



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

ITEM NO. 20

MEETING DATE: June 7, 2022

AGENDA PLACEMENT:

- Ceremonial
- Consent
- Individual
- Closed Session

CAPTION:

Discussion of and action on a Fireworks Permit Application from the City of Johnson City for a public Independence Day fireworks display and parade to be held on July 2, 2022 at the Blanco County Courthouse Square, 101 E. Pecan Drive, Johnson City, Texas 78636, including, but not limited to, the advertising, funding, and staffing thereof. (Staff)

STRATEGIC WORK PLAN:

- | | |
|--|---|
| <input 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 checked="" 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:

Location: Blanco Co. Courthouse, 101 E. Pecan Drive
Setup: Saturday, July 2, 2022
Cleanup: Saturday, July 2, 2021, City coordinating barricade placement and removal.
Facilities: 2 unisex porta-potties.

Fireworks:

Lower walking track at dusk. Licensed Pyrotechnic Michael Norton (License No.) with American Fireworks to detonate the fireworks. Two brush trucks staged and staffed around the area. 150-250 foot safety zone around the detonation of the fireworks to ensure no embers fall on spectators. Staffing: City Staff, JCVFD, Volunteers

Amenities:

- Downtown Parade starting at 10:00 am
- Live Music
 - National Anthem before fireworks.
 - Live music by local artists throughout the evening.
- Food provided by local non-profits and/or local vendors.
- Flag Ceremony – at the flagpole at the southeast corner of the Courthouse Square or stage area.
- Fireworks beginning at Dusk

Security: Traffic control handled by Johnson City PD and Blanco Co. Sheriff's Office.

Insurance: Fireworks rider provided by TML-IRP.

Parking: Coordinated by City by outlined parking plan.

Cancellation: If rain prevents the fireworks show from happening, it will be rescheduled according to American Fireworks availability.

FINANCIAL: General Fund \$9,050 to \$10,000
HOT Funds \$1,000 to \$2,000 for advertising

ATTACHMENTS:

- Aerial Image of Area for Parade Route
- Aerial Image of Event
- TxDot Road Closure Application
- City of Johnson City Special Event Permit
- City of Johnson City Fireworks Application
- Blanco Co. Commissioners Court Agenda Request Form
- JCISD Approval and Application for use of Facilities
- Hotel Tax Legal Q&A

SUGGESTED ACTION:

Motion to approve a Fireworks Permit Application and Special Event/Parade Permit from the City of Johnson City for a public Independence Day fireworks display and parade to be held on July 2, 2022 around the Blanco County Courthouse Square, 101 E Pecan, Johnson City, Texas 78636, including, but not limited to, the advertising, funding, and staffing thereof.

PREPARED BY: City Staff

DATE SUBMITTED: 6/03/22

NOTES TO AGENTS:

Agents must provide all requested information then either email, fax, or mail this form as noted below.

Pre-printed limits are the minimum required; if higher limits are provided by the policy, enter the higher limit amount on an Acord Form.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day** prior to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

List the contractor's legal company name, including the DBA (doing business as) name as the insured. If a staff leasing service is providing insurance to the contractor/client company, list the staff leasing service as the insured and show the contractor/client company in parenthesis.

The Texas Department of Insurance (TDI) approved forms are the only acceptable proof of insurance for department contracts. The preferred Certificate of Insurance (COI) is on a 1560 or Acord form.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

DO NOT COMPLETE THIS FORM UNLESS THE WORKERS' COMPENSATION POLICY IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF TXDOT.

The **SIGNATURE** of the agent is required.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURANCE is not an acceptable substitute for Workers' Compensation.

COMMERCIAL GENERAL LIABILITY INSURANCE:

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

BUSINESS AUTOMOBILE POLICY:

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$500,000 each occurrence
	\$100,000 each occurrence
Property Damage	\$100,000 for aggregate

PRIVATE AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for a Business Automobile Policy.

Completed forms may be submitted by any of the following methods:

