
City Council Regular Meeting

DEPARTMENT: Public Works

FROM: Errick Thompson, P.E., Deputy Public Works Director

MEETING: September 5, 2023

SUBJECT:

Consider approval of a Right-of-Way Use Agreement for outdoor patio seating and metal awning at 112 E. Ellison Street, Old Texas Brewing Company restaurant. *(Staff Contact: Errick Thompson, Deputy Public Works Director)*

SUMMARY:

Phillip Waddell, owner of the Old Texas Brewing Company restaurant (OTB), submitted a Right-of-Way Use Agreement application for a metal awning to be constructed within the City's right-of-way. The awning is proposed to be constructed over the existing outdoor tabletop patio seating, and is located in approximately 850 sf of the City right-of-way within four existing parking spaces. This outdoor patio seating was approved in July 2015 as a temporary right-of-way use agreement from July 21, 2015, to December 31, 2015. That agreement's purpose was to temporarily allow installation of tabletop dining and potted plants to create a public space and to evaluate the potential for similar uses in the Old Town District. A standard Right-of-Way Use Agreement would be considered if no issues or concerns were identified during the evaluation period.

The proposed Right-of-Use Agreement includes the new awning and the existing tabletop patio tables, plants, and other materials within the right-of-way. An existing monument sign constructed with the Old Town improvements within the right-of-way will be relocated by the applicant as part of this request.

There is an existing water line within the location of the proposed metal awning. The awning will be removable to facilitate the maintenance of the water line and any existing franchise utilities. The agreement (corresponding exhibit) includes a number of conditions such as:

- 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.
- Applicant is responsible for ADA compliance within the request area. 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 Texas Alcohol Beverage Commission (TABC) and remains solely responsible for compliance.
- 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.
- Applicant shall be responsible for removing and replacing the metal awning 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 the awning 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 awning, tables, chairs, and any other materials belonging to Applicant.
- Applicant agrees to obtain and maintain a certificate of insurance for the right-of-way area and to name the City as an additional insured.

OPTIONS:

- 1) Approve a Right-of-Way Use Agreement for outdoor patio seating and metal awning at 112 E. Ellison Street, Old Texas Brewing Company restaurant.
- 2) Deny a Right-of-Way Use Agreement for outdoor patio seating and metal awning at 112 E. Ellison Street, Old Texas Brewing Company restaurant.

RECOMMENDATION:

Approve a Right-of-Way Use Agreement for outdoor patio seating and metal awning at 112 E. Ellison Street, Old Texas Brewing Company restaurant.

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

July 21, 2015 – Temporary Right-of-Way Use Agreement approved for table top dining tables, plants and other materials to provide a barrier between patrons and drivers.

FISCAL IMPACT:

None

STAFF CONTACT:

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