



## Agenda Statement

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**Type:** New Business      **Status:** Passed

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**Title:** Approval of Temporary Land Use Permit #18-01 for Karen Ables for Fat Mermaid Restaurant for Six Months on 600 Square Feet of Public Right of Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. TLUP 1801 Application Form Fat Mermaid, 2. VMC 17.48.140 Temporary Land Use Permit, 3. 2010 ADA Requirements for Accessible Routes, 4. Fat Mermaid Awning Photo 01, 5. Fat Mermaid Awning Photo 02, 6. Fat Mermaid Awning Photo 03

Date	Ver.	Action By	Action	Result
5/23/2018	1	Planning and Zoning Commission		

### **ITEM TITLE:**

Approval of Temporary Land Use Permit #18-01 for Karen Ables for Fat Mermaid Restaurant for Six Months on 600 Square Feet of Public Right of Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision.

**SUBMITTED BY:** Kate Huber, Community Development Senior Planner

### **FISCAL NOTES:**

Expenditure Required: N/A  
Unencumbered Balance: N/A  
Funding Source: N/A

### **RECOMMENDATION:**

Approve temporary land use permit #18-01 for Fat Mermaid Restaurant and Karen Ables for six months, for the 600 square feet area of the sidewalk, within the public right of way, directly in front of her restaurant on Lot 1A, Block 39A, Harbor Subdivision.

### **SUMMARY STATEMENT:**

On April 17, 2018, Karen Ables owner of the Fat Mermaid Restaurant, applied for a building permit for a temporary summer awning that allows her to expand table seating for her restaurant outside during the warmer months. She has received building permits for this same structure for the past two years.

As a part of the zoning review for the permit application, we must confirm that setback requirements are met. In the case of this parcel, zoned general commercial, per VMC 17.030.070, there are no

setback requirements other than those required regarding fire walls and separation of buildings. That being said, through review it was clear that all or part of the temporary structure falls outside of the lot on which the restaurant sits and instead sits on the City of Valdez (COV) owned public right-of-way and sidewalk for North Harbor Drive. It is unclear why a zoning review was not completed for the past permit applications in 2016 & 2017.

After inquiring with Community Development Director, Rochelle Rollenhagen, regarding the approval of this structure, City Attorney, Jake Staser was consulted. Staser recommended that the applicant seek a temporary land use permit (TLUP) to account for the area of use that falls within the public right-of-way.

The use of the TLUP gives the Planning and Zoning Commission oversight to approve or deny use of COV property and addresses issues of liability by requiring, per VMC 17.48.140 B2, that 'the permittee shall have liability insurance valuing not less than one million dollars and shall name the COV as an additionally insured.' Other requirements of the code stated include that 'no permanent structures shall be erected on the property' and that 'no permanent alteration of the land shall occur'.

The structure that will sit in the area requested by the applicant covers an area of 12' X 32'. The applicant has also requested an additional uncovered roped off area to be included that measures 12' X 18'. The total area is 600 square feet. The applicant requested the permit for May 1st - November 1st of 2018, however the permit can only be issued for 6 months maximum.

The attached photos that show the temporary structure were taken on May 20, 2018. As you can see, the structure was erected before permits were issued. At the time the structure was put back into place for the season, Community Development contacted Karen Ables. On April 17, 2018, Ables submitted the building permit application retroactively and has been fully cooperating with Community Development to find a solution to the concerns regarding use of the public right-of-way.

As shown in the photos, the posts of the covered awning structure are secured by moveable cement pier blocks. Also shown in the photos are some additional posts that expand the roped off seating area beyond the awning structure to form the additional 12' X 18' included in the application. These posts were originally put in place in 2015 without a permit. The documentation from that time is limited and there is no record of any approval given for these posts by the Community Development Department. It appears from the documentation that the shorter posts require holes drilled in the sidewalk, which may violate the restrictions for the TLUP regarding permanent alteration of land. Staff recommends that a condition of this permit should be to remove those posts and fill the holes in the sidewalk. All barricades for the area of this permit should be temporary and moveable.

Fees for a TLUP of this type were established by City Council with Resolution 12-36. The resolution states that "for permits not exceeding two acres in size and for a period of six months or less, the fee shall be \$250 per month." Given that decision by Council, the fee for a TLUP of this type will be \$1500 for the 6 month period.

The size of the structure allows for a 52" wide clear pathway on the sidewalk. The attached ADA guidelines show a requirement of a minimum of 36" clearance for accessible routes. The City does not enforce ADA Accessibility requirements for businesses but these guidelines are included as a reference point, as we do not wish to allow for a temporary land use permit that inhibits ADA accessibility. Although 52" is above the ADA requirement, staff is somewhat concerned that overhang from vehicles parked in the street will inhibit clear flow of pedestrians on the sidewalk.

Staff believes that the request by Karen Ables and the Fat Mermaid Restaurant should be approved with appropriate conditions. The area created by this temporary awning is enjoyed by many community members and it is in the City's best interest to support local endeavors of this type. While we support the approval of this permit, we firmly believe that measures should be taken to ensure that use of the public right-of-way by local businesses does not inhibit the use of the sidewalk for all Valdez citizens and visitors, including those that may require a wheelchair or walker or other adaptive aids for mobility.

If TLUP 18-01 is approved by the Planning and Zoning Commission, staff will prepare a temporary land use permit using standard language approved by City attorneys and to include any conditions required by the commission.