



**AGENDA ITEM REQUEST FORM
CITY OF JOHNSON CITY, TEXAS
CITY COUNCIL**

ITEM NO. 15

MEETING DATE: **February 2, 2021**

AGENDA PLACEMENT:

- ☐ Ceremonial
- ☐ Consent
- ☒ Individual
- ☐ Closed Session

CAPTION:

Discussion of and action on an Encroachment License Agreement application submitted by Timothy Jung of Reck 'em Right Brewing Co. for the placement of a barbeque trailer within City right-of-way located at 102 S. Ave. G, Johnson City, Texas 78636, more particularly described as Johnson City, Block 09, Lot 01 (pt of), 02 (pt of), 03 & 06, acres .28. (Applicant)

EXECUTIVE SUMMARY:

Following discussion at the January 12, 2021 City Council meeting regarding an existing encroachment on City right-of-way, City Staff approached Timothy Jung, owner/operator of Reck'em Right Brewing Co., and informed him that he would need to submit an Encroachment License Agreement Application for an existing barbecue trailer for City Council review and approval. Mr. Jung submitted the Application and requisite fee on January 13, 2021.

In accordance with Municipal Code of Ordinances Article 4.06 *Mobile Food Vendors*, the subject barbecue trailer would be exempt from mobile food vendor regulations and permitting because:

The mobile food vendor is a complementary extension or outlet, of a brick-and-mortar restaurant or business and the applicant applies for and is granted a conditional use permit under the requirements of the city's zoning ordinance. The mobile food vendor shall only operate during the operating business hours of the brick-and-mortar business of which the mobile food vendor is an extension or outlet.

Consequently, in addition to this Encroachment License Agreement, the applicant will be required to seek a Conditional Use Permit through the Planning and Zoning Commission and City Council at a later date.

FINANCIAL: N/a

ATTACHMENTS:

- Original Encroachment License Agreement
- Revised Encroachment License Agreement (City Attorney)
- Maps

SUGGESTED ACTION:

Motion to approve a Professional Services Agreement between the City of Johnson City, Texas and Jones & Carter, Inc. for general engineering consultation, services, and assistance. (Staff)

PREPARED BY: City Staff

DATE SUBMITTED: 1/29/21



Development Services
P.O. Box 369 (Mailing)
303 E. Pecan St. (Physical)
Johnson City, Texas 78636
(830) 868-7111, Ext. 4
(830) 868-7718 (Fax)

Application Date: 1/13/2021

ENCROACHMENT LICENSE AGREEMENT APPLICATION

1. Name of Applicant: Timothy Jung
2. Property Address: 102 South Ave G. Johnson City TX 78636
3. Legal Description of Property: Johnson City, BLK 09, Lot 1 (Pt of), 02 (Pt of), 03 + 06, Acres .28
4. Nature of Encroachment (Describe): BBQ Trailer parked in front of breeze way. The Trailer is completely off of the street, but occupying possible parking spaces.
5. Purpose of Encroachment (Describe why you are requesting permission to place an encroachment upon the City's right-of-way): In order to re-open and have the possibility of serving at a 75% occupancy we need the BBQ trailer parked to have our kitchen open, which is a requirement w/ TABC. There is no other feasible space to park it.
6. I have read and fully understand the City of Johnson City's Encroachment License Agreement, which I have executed and submitted along with this Encroachment Permit Application.
7. The Permit Application Fee (for the City's Fee Schedule and Code regulations, please refer to www.johnsoncitytx.org.) is included with this Permit Application. I understand that the purpose of this fee is to process my application and that this fee is non-refundable, whether or not I am granted an Encroachment License by the City Council.
8. I understand that this Encroachment Permit Application constitutes a government document. Further, I swear or affirm that the information that I have provided herein is true and correct to the best of my knowledge.

SUBMITTED THIS 13th DAY OF January, 2021.


