

City of Brisbane Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **Proposed License Agreement with 7 Mile House for Outdoor Dining within Public Right of Way**

DATE: Meeting of November 5, 2012

City Council Goals:

To promote economic development that stabilizes and diversifies the tax base (Goal #4).
To preserve the unique current character of Brisbane (Goal#16).

Purpose:

To consider a request by the 7 Mile House Sports Bar & Grill's to allow an approximately 7 ft wide strip of public sidewalk immediately in front of their restaurant/bar to be used for outdoor dining.

Recommendation:

That the City Council authorize the City Manager to execute the attached license agreement with the 7 Mile House Sports Bar & Grill.

Background:

The 7 Mile House Sports Bar & Grill has requested permission to use the sidewalk area in front of their restaurant for outdoor dining. This area was recently upgraded as part of the Bayshore Bus Stop Improvement Project and includes a new sidewalk approximately 12 feet in width. The proposed outdoor dining area would utilize 7-foot wide strip of the sidewalk in front of the existing restaurant, maintaining a clear sidewalk width of 5 feet for public access.

Discussion:

The attached license agreement includes conditions recommended by the Police, Public Works, and Planning Departments for both the design and operation of the outdoor space. In addition to the general design parameters included in the conditions of the draft agreement, the conditions

also address operational requirements to maintain a clean, safe and secure area compliant with State Alcoholic Beverage Control (ABC) requirements for serving alcohol outdoors.

Specific requirements include that the dining area enclosure be low to allow for visibility from the street, and that adequate lighting be provided within this area. The hours of operation shall be limited daily to no later than midnight per the Police Department's recommendations. Additionally, the area shall be monitored and maintained by the 7 Mile House. It is further recommended that the 7 Mile House provide an enclosure for trash and recycling, to be located south of the dining and the bus shelter areas and that the operator be responsible for daily litter pick up of the sidewalk and parking area.

With the recommended conditions of approval both the Police and Public Works Departments support this request.

Fiscal Impact:

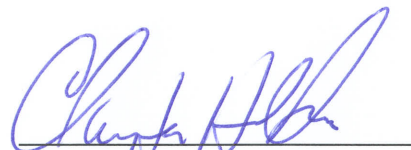
None. The 7 Mile House will be responsible for all costs related to establishing and maintaining this use.

Attachments:

- A. Draft License Agreement
- B. Schematic Site Plan
- C. Site Photo



John Swiecki, Community Development Director



Clay Holstine, City Manager

**Draft
LICENSE AGREEMENT**

THIS LICENSE AGREEMENT, dated _____, 2012, between THE CITY OF BRISBANE, a municipal corporation ("City") and SEVEN MILE HOUSE SPORTS BAR & GRILL, doing business as 7 Mile House ("Licensee") is made with reference to the following facts:

A. City is constructing improvements for the bus stop within the public right of way near the southwest corner of Bayshore Boulevard and Geneva Avenue.

B. Licensee operates a restaurant and bar at 2800 Bayshore Boulevard in Brisbane known as the 7 Mile House.

C. Licensee desires to use a portion of the public right-of-way adjacent to the bus stop improvement project for outdoor dining and City is willing to grant Licensee a revocable license to allow such use, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed as follows:

1. **Grant of License.** City hereby grants to Licensee a revocable license to use and occupy a portion of City's right-of-way generally located along the frontage of the restaurant within the area shown on the drawing attached hereto as Exhibit "A" and made a part hereof (the "License Area"). The license granted herein shall authorize use and occupancy of the License Area only by Licensee and its customers, employees, representatives, and invitees. This license shall not constitute the transfer or relinquishment of any ownership interest held by City in the public right-of-way nor shall this license confer any vested or proprietary rights upon Licensee beyond the right to utilize the License Area in the manner authorized by this license and subject to all of the conditions set forth herein.

2. **Condition of License Area.** Use of the License Area is being granted to Licensee in its present condition and City shall have no obligation to make any alterations or improvements to the License Area to accommodate Licensee's use. Licensee acknowledges that City has made no representations or warranties concerning the condition of the License Area or its suitability for Licensee's intended use. It shall be the sole responsibility of Licensee to conduct such inspections of the License Area as it deems necessary to satisfy itself that the License Area can be used for the purposes intended by Licensee. Licensee further acknowledges that no utilities are being provided by City to the License Area and any utility services desired by Licensee will need to be obtained and installed by Licensee at its own expense.

