

**TO:** Mayor Rogin and Members of the Board of Trustees

**FROM:** Kim Mitchell, Communications and Community Relations

**DATE:** November 13, 2024

**ITEM:** Discussion on Use of CDOT Right of Way (ROW) for Incidental Use

---

ORDINANCE

MOTION / RESOLUTION

INFORMATION

---

**CDOT ROW Issue:** In late October, CDOT personnel, the Town of Lyons, and CML representatives met to discuss leasing CDOT right-of-way along the 300-500 blocks of Main Street.

Staff learned that although it is a CDOT policy and authorized under Federal Regulations, it was expressed that requiring a lease of the CDOT public right of way is probably not being applied consistently throughout the state. In our outreach to other Colorado Main Street communities, staff learned that no other town was required to have a lease agreement for the public right of way. Staff also learned that a few towns have a permit process between the municipality and the local business to utilize the public right of way, which addresses issues such as maintenance, trash, and repairs and confirms the understanding of both entities in writing.

In the meantime, CDOT said the town could expand its current Incidental Special Use Permit with CDOT to include public seating and tables in areas where the general public is welcome to sit without being a customer of the adjacent business. If the Town takes responsibility and liability, there would be no charge from CDOT to the Town as a governmental entity. This would save local small businesses thousands of dollars annually, which would otherwise be charged by CDOT for the use of this space. Staff recommend that the town not charge any business for use of the town's incidental use area but enter into a simple maintenance agreement.

The Town could also update some of the furniture, including tables and benches; those amenities would be available for any public use along the public right of way and not exclusive to a specific business. Those businesses that would want and/or require exclusive use, i.e., for liquor premise licensing, would still be required to have a separate direct lease with CDOT based on the amount of square footage leased. CDOT and the Town agree that a business needs an individual lease agreement with CDOT if it wants exclusivity in its seating.

With this updated agreement, other businesses along Main Street would be able to use the public right of way without a specific lease. Town staff would have the business agree to continue to maintain the area in exchange for customer seating and use, but not exclusive to their customers.

Staff suggests using funds from the interest repaid via funds from the Business Recovery Loan Funds (initially funded post-flood in 2013 and 2014). This was funded via other small businesses nearly a decade ago and currently has sufficient funding to purchase industrial-quality furniture that can withstand municipal/public use.

Staff would like BOT direction regarding the no-fee conditional use permit and utilizing some of the BRF funds to update furnishings where needed.