(Applicant Signature)

Office Use Only:



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ENCROACHMENT LICENSE APPLICATION INSTRUCTIONS

1. To apply for an Encroachment License from the City of Johnson City, an Applicant must complete and submit the following:
 - a. An original and signed application form, and required documents; and
 - b. Payment of a non-refundable application fee as set by the City of Johnson City in its Master Fee Schedule.
2. For a mobile food vendor, an Applicant seeking use of an easement or right-of-way for a mobile food unit, must possess at the time of the application a "Conditional Use Permit", approved and issued by the City Council of the City, for use of an easement or right-of-way for a mobile food unit. An Applicant may apply for both a Conditional Use Permit and an Encroachment License at the same time. An application form for a Conditional Use Permit is available from the City.
3. An application and documents must be submitted to the City at the address indicated above.
4. An application shall be reviewed by the Development Services Department of the City. Please allow approximately seven to ten business days for review.
5. If approved, the Director of Public Works shall notify the Applicant of his required signature for the Encroachment License Agreement. Upon execution of the Agreement by the City and the Applicant, the License Agreement shall issue.
6. Denial of an application for an Encroachment License may be appealed to the City of Johnson City Chief Administrative Officer whose decision is final.
7. The Encroachment License Agreement must be available and produced on request by the City.
8. An Encroachment License is valid for one year from date of issuance and is renewed annually upon compliance review and payment of the annual application fee.



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Application Date: _____

ENCROACHMENT LICENSE

APPLICATION FORM

To apply for an Encroachment License from the City of Johnson City, an Applicant must complete and submit the following information and documents:

1. Applicant Information:

Name: _____

Address: _____

Phone: _____

Email: _____

2. Physical address of easement or right-of-way:

3. Legal description of easement or right-of-way. Attach as separate page and labeled Exhibit "A". Include physical address, and legal description (metes and bounds) described as follows:

"Being that portion of that certain public utility easement or right-of-way situated in _____ Addition/Survey to the City of Johnson City, Blanco County, Texas, and being more particularly described by metes and bounds as follows: (Legal Description follows)."

4. Purpose and Nature of Encroachment. Describe why you are requesting permission to place an encroachment upon the City's easement or right-of-way; ex: building, parking, decks, signs, retaining wall, fence, driveway, piers, footings, etc.

5. Graphic description and dimensions of nature of the encroachment. Attach as separate page and labeled as Exhibit "B". This drawing shall include a north arrow, and indicate the purpose of the encroachment. A detailed and/or cross section drawing of the improvement(s) may be requested by city staff.

6. For a mobile food vendor, an Applicant seeking use of an easement or right-of-way for a mobile food unit, copy of the "Conditional Use Permit" issued by the City Council of the City approving use of the mobile food unit on the property. An applicant may apply for both a Conditional Use Permit and an Encroachment License at the same time.

7. Signed original of "Utility Consent to Encroachment" form as contained in Attachment No. 1 for a request involving a utility easement.
8. On approval and within ten days after Encroachment License Agreement signed, Homeowner's Insurance Certificate, or Certificate of General Liability insurance policy containing the following:
 - a) Minimum coverage: Residential: \$300,000; Commercial: \$1,000,000; and
 - b) Notice of policy cancellation to City two weeks prior to cancellation.
9. Payment of a non-refundable application fee as set by the City of Johnson City in its Master Fee Schedule.

Applicant Affidavit and Signature

I have read and fully understand the requirements for application of a City of Johnson City's Encroachment License. I understand that this Encroachment License Agreement Application constitutes a government document.

The License Application Fee (for the City's Fee Schedule and Code regulations, please refer to www.johnsoncitytx.org.) is included with this Encroachment License Application. I understand that the purpose of this fee is to process my application and that this fee is non-refundable, whether or not I am granted an Encroachment License by the City.

Further, I swear or affirm that I have the authority to make the foregoing application and to enter into an Encroachment License Agreement if approved, and that the information that I have provided herein is true and correct to the best of my knowledge.

SUBMITTED THIS _____ DAY OF _____, 20_____.

Applicant Name Please print.

Applicant Signature

UTILITY CONSENT TO ENCROACHMENT OF UTILITY EASEMENT

Applicant may indicate a listed company as “not applicable” where there is no utility easement in the requested easement or right-of-way area for that company.

“The undersigned, on behalf of the public utility company using or entitled to use under the terms and provisions of our respective franchise with the City of Johnson City, is authorized and does hereby consent to the encroachment and joint use of the described portion of such easement or right-of-way requested in this Application for encroachment.”

PEDERNALES ELECTRIC COOPERATIVE

Name and Title _____
(Please Print)
Signature: _____

Date: _____

GAS COMPANY _____

Name and Title _____
(Please Print)
Signature: _____

Date: _____

PHONE COMPANY _____

Name and Title _____
(Please Print)
Signature: _____

Date: _____

INTERNET and/or WIRELESS COMPANY _____

Name and Title _____
(Please Print)
Signature: _____

Date: _____

CITY OF JOHNSON CITY
Name and Title _____
(Please Print)
Signature: _____

FOR OFFICE USE ONLY

APPLICATION CHECKLIST Initial to indicate receipt.

