



City Council

Approval of a Resolution Authorizing a Right-Of-Way Use Agreement with Well 80 Real Estate, LLC.

Agenda Date: 10/30/2023
Agenda Item Number: 4.G
File Number:23-0946

Type: resolution **Version:** 1 **Status:** Passed

Title

Approval of a Resolution Authorizing a Right-Of-Way Use Agreement with Well 80 Real Estate, LLC.

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve a Resolution authorizing a Right-Of-Way Use Agreement with Well 80 Real Estate, LLC.

Report

Issue:

Whether to approve a Resolution authorizing a Right-Of-Way Use Agreement with Well 80 Real Estate, LLC.

Staff Contact:

Andrew Curtis, Engineering Program Specialist, CP&D, 360.753.8181

Mike Reid, Director of Economic Development, City Manager's Office, 360.753.8591

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

Well 80 Real Estate, LLC (Well 80) is the owner of Lot 6, Block 53 of Sylvester Town of Olympia (street address of 514 4th Avenue E). Well 80 has requested the continued use of the adjacent north-south alley and portion of 4th Avenue sidewalk for commercial outdoor seating and food/beverage service.

While Well 80 holds the underlying fee ownership of the alley, the City typically controls and maintains the alley and sidewalk as publicly dedicated right-of-way. In order to continue to use the alley and portion of the sidewalk for commercial purposes, Well 80 must receive approval from the City through a Right-Of-Way Use Agreement.

This north-south alley is not used for solid waste collection or deliveries and is not useable for other vehicle traffic. City utilities are located behind Well 80 in the east-west alley.

If approved, this would be the second 4-year agreement the City has entered into with Well 80. The first 4-year “pilot” term was considered successful. Since then, additional guidelines and policy have been developed concerning the commercial use of public right-of-way and has led City staff to consider new strategies to achieve heightened economic vitality, cleanliness and public safety in the downtown core.

Given safety concerns and clean-up service costs associated with maintaining underutilized downtown alleys such as this one, the City seeks to incentivize this commercial use or “stewardship” of applicable alleys by providing businesses a credit against the right-of-way lease rent. This is being called a “Clean Alley Credit.”

Following review, staff believes that the proposed use by Well 80 is a viable recipient of this credit with certain conditions as outlined in the proposed Right-of-Way Use Agreement. The proposed term of the agreement is 4 years, with the City retaining the right to cancel the agreement at the City’s convenience. The City would retain access for public and private utility maintenance as needed, and Well 80 would pay the City \$778.25 each year under the agreement.

Since the pandemic, the Washington State Department of Revenue has reiterated its interest to Washington municipalities in collecting the Leasehold Excise Tax, a tax on the use of public property by a private party, under RCW 82.29A. It is the responsibility of Washington cities to collect this tax on behalf of the State and remit it to the Department of Revenue. This use agreement will serve as a vehicle for compliance with this Washington State Department of Revenue requirement.

Climate Analysis:

Inviting, pedestrian-friendly amenities in the public right-of-way, where space allows, make efficient use of limited urban space and has a tangible, positive effect on the climate. This use, strategically applied, adds vibrancy and economic vitality to the downtown core while reducing urban sprawl and offering alternatives to “car-centric” dining.

Equity Analysis:

The anchored fixtures in the alley and sidewalk seating on 4th Avenue occupy a portion of the public right-of-way but allow ample room for pedestrian mobility, both inside the agreement use area and out, exceeding ADA and accessibility guidelines to allow inclusivity and access for mobility challenged populations.

Also included in the agreement is a non-discrimination clause stipulating WELL 80 not violate any terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or any other applicable federal, state, or local law or regulation regarding non-discrimination.

Neighborhood/Community Interests (if known):

The alley is not currently usable for vehicle traffic due to above surface utility equipment within the travel way. The east-west alley within the Block allows for building and solid waste collection access. Prior to Well 80’s use of the alley, residents in the apartments at 512 4th Avenue E expressed

concerns with pedestrian traffic and nighttime activity in the open alleyway.

Financial Impact:

The Right-of-Way Use Agreement generates \$778.25 in revenue for the General Fund.

Options:

1. Move to approve a Resolution authorizing a Right-Of-Way Use Agreement with Well 80 Real Estate, LLC.
2. Do not approve the Right-of-Way Use Agreement.
3. Take other action.

Attachments:

Resolution
Agreement
Site Plan