3. **Design of License Area.** Prior to the commencement of any occupancy of the License Area, Licensee shall furnish to City (Community Development, Public Works and Police Departments) a site plan showing the design of the proposed outdoor dining area, which shall be subject to written approval by City. The design shall comply with the following requirements:

- (a) The License Area for the outdoor dining shall be not extend beyond the limits shown on Exhibit A; which includes an approximately 7 ft. strip of the sidewalk along the frontage of the 7 Mile House and extending a few feet past the 7 Mile House frontage to the south, to the corner of the PG&E wall.
- (b) The License Area shall be lighted in a manner satisfactory to the City.
- (c) A barrier between the seating area and the public sidewalk shall be installed which shall not exceed 42 inches in height and shall be reasonably transparent, such as wrought iron fence or wooden fence with an open pattern, to allow visibility of the dining area from the street.
- (d) Planters may be used in addition to the barrier to add interest to the outdoor dining space, but such planters must be low or have an open branch structure to avoid creation of a visual barrier.
- (e) Signage shall be installed at the barrier to indicate that there is no alcohol allowed beyond that point.
- (f) A shelter for the 7 Mile House's trash/recycling bins shall be constructed in the public right of way. A building permit will be required for the shelter to ensure prevention of stormwater run-on to the area, or run-off from the area.

No modifications shall be made to the approved design without the prior written consent of the City.

4. **Operation of Outdoor Dining Area.** The outdoor dining within the License Area shall be conducted in compliance with the following conditions:

- (a) Hours of operation shall be no later than midnight of any day.
- (b) Licensee shall be responsible for daily cleaning of the parking area and the sidewalk/concrete to the satisfaction of the Director of Public Works/City Engineer.

5. **Term.** The term of this license shall continue indefinitely until terminated by either party.

- (a) Licensee may terminate the license at any time by giving written notice to City stating the effective date of termination.
- (b) This license may be revoked by the Director of Public Works/City Engineer if it becomes necessary for City to utilize any portion or all of the License Area to prevent, correct or abate a safety or health hazard or any existing or threatened

hazard to the condition or maintenance of the public street or any utilities installed therein, or if the City otherwise requires use of any portion or all of the License Area. In the absence of emergency, City shall provide at least thirty (30) days written notice of revocation during which time Licensee shall at Licensee's own expense, remove such portion or all of the private improvements constructed within the public right-of-way as may be directed by the Director of Public Works/City Engineer.

6. **Permitted Uses.** The License Area shall be used and occupied by Licensee solely for the purpose of outdoor dining for the customers of 7 Mile House. The License Area shall not be used or occupied for any other purpose without the prior written consent of City, which City may withhold in its sole and absolute discretion.

7. **Compliance With Legal Requirements.** Licensee shall strictly comply with all federal, state and local laws and regulations applicable to the use and occupancy of the License Area for the purpose of outdoor dining and service of alcoholic beverages.

8. **Indemnity.** Licensee agrees to indemnify, defend, and hold City, and its officers, officials, boards, commissions, employees, and agents, harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including attorney's fees, occasioned by or in any way connected with the condition, use or misuse of the License Area, or occasioned by any act or omission of Licensee or its customers, employees, invitees, or other persons who may come upon the License Area, except for damage to any property or injury to or death of any person arising from the sole negligence or willful misconduct of City. The indemnity obligations of Licensee set forth herein shall survive and continue beyond the term of this License Agreement.

9. **Liability Insurance.** Licensee shall at all times maintain in full force and effect a policy of general liability insurance providing coverage to City of not less than one million dollars (\$1,000,000.00) against the liabilities referred to in Section 8 of this license. Such policy shall expressly provide that coverage thereunder shall be primary with respect to any other liability insurance maintained by City and shall not be reduced or cancelled without at least twenty (20) days prior written notice to City. The obligation of Permittee to indemnify and defend City shall not be limited to the amount of such insurance coverage therein.

10. **Default.** In the event of any default by Licensee in the performance of its obligations under this agreement and such default is not cured within ten (10) days after written notice thereof to Licensee, City may at any time thereafter terminate this License Agreement by written notice to Licensee.

11. **Surrender of License Area.** Upon any expiration or termination of this License Agreement, Licensee shall remove all of its property from the License Area, repair any damage to the premises, and surrender possession of the License Area to City in the same physical condition as originally received, except for any alterations that may have been made with the prior written consent of the Director of Public Works/City Engineer.

12. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and shall be mailed or personally delivered to the other party at the following address:

City of Brisbane
Attn: Director of Public Works/City Engineer
50 Park Place
Brisbane, Ca 94005

7 Mile House
2800 Bayshore Boulevard
Brisbane, Ca 94005

Any notice sent by mail shall be deemed received on the third business day after deposit of the notice in the U.S. Mail with proper postage prepaid thereon.

13. **Costs of Suit.** In the event legal action between City and Licensee shall become necessary in order to enforce or interpret this License Agreement, or any provision contained herein, the prevailing party shall be entitled to recover all costs and expenses as may be incurred in connection therewith, including reasonable attorney's fees.

