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## City Council Regular Meeting

**DEPARTMENT:** Development Services  
**FROM:** Tony McIlwain, Director  
**MEETING:** October 6, 2025

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**SUBJECT:**

Consider and take possible action on a right-of-way use agreement with BTX Old Town LLC and BTX Condominium Association Inc., for building balconies, signs, outdoor dining patio's with attached canopies, fencing, building lighting, downspouts, and awnings that were constructed in the right-of-way, for buildings addressed as 135 & 139 W. Ellison Street. *(Staff Contact: Tony McIlwain, Development Services Director) (Old Town Design Standards Review Committee recommended approval 8-0)*

**SUMMARY:**

Justin Bond, representing BTX Old Town LLC and BTX Condominium Association Inc. (owners), submitted a Right-of-Way Use Agreement application for building balconies, signs, outdoor dining patio's with attached canopies, fencing, building lighting, downspouts, and doorway awnings that were constructed within the Ellison Street Right-of-Way as part of the approved Ellison Street Building Project.

The approved Ellison Street Building Project proposal (Exhibit 4) included language that allowed for design flexibility so that the site could meet the overall goals of the project and create a unique place making space. The approved development plan, with waivers allowed for the building to be constructed on the property line and without the required landscaping. Once the building was placed on the property line, any attachments to the façade of the building extended beyond the property line and into the existing right-of-way. The proposed Right-of-Use Agreement includes patio seating areas with and without canopies, decorative metal fencing, balconies with outdoor seating, signs attached to the patio roof canopy, balconies and building facades, building lights, downspouts, and awnings over entry doorways.

The agreement (Exhibit 3) includes a number of conditions such as:

- Applicant is made aware of and agrees that this easement and right-of-way use agreement is non-exclusive and is granted contingent upon superior pre-existing rights of other parties, including the City and Utilities. The rights of those parties shall not be infringed upon by any act or omission of Applicant. Applicant may not in any way impede or impair the ability of City or Utilities to access, install, repair, maintain, construct, or otherwise utilize in any capacity any area covered by this agreement, including any rights authorized by law. Applicant shall be responsible for any additional costs incurred by City or Utilities due to Applicant's failure to abide

by this agreement.

- Applicant acknowledges and understands that Oncor maintains overhead and/or underground electrical facilities within the right of way. State law requires contacting **Dig Tess** by calling **811** for underground equipment to be located at least two (2) days before you dig. Dig Tess does not mark a precise location but is usually within four (4) feet of the actual location. Applicant agrees to exercise extreme caution with respect to such electrical facilities.
- Applicant shall bear all costs of tables, plants, and any other materials required including the cost of repair or replacement.
- 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 improvements, including the metal canopy, balconies, signs, lights, down spouts, awnings and decorative fencing, 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 any improvements, including the metal canopy, balconies, signs, lights, down spouts, awnings and decorative fencing, 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 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.

#### **RECOMMENDATION:**

Staff recommends approval of a right-of-way use agreement with BTX Old Town LLC and BTX Condominium Association Inc.

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

*September 17, 2025 – Old Town Development Standards Review Committee recommended unanimously approval of the right-of-way use agreement.*

*June 21, 2021 – City Council reviewed and approved Case 21-022 with associated waivers to landscaping and front setbacks.*

*May 11, 2021 – Planning and Zoning Commission unanimously recommended approval of Case 21-022 with associated waivers. The applicant voluntarily withdrew the waiver request for the alleyway width, noting he will satisfy the 20-foot wide alley requirement.*

*May 6, 2021 – Old Town Development Standards Review Committee recommended unanimously approval of Case 21-022 with associated waivers.*

*May 3, 2021 – City Council reviewed and approved within the Original Town of Burleson Addition; Lots 1R-6R and 7R2-8R2, Block 13.*

*December 8, 2020 – City Council reviewed and approved the Ellison Street Project Development Agreement, document CSO#1625-12-2020.*

#### **REFERENCE:**

<https://ecode360.com/45102912#45102912>

#### **FISCAL IMPACT:**

None

**STAFF CONTACT:**

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