

Right-of-Way Use Agreement

Spice Rack Bar & Grill

133 S. Wilson Street

City Council

December 11, 2023

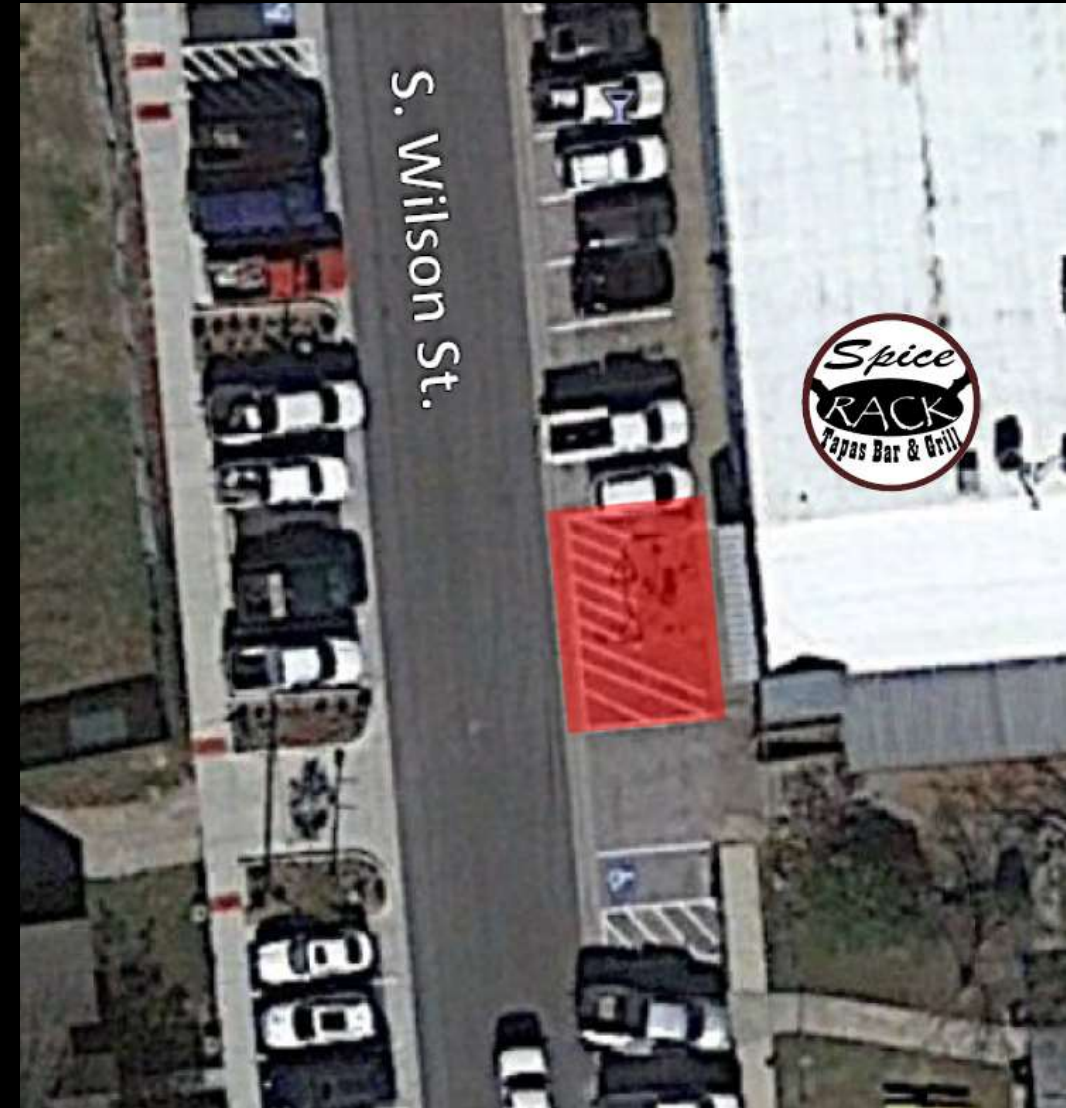


History



April 12, 2021:

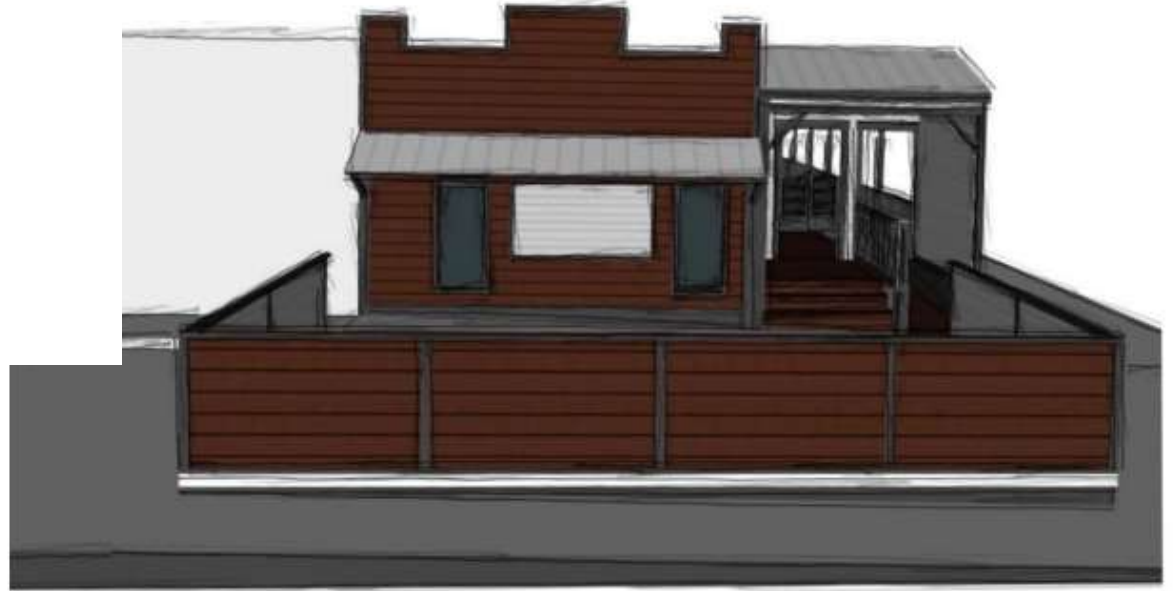
- City Council approved outdoor seating patio within the City's R.O.W for Spice Rack
 - Located within a public median space of a non-parked area
- Purpose of this revocable R.O.W agreement was for the temporary installation of tabletop dining to create a public space
- No roofing or awning post was proposed with the patio area at that time.



Approved Concept Sketches Presented to Council April 12, 2021



Concept Sketch



Existing Conditions





Request

- The applicant recently installed metal posts and an awning over the existing outdoor seating patio within the City's R.O.W
- Requesting approval of the R.O.W use agreement to allow for the metal posts and awning.
- The improvements will require a permit; however, city staff cannot issue one until a ROW Use Agreement is approved.



Conditions



- 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.

Requested Action



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



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