATION CODE

❖ Frameworks for Street and Sidewalk Use

❖ Private Agreement. A city may enter into an agreement for the street and sidewalk to be used for a private purpose so long as the use does not (i) interfere with the public use of the street and sidewalk or (ii) create a dangerous condition. This private agreement will require approval by the City Council.

❖ Permit Program. A city may establish by ordinance a permit program allowing the owner or lessee of property adjacent to a municipal street to use the abutting municipal street. The statute requires that the ordinance include specific provisions (provisions for the protection of utility companies and the public, clearances to ensure safety, bond necessary to cover removal costs, requiring the permit holder to pay to costs of installation, stating the city or utility company may remove the amenity without liability when there is a lawful need) and specifies other provisions that may included (insurance, etc.).

TEXAS TRANSPORTATION CODE

- ❖ Concerns/Questions with Permit Program
- ❖ Review. A permit program could eliminate the case-by-case review of each application by City Council. The City Council would no longer review and approve each right-of-way use application in Old Town. Permits would be reviewed and issued by City staff in accordance with the ordinance.
- ❖ Parking. How would we handle parking spots in Old Town under a permit system? Many of the potential right-of-way uses could mirror Old Texas Brewery where the café seating is located in former parking spaces. Who determines when the parking spaces are allowed to be used?
- ❖ Revocable Permit. It is a little unusual to issue a permit that can be revocable at any time by the City. It can be done, but such revocability is unusual.

OUTSTANDING QUESTIONS

- ❖ Does the Committee want to review improvements on a case by case basis, or would they like to specifically exclude certain improvements?
 - Is the primary concern restoring area to original condition?
 - Does the Committee want to consider an escrow for the improvements?
- ❖ Does the Committee want to assess a one time fee, including review, and recording fees, or an annual fee preferred?

NEXT STEPS

- ❖ What does the Committee want to consider as next steps in the process?
 - ❖ Council Report and Presentation – February 19, 2023
 - ❖ Ordinance Amendments – March 4 & 18, 2023
 - ❖ Implementation – April 1, 2023