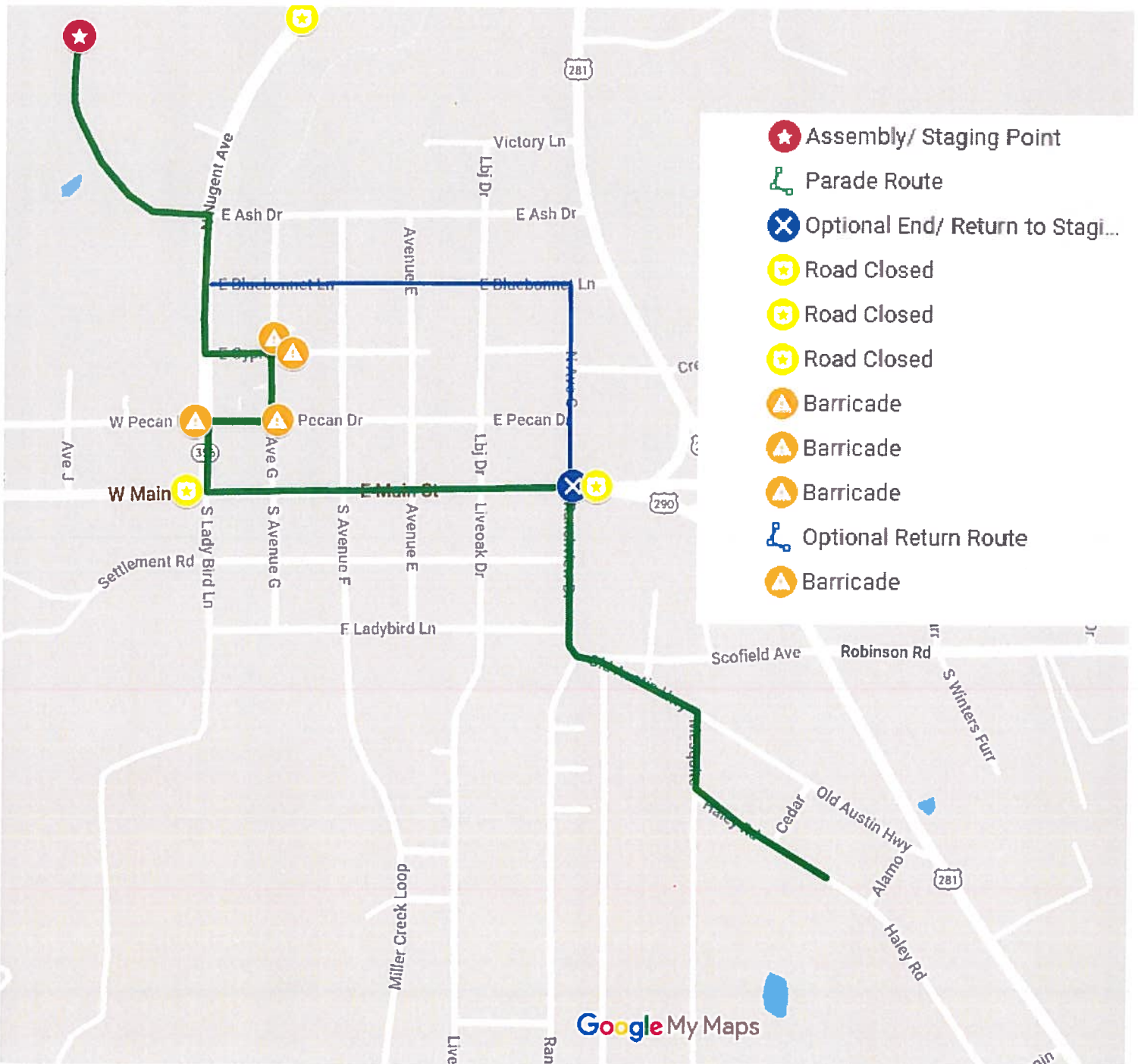
Email: CST_Insurance@txdot.gov
Fax: (512) 416-2536
Mail: Texas Department of Transportation
CST – Contract Processing
125 E. 11th Street
Austin, TX 78701-2483

INDEPENDENCE DAY

TXDOT



PARADE ROUTE





POLICE DEPARTMENT

Chief of Police Ross Allen

P.O. Box 159 • 406 West Main Street

Johnson City, Texas 78636

Office (830) 868-0995 • Fax (830) 868-2095 • E-mail policechief@johnsoncitytx.org

To whom it may concern,

The Johnson City Police Department will be conducting traffic control for the July 2nd Parade. We along with other local Law Enforcement Agencies will be using marked police vehicles for road closures and traffic control.

Chief Ross Allen
Johnson City Police Department.

Application Date: _____



P.O. Box 369 (Mail)
303 E. Pecan Dr. (Physical)
Johnson City, TX 78636
830.868.7111 (Phone)
830.868.7718 (Fax)

FIREWORKS PERMIT APPLICATION

APPLICANT'S NAME: Whitney Walston DATE: 06/03/2022

APPLICANT'S ADDRESS: 303 E Pecan PHONE #: 830-868-7111 *7

AGE: 35

LOCATION OF PROPOSED FIREWORK DISPLAY:

30.27971, -98.41383, The lower track on the JCISD High School Campus

ADDITIONALLY, THE FOLLOWING MUST ACCOMPANY APPLICATION:

- Names, ages, and addresses of all persons conducting the display.
- Proof of insurance or bond as required by Ordinance.
- A survey or aerial image submitted illustrating the display area and location of all launch and detonation sites, public areas, and safety features.
- Location of stored fireworks for the display.

