



## Agenda Statement

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**Title:** Report: Temporary Land Use Permit #22-03 for Fat Mermaid Restaurant for 518 Square Feet of Public Right-of-Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. TLUP 22-03 Fat Mermaid Application, 2. 2010 ADA Requirements for Accessible Routes, 3. 143 N Harbor Drive Aerial Map

Date	Ver.	Action By	Action	Result
5/17/2022	1	City Council	received and filed	

### **ITEM TITLE:**

Report: Temporary Land Use Permit #22-03 for Fat Mermaid Restaurant for 518 Square Feet of Public Right-of-Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision

**SUBMITTED BY:** Nicole LeRoy, Planner

### **FISCAL NOTES:**

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

### **RECOMMENDATION:**

N/A report only

### **SUMMARY STATEMENT:**

On April 7, 2022, Karen Ables, owner of the Fat Mermaid Restaurant, applied for a temporary land use permit for seasonal outdoor seating adjacent to her restaurant at 143 North Harbor Drive. This is the fifth year Ms. Ables has pursued a permit of this type. Per her attached application, Ms. Ables has requested use of a 518 square foot portion of public right-of-way for outdoor restaurant seating. Ms. Ables requested the permit for May 1st - October 1st of 2022.

When this type of temporary land use permit was first processed in 2018, staff recommended compliance with the Americans with Disabilities Act (ADA) be a condition of the permit approval to allow all pedestrians an accessible route through the public right-of-way. There was debate at the time as to the required slope of the sidewalk for qualification as an accessible route as defined by the ADA. Through inspection of the site at the time, it was determined that the slope of the accent strip

exceeded the 2% maximum slope mandated by the ADA, disqualifying it as an approved accessible route. As such, it was determined by staff that 36" distance of flat, clear sidewalk would need to be maintained in order to meet the ADA minimum clearance for accessible routes (see attached guidelines.) It should be noted that the permit area shown in the application site plan for this year extends out slightly further towards Wrangell Avenue than in prior years. The drawing submitted by Ms. Ables shows an 9' x 10' uncovered portion of public right-of-way to be utilized for outdoor seating on the corner of Wrangell Avenue and North Harbor Drive. Staff has no concerns about the use of this additional portion of right-of-way usage by the Fat Mermaid, so long as appropriate ADA clearance is appropriately maintained on Wrangell Avenue, and North Harbor Drive.

Per VMC 17.48.140 F 2, use of the property under the permit shall not constitute a nuisance, substantially interfere with the use and enjoyment of adjacent property, or adversely impact public access or city operations. Ms. Able's requirement to meet ADA compliance meets the intent of this provision.

In addition, per Valdez Municipal Code 17.48.140 F 7, the permanent alteration of City property is prohibited under a permit of this type. To satisfy this code requirement, staff recommends that the temporary land use permit approval condition that all barricades for the permitted area be temporary and moveable, and that no modification to the sidewalk occurs.

Fees temporary land use permits 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." For the six-month period Ms. Ables has requested, the permit fee will be \$1,500.00.

Staff submitted the temporary land use permit application to Capital Facilities, Public Works, and Ports and Harbor for their comments and received no objection to the permit.

Staff recommended to the Planning and Zoning Commission that the temporary land use permit request by Karen Ables and the Fat Mermaid Restaurant be approved with the conditions that Ms. Ables be required to comply with all ADA guidelines, make no permanent alteration to the area, and obtain a building permit and required inspections for the proposed structure, as required by Title 15 of the Valdez Municipal Code.

The Planning and Zoning Commission voted to approve temporary land use permit 22-03 on April 27, 2022. The approval of temporary land use permits is to be reported to City Council at the next regularly scheduled meeting.