
City Council Regular Meeting

DEPARTMENT: Development Services

FROM: Emilio Sanchez, Development Services Assistant Director

MEETING: December 11, 2023

SUBJECT:

Consider approval of a Right-of-Way Use Agreement for a metal awning and posts over an existing outdoor seating patio at 133 S. Wilson Street, Spice Rack Bar & Grill. (*Staff Contact: Emilio Sanchez, Development Services Assistant Director*)

SUMMARY:

Derek Scheler, the owner of the Spice Rack Bar & Grill, submitted a Right-of-Way Use Agreement application for a recently installed metal awning and posts over an existing outdoor seating patio within the City's right-of-way. The metal awning and posts require a permit; however, staff informed Mr. Scheler that a permit cannot be issued until a ROW Use Agreement is approved. On April 12, 2021, the existing outdoor seating patio located within a public median space of a non-parked area, was approved by City Council. The purpose of this revocable right-of-way agreement was for the temporary installation of tabletop dining and potted plants to create a public space. No roofing or awning or posts were proposed with the patio area at this time. The applicant is now requesting approval to allow for the recently installed metal awning and posts over the existing seating patio to be included in the Right-Of-Way agreement. The newly installed metal roof and posts are consistent with the materials of the existing outdoor seating area.

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

- Subject ROW Use Agreement supersedes 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 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 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 in 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 tables, chairs, and any other materials belonging to Applicant.
- Applicant agrees to obtain and maintain insurance in the amounts referenced in Exhibit 3 at all times during the term of this Agreement.

RECOMMENDATION:

N/A

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

April 12, 2021 – City Council approved a Right-of-Way Use Agreement with Spice Rack Grill for the use of non-parked public space on W. Wilson St. for the purpose of outdoor dining.

REFERENCE:

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

FISCAL IMPACT:

None

STAFF CONTACT:

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