



Engineering Department

DATE: March 17, 2020

FROM: Gabe Schell, City Engineer

ITEM: Seating Area Encroachment Agreement – 112 North Fourth Street

REQUEST

Request approval of an outdoor seating area encroachment agreement and waiver.

Please place this item on the 3/24/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Brick Oven Bakery located at 112 North Fourth Street, has requested an encroachment in the right of way for removable seating areas. The seating areas would be adjacent to the east wall face of the building and adjacent to the curb of North Fourth Street, see attachments. The areas would not be fenced as there is no alcohol served. The owners would maintain a 4-foot unobstructed walkway between the seating areas and 2-feet from the curb face. The owners will place and remove the tables and chairs daily. The parking in front of this building is angular. The encroachment committee reviewed and recommends approval of the attached agreement including a 5-year term.

RECOMMENDED CITY COMMISSION ACTION

Approve encroachment agreement with Brick oven bakery, LLC.

STAFF CONTACT INFORMATION

Gabe Schell, PE | City Engineer, 355-1505 or gschell@bismarcknd.gov

AGREEMENT AND WAIVER

The City of Bismarck hereby grants Brick oven bakery, LLC (Grantee) the right to install and maintain privately-owned bistro chairs and tables (encroachments) on the public right-of-way, adjacent to 112 North Fourth Street, as shown on the attached Exhibits, subject to the following conditions:

1. The Grantee shall comply with all rules regarding the construction of the encroachments on the public right-of-way as set by the City Engineer. If the Grantee should obtain a license to serve alcoholic beverages this agreement would be voided and the Grantee would need to reapply for a new encroachment agreement.
2. The term of this grant shall be for five (5) years and shall continue thereafter from year to year. The City may cancel this grant at any time after the initial five-year term upon six (6) months' written notice to the Grantee.
3. The Grantee shall maintain a minimum of four (4) feet (48") of unobstructed walkway between any obstruction and the furthest edge of the open seating area.
4. Upon the end of the term or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove the encroachments and restore the public right-of-way to its original condition, if so required by the City.
5. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, in exchange for the City's permission to operate and maintain the encroachments in the right-of-way, Grantee agrees to release the City, its assigns, or other franchised utilities from and waive any and all claims relating to said encroachments including, but not limited to, damages arising from damage to the encroachments, loss of business, or other

personal injury or property damage resulting from damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it is using the public right-of-way at its own risk. Grantee shall not look to the City, its assigns, or other franchised utilities to pay for any expense or damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it will hold harmless and indemnify the City, its assigns, or other franchised utilities from any and all claims in any way resulting from the placement of the encroachments on the public right-of-way. Grantee agrees that after installation of the encroachments, Grantee will restore the City right-of-way or street to its original condition. In the event the City is required to perform street maintenance or construction on the right-of-way at the location of the encroachments, Grantee shall cooperate with the City in removing or temporarily protecting the encroachments and accommodating the City's project, at Grantee's sole expense.

DATED this _____ day of _____, 2020.

Print Name & Title
Brick oven bakery, LLC

Signature

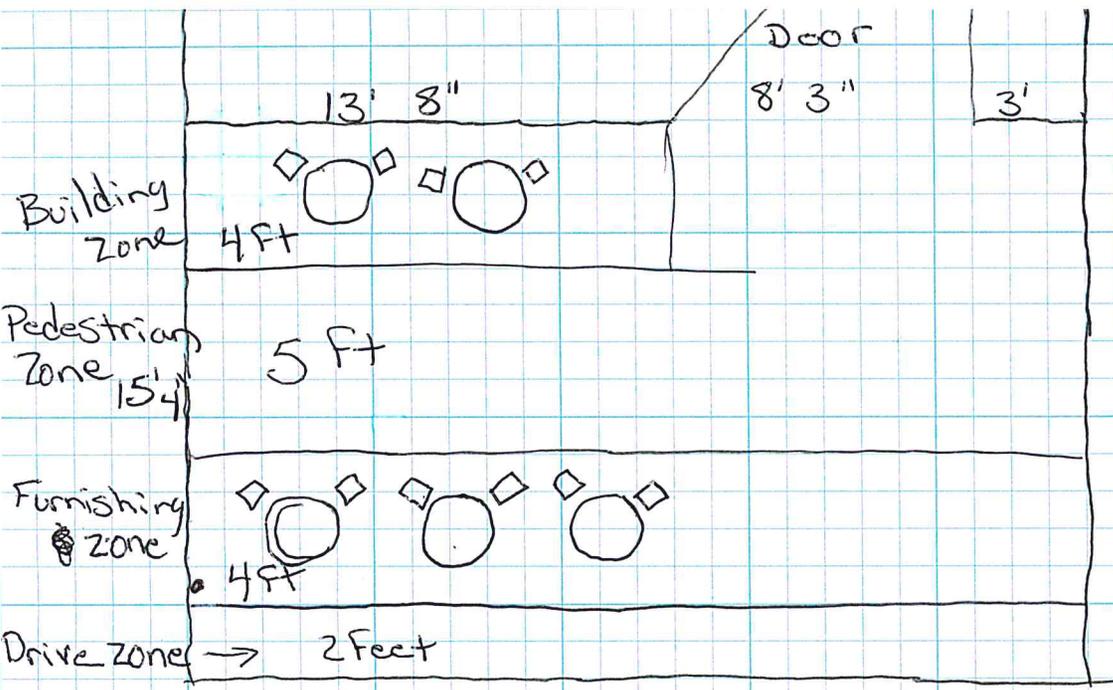
Address

Gabe Schell, P.E.
City Engineer

Date

Keith Hunke
City Administrator
Bismarck

Steve Bakken, President
Bismarck City Commission



April 1st 2020
Brick oven Bakery

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