



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

ITEM NO. 12

MEETING DATE: November 2, 2021

AGENDA PLACEMENT:

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

CAPTION:

Discussion of and action on the extension of an approved Conditional Use Permit and Encroachment License and Agreement for Reck'em Right Brewing Co. for the placement and operation of a food / barbeque trailer on City right-of-way located at 102 S. Ave. G, Johnson City, Texas 78636. (Applicant)

STRATEGIC WORK PLAN:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Not Applicable | <input type="checkbox"/> Goal 5: Improve Fire Safety |
| <input type="checkbox"/> Goal 1: Increase Housing Diversity | <input type="checkbox"/> Goal 6: Improve Streets |
| <input type="checkbox"/> Goal 2: Expand Quality Lodging | <input type="checkbox"/> Goal 7: Increase Publicity & Promotion of the Community |
| <input type="checkbox"/> Goal 3: Improve Code Enforcement | <input type="checkbox"/> Goal 8: Increase Economic Development Activities |
| <input type="checkbox"/> Goal 4: Improve Streetscaping & Signage | |

EXECUTIVE SUMMARY:

Timothy Jung, owner/operator of Reck'em Right Brewing Co., submitted an Encroachment License Agreement application for an existing barbecue trailer located on City right-of-way for City Council review and approval on February 2, 2021. The Council approved the Encroachment License Agreement.

Moreover, the City Council approved - subject to a 6-month rereview - a Conditional Use Permit for the same on April 6, 2021; six months expires on October 7, 2021.

Although the approved food / barbeque trailer has been removed, the applicant desires to replace the prior trailer with a new barbeque trailer in the near future. The new trailer will not be a mobile food trailer as before, but rather, will consist of a flatbed trailer with a non-enclosed barbeque pit.

On October 5, 2021, Council expressed several concerns about safety, oil dripping onto the street, no inside grease trap, and an additional loss of parking. Councilmember Babb made the motion to table the item. Councilmember Coleman seconded the motion. All were in favor, and the motion was tabled until November 2, 2021.

On October 6, 2021, City Staff advised Mr. Jung that City Council elected to wait until November when he could attend to take action on extending the conditional use permit. City Staff informed the applicant that City Council desired and/or expressed concerns about the following:

1. Would like to see full color trailer schematic / dimensions;
2. The potential for grease on street;
3. Is a grease trap required;
4. Safety of BBQ trailer for patrons / visitors (i.e. heat, etc.); and
5. Loss of parking.

Mr. Jung responded:

“I am waiting to buy a bbq trailer until I am approved. I can show pics of what I want to buy but I am not going to spend the money if I don’t have a place to put it.”

FINANCIAL: N/a

ATTACHMENTS:

- Conditional Use Permit; and
- Encroachment License.

SUGGESTED ACTION: No motion provided.

PREPARED BY: City Staff

DATE SUBMITTED: 10/29/21



Zoning Permit

Permit Number: 267

Permit Date: 04/07/2021
Expire Date: 10/07/2021
Use Type: Commercial
Project Cost: .00
Square Footage: 0

Site Address: 112 E MAIN ST
City,State,Zip: JOHNSON CITY, TX 78636
Lot:
Subdivision: N/a

Owner: JCTX Partners, LLC
Address: 611 W. 5th St., Ste. 300
City,State,Zip: Austin, TX 78701
Phone:
Email:

Contractor: Reck'Em Right Brewing Company
Address: 102 S Ave. G
City,State,Zip: Johnson City, TX 78636
Phone: 830-998-6814
Email: tim@reckemrightbrewing.com

Comments:

Conditional Use Permit for placement of BBQ food truck at 102 S. Ave. G. Expires 6 months from issuance.

Fee	Amount	Payment Date	Amount
Zoning Change or Classification Addition Request	\$378.00	04/07/2021	\$378.00
Total Fee: \$378.00		Total Paid: \$378.00	

You are on notice that State and Federal laws mandate Texas Department of Licensing and Regulation (TDLR) registration if the construction valuation is \$50,000 or more. You are on notice that State and Federal laws mandate asbestos surveys be completed before commencing commercial renovation / demolition work within the State of Texas. You are on notice that Waste Connections is the City's garbage and debris collection franchisee. Contractors shall coordinate all disposal services through the City's franchisee.


Development Service Dept.