- _____ Completed, signed Application.
- _____ Power of Attorney (if applicable).
- _____ Exhibit "A": Legal description of easement or right-of-way.
- _____ Exhibit "B": Graphic description and dimensions of nature of the encroachment.
- _____ Attachment No. 1: Utility Consent to Encroachment of Utility Easement.
- _____ Conditional Use Permit (for a mobile food vendor seeking use of easement or right-of-way for a mobile food unit.
- _____ Proof of insurance. On approval and within ten days after Encroachment License Agreement signed.
- _____ Application fee.

APPLICATION REVIEW PROCESS AND DECISION

Date Application Submitted: _____

Fee Paid and Amount: _____

Date of Approval: _____

License(s) Issued: _____

License Expiration Date(s): _____

Date of Denial: _____

Reason(s) for Denial: _____

Date of Appeal (if taken): _____

Decision on Appeal: _____

By City Representative: _____

Printed Name

Title

Signature

ENCROACHMENT LICENSE AND AGREEMENT

This Encroachment License and Agreement ("Agreement") is entered into this _____ day of _____, 20_____, ("Effective Date") by and between the City of Johnson City, Texas, a Type A municipal corporation as Licensor ("City"), and _____ ("Licensee"), individually "Party", collectively "the Parties", acting by and through their respective duly authorized officials.

In consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

- I. License and Premises.** City grants Licensee a License for the use of an easement or right-of-way situated in the City of Johnson City physically and legally described in Exhibit "A", attached hereto and incorporated herein and for all purposes, and hereinafter referred to as the "Premises". This License does not grant to Licensee the authority to use any area beyond the Premises.
- II. Purpose and Use.** Licensee accepts the License and agrees to use the Premises for the specific purpose(s) described in Exhibit "B", attached hereto and incorporated herein and for all purposes.
- III. Terms and Conditions of License Use by Licensee.**
 - A. Maintenance and Removal.** Licensee shall:
 - a. Maintain in good condition all of the Premises and improvements, if any;
 - b. Reimburse the City for costs of maintenance of the Premises if City performs such;
 - c. Arrange for all activities and improvements on the Premises to be discontinued and/or removed at Licensee's expense within thirty (30) days of termination; and
 - d. Not seek compensation from the City for loss of value to improvements or loss of profits when required to remove improvements or to discontinue use.
 - B. Insurance.**
 1. Licensee, at its sole expense, shall maintain on the Premises insurance coverage with insurers licensed to do business in the State of Texas and acceptable to the City.
 2. Such insurance shall remain in effect during the full term of this Agreement and during removal of improvements and restoration of the Premises on termination of the Agreement.
 3. The Licensee shall provide proof of insurance within ten days after execution of this Agreement and shall provide proof of insurance annually on the anniversary date of renewal during the term of this Agreement.
 4. All policies shall include the City as an "Additional Insured".
 5. Such insurance will not be cancelled or altered except after thirty (30) days written notice to the City.
 6. Licensee shall immediately advise City of any claim or litigation that may result in liability to City.

C. Hazardous Substance. Licensee shall not store or dispose on the Premises, nor transport to or over the Premises any hazardous substance. Licensee represents and warrants that its use of the Premises will not generate any hazardous substance.

D. Lawful Use. Licensee shall use the Premises in accordance with all Federal and State Laws, and Municipal Ordinances, Codes and Regulations.

IV. License Only; Right of Entry.

A. License Only. This Agreement creates only a License for the limited purposes permitted herein and subject to the terms and conditions set forth for use by Licensee. This License does not confer on Licensee nor does Licensee acquire any leasehold or other real property interest in the Premises.

B. Right of Entry. City reserves the right to enter upon the Premises at any time for the purpose of installing or maintaining improvements necessary for the public's health, welfare and safety, or for any other public purpose.

V. Term; Automatic Renewal. This Agreement is effective on the Effective Date for a term of one year, unless terminated by the City or the Licensee as provided herein. This Agreement automatically renews on the anniversary date of the Effective Date pending City approval following review by the City of Licensee compliance with the Agreement, and payment of the City's annual application fee by Licensee.