By signing below, the Applicant hereby acknowledges that he/she is familiar with the Firework Rules promulgated by the State Fire Marshall and Article 5.43-4, Insurance Code of the State of Texas and agrees to adhere strictly to the provisions of said regulations.

SIGNATURE: _____ License #: _____

<u>Office Use Only:</u>	
Permit #: _____	Date Received: _____
Date of Approval: _____	Date of Denial: _____
Approved by: _____	Fire Marshal Approved: _____

Application Date: 6/03/2022



P.O. Box 369 (Mail)
303 E. Pecan Dr. (Physical)
Johnson City, TX 78636
830.868.7111 (Phone)
830.868.7718 (Fax)

APPLICATION FOR SPECIAL EVENT / PARADE PERMIT

CHAPTER 4

PERMIT NO.: _____

PLEASE READ THE FOLLOWING PRIOR TO COMPLETING THIS FORM: CITY STAFF MAY CONTACT YOU TO DETERMINE IF TRAFFIC CONTROL OR ANY OTHER CODE REQUIREMENTS ARE NECESSARY FOR APPROVAL OF THE SPECIAL EVENT / PARADE PERMIT APPLICATION. AFTER REVIEW OF THE APPLICATION, CITY STAFF WILL CONTACT YOU TO INFORM YOU OF THE DISPOSITION OF THE APPLICATION. PERMIT APPLICATIONS MUST BE FILED A MINIMUM OF FIFTEEN (15) DAYS BEFORE THE SPECIAL EVENT / PARADE. IMPORTANT CONTACT INFORMATION:

830.868.3209 (POLICE DEPT.) 830.868.7111 (CITY HALL)

Special Event / Parade Definition:

Event: A planned occasion or activity that occurs on and impacts a City public right-of-way, such as a street, sidewalk, alley, walkway, or other City public-owned facility, such as a municipal park, pool, or community building, during a particular interval of time; an event includes a parade, rally, public rally, or recreational street use.

Parade: Any march or procession consisting of people, animals, vehicles (motorized or nonmotorized), floats, or a combination thereof, except funeral processions, upon any public street or alley which does not comply with the normal or usual traffic controls and which may reasonably require and necessitate special traffic control and/or rerouting, special police protection, and/or crowd control or other prior planning, and which is organized for a common purpose, theme, or cause.

Section I. Event Information

Check One: Parade Special Event Start Date: 07/02/2022 End Date: 07/02/2022

Repeat Event: Yes No If so, please provide dates: 07/03/2021

Event Description: Independence Day Parade and Fireworks Celebration

Location and/or Route of Event: Parade Route Attached/ Event Layout Attached

Event Assembly Time, if applicable: 8 am for Parade Assembly Location: JCISD High School Parking Lot
Dusk for Fireworks Courthouse Square

Event Disband Time, if applicable: 11:30 am Disband Location: JCISD High School Parking Lot
10:30 pm Courthouse Square

Number of Participants: People: 100 / Animals: 10-20 Animal Type: Horses, goats, dogs, bovine

Number and Type of Vehicles: Vehicles: 40-50 Vehicle Type: Multiple

Will the Event Occupy All or Part of the Road: No Yes Street Closure(s) Required?: No Yes
If Yes, specify street closure location: Please see attached for both parade and celebration closures

Will loudspeakers, live music, or amplification equipment be on site?: Yes No
If yes, please describe: For the evening celebration, there will be a colorguard presentation and live music

Will alcohol be served?: Yes No
Will alcohol be sold?: Yes* No

* TABC license and certificate of general liability insurance required.

Will food be sold at the event?: Yes* No

* Copies of licenses or permits issued by the appropriate agencies required.

Will individual retail vendors participate in the event?: Yes* No

* Peddler permit applications must be submitted.

Restroom facilities provided by event?: Yes No

How many restrooms and in what location(s):

Mens/Womens restrooms at Memorial Park along with two portable toilets on Ave G near the park

Section II. Organization/Personal Information

Sponsoring Organization: The Parade is sponsored by the Blanco Co. Republican Party/Fireworks by the City

Non-Profit Organization: No Yes (Please provide proof of non-profit status with application.)

Event Chairperson: Parade - Carlette Lewis/ Fireworks Whitney Walston Phone: (830) 868 7111 Cell: (512) 850 - 8402