04/07/2021
Date



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

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: Timothy Jung

Address: 102 South Ave. G, Johnson City, TX 78636

Phone: (830) 998-6814

Email: tim@reckemrightbrewing.com

2. Physical address of easement or right-of-way:
102 South Ave. G, Johnson City, TX 78636

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)."

Johnson City, BLK 09, Lot 1 (pt of), 02 (pt of), 03 & 06, Acres 0.28

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.
Food trailer

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 5th DAY OF February, 2021.

Timothy Jung

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 N/a

(Please Print)

Signature: _____

Date: _____

GAS COMPANY N/a

Name and Title _____

(Please Print)

Signature: _____

Date: _____

PHONE COMPANY N/a

Name and Title _____

(Please Print)

Signature: _____

Date: _____

INTERNET and/or WIRELESS COMPANY

N/a

Name and Title _____

(Please Print)

Signature: _____

Date: _____

CITY OF JOHNSON CITY

Name and Title for Brent J. Sultemeier, Public Works Director

(Please Print)

Signature: 

FOR OFFICE USE ONLY

APPLICATION CHECKLIST Initial to indicate receipt.

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

APPLICATION REVIEW PROCESS AND DECISION

Date Application Submitted: 1/13/2021

Fee Paid and Amount: \$179.00

Date of Approval: 2/2/21 (by City Council)

License(s) Issued: Encroachment License

License Expiration Date(s): _____

Date of Denial: _____

Reason(s) for Denial: _____

Date of Appeal (if taken): _____

Decision on Appeal: _____

By City Representative: Rick Schroder

Printed Name

Chief Administrative Officer / City Sec.

Title

Signature 

Exhibits A & B: T. Jung Encroachment

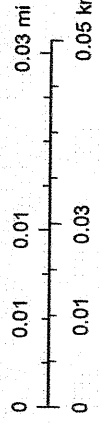


2/23/2021, 1:47:13 PM

☐ Parcels

☐ Abstracts

1:1,128



GeoEye, Maxar, Microsoft, Esri Community Maps Contributors, Texas Parks

Blanco County Appraisal District, BIS Consulting - www.bisconsulting.com
Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of boundaries.

ENCROACHMENT LICENSE AND AGREEMENT

This Encroachment License and Agreement ("Agreement") is entered into this 2nd day of February, 2021, ("Effective Date") by and between the City of Johnson City, Texas, a Type A municipal corporation as Licensor ("City"), and Timothy Jung / Reck-em Right Brewing Co. ("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: Timothy Jung
Address: 101 Arrowhead Drive
Johnson City, Texas 78636

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 authorize 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

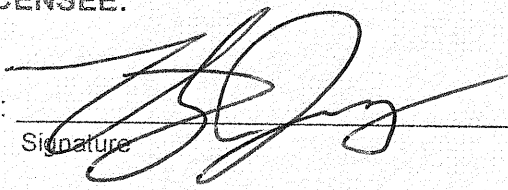
2/2/21
Date

ATTEST:

By: 
City Secretary

2/2/21
Date

LICENSEE:

By: 
Signature
Timothy Jung
Printed Name
Owner, Reck'em Right Brewing Co.
Title

2/2/21
Date



The Cincinnati Insurance Company
The Cincinnati Casualty Company
The Cincinnati Indemnity Company

Policy Number: ETN 054 14 17

Effective Date: 06-18-2020

Named Insured: TLCGH LLC DBA RECK EM RIGHT BREWING CO

For professional advice and policy questions or changes, please contact your local independent agency:

SWBC INSURANCE SERVICES, INC.
P.O. BOX 791028
SAN ANTONIO, TX 78279-1028

210-525-1242

Dear Policyholder:

Thank you

Thank you for trusting The Cincinnati Insurance Companies with your commercial insurance coverage. We recognize that locally based independent agents have the working knowledge to help you choose the right insurance company for your needs. Together with your local independent insurance agency, we are committed to providing you with the highest level of service.

Please review your enclosed policy information to verify your coverage details, as well as deductibles and coverage amounts. Should your needs change, your agent is available to review and update your policy.

Please promptly report claims

If you experience a policy-related loss, you may report it by contacting your local professional independent agency representing The Cincinnati Insurance Companies or by directly calling us toll-free at **877-242-2544** and providing your policy number and claim-related information.

Sincerely,

Sean M. Givler
Senior Vice President - Commercial Lines