14. **No Assignment.** This License is personal to Licensee and may not be assigned or transferred to any other party without the prior written consent of City.

15. **Successors and Assigns.** Subject to the restrictions against assignment by Licensee, this License Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

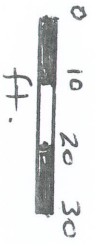
IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

CITY OF BRISBANE

7 MILE HOUSE

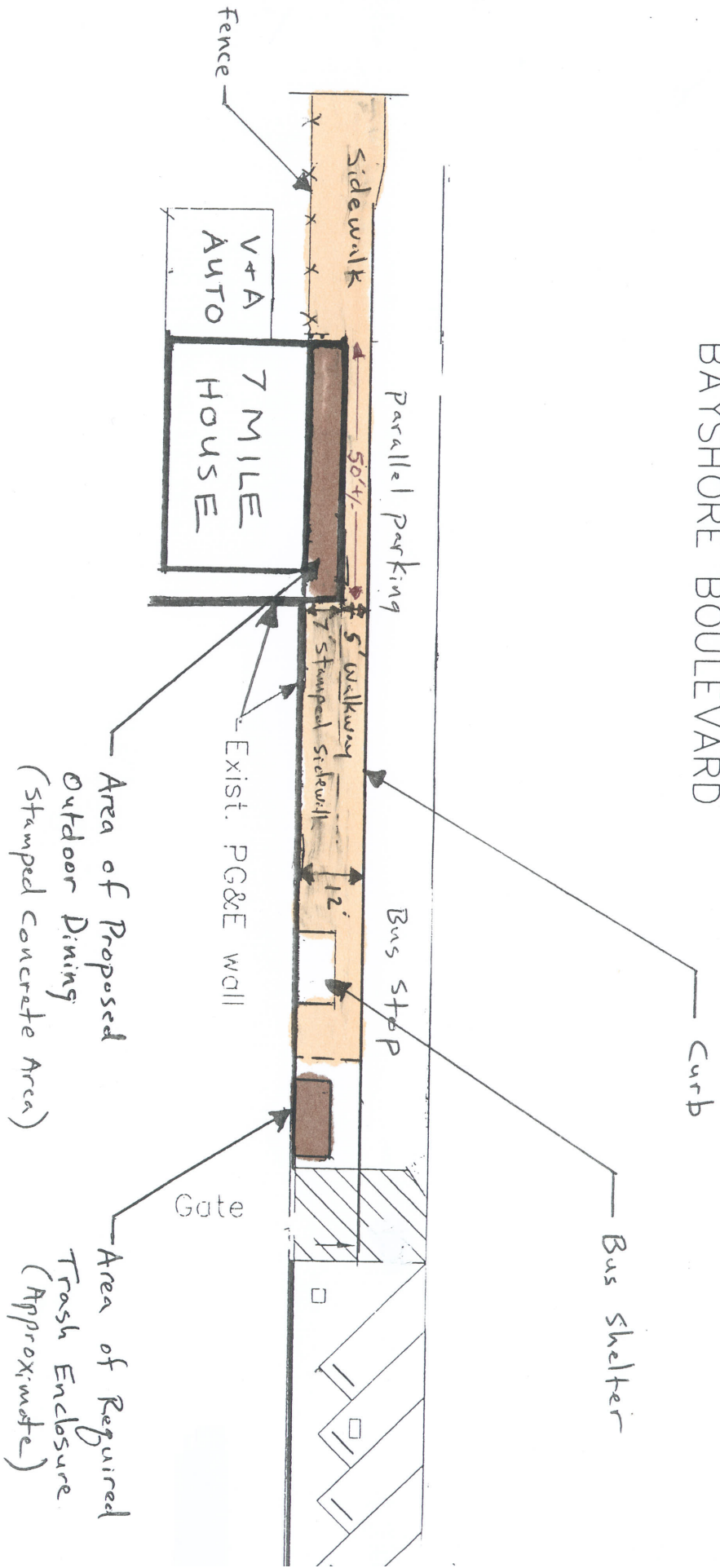
By: _____
CLAY HOLSTINE, City Manager

By: _____



BAYSHORE BOULEVARD

GENEVA AVENUE



Schematic Site Plan
7 Mile House Area

10/29/12



7 Mile House

7 Mile House - 2800 Bayshore Blvd. - Circa 2002



BRISBANE

CITY LIMIT

POP. 3650

ELEV.

7 MILE HOUSE
SPORTS BAR & GRILL

7 MILE HOUSE
More than just a bar
The 7 Mile House has
Wed, Thu, Fri, Sat, Sun
ALL DAY BREAKFAST
\$10.95
\$12.95
\$14.95

Absolutly
NO
ALCOHOL
outside
NBA LEAGUE PASS
WHICH YOUR FAVORITE TEAM?

12/29/2017