VI. Termination.

A. This Agreement may be terminated:

- i. By either Party at any time prior to the expiration of the License term by giving ten (10) days written notice to the other party; or
- ii. By the City automatically if the City Council determines that use of the Premises is necessary for any other public purpose, including electric, water, sewer, drainage, communication.

B. Licensee shall restore the Premises to its original state existing as of the Effective Date, reasonable wear and tear excepted, upon termination of this Agreement.

VII. Default; Cure; Damages and Remedies upon Default.

A. Either of the following shall constitute an Act of Default, failure by Licensee to:

- i. Pay the annual application fee;
- ii. Maintain required insurance;
- iii. Comply with the terms and obligations of this Agreement; or
- iv. Use the Premises for the purposes permitted herein.

B. Upon an Act of Default, City shall provide written notice of default to Licensee and a thirty-day opportunity to cure. Failure to cure shall terminate the Agreement.

C. City shall be entitled to collect from Licensee damages including fees and expenses incurred by City in pursuing its remedies provided by law. Remedies include removal of and assessment of a lien on Licensee's property or improvements for costs of removal incurred by the City.

VIII. Notices. Notices required under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage pre-paid, addressed:

To Licensors-City
City of Johnson City
City Secretary
P.O. Box 369
Johnson City, TX 78636

To Licensee:
Name: _____
Address: _____

IX. INDEMNIFICATION.

LICENSEE SHALL, AND HEREBY AGREES TO, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, OR COSTS, INCLUDING ATTORNEY'S FEES, FOR PROPERTY DAMAGE OR LOSS, AND/OR PERSONAL INJURY, INCLUDING DEATH, ARISING OUT OF OR RELATED TO ACTS OR OMISSIONS OF LICENSEE, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES OR TRESPASSERS ON THE ENCROACHMENT PREMISES OR IN PERFORMANCE OF USES GRANTED UNDER THIS LICENSE; AND WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED CONTRIBUTORY NEGLIGENCE OF THE CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS; AND THAT LICENSEE SHALL DEFEND AND PROTECT CITY WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. LICENSEE SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND MADE AGAINST CITY OR LICENSEE.

X. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the Parties and may not be modified except in writing executed by both Parties.

XI. Assignment; Sublease. Licensee may not assign this Agreement or sublease the Premises without the prior written consent of the City.

XII. Governing Law, Interpretation and Severability. This Agreement shall be governed by the laws of the State of Texas and venue shall lie in Blanco County, Texas. In the event of any dispute, it shall not be construed for or against either party that such party did or did not author the Agreement. The invalidity or illegality of any provision of this Agreement shall not affect the remaining provisions.

XIII. Authority. The signer of this Agreement for Licensee hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of Licensee and that he or she has had full opportunity to read the contents hereof and to seek its review by legal counsel.

Signature page follows.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement individually, or by their duly authorized agents, as of the dates indicated below.

LICENSOR:

City of Johnson City,
a Texas Type A Municipal Corporation

By: _____
Mayor

Date

ATTEST:

By: _____
City Secretary

Date

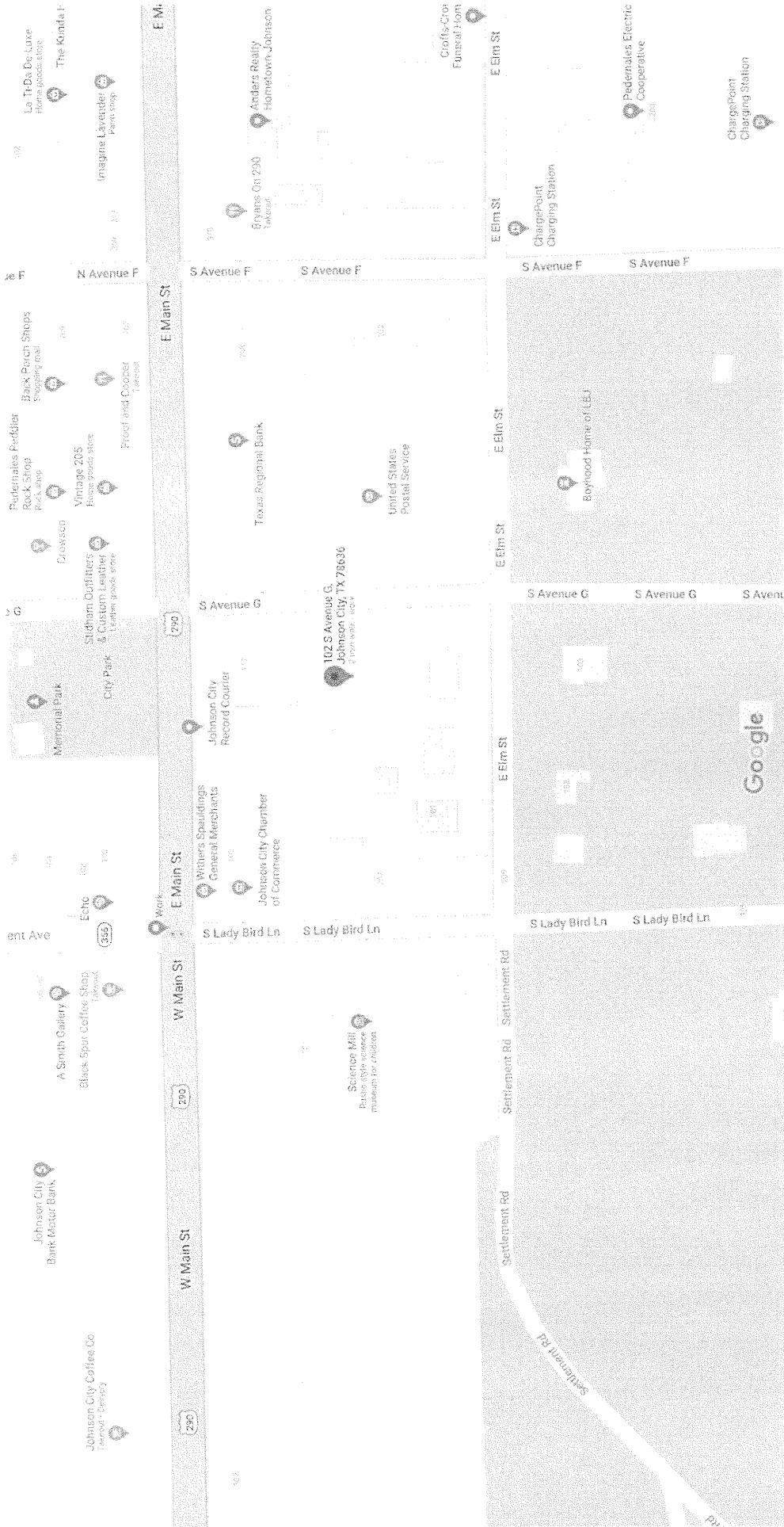
LICENSEE:

By: _____
Signature

Date

Printed Name

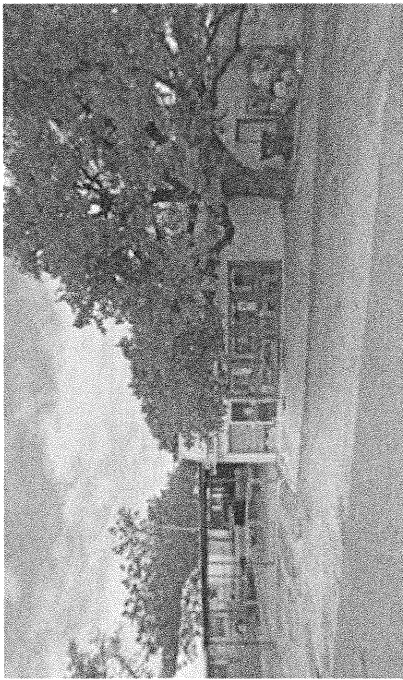
Title



Google Maps Reck 'Em Right Brewing Company



Map data ©2021, Map data ©2021 20 ft

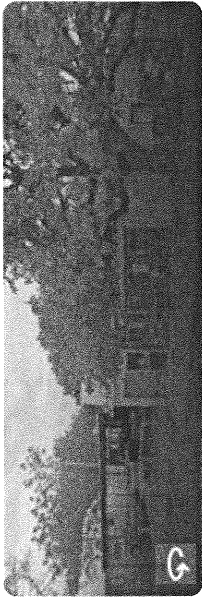


102 S Avenue G

Johnson City, TX 78636
Building

- Directions
- Save
- Nearby
- Send to your phone
- Share

Photos



At this place

Reck 'Em Right Brewing Company

4.9 ★★★★★ (35)
Brewery
Open until 9:00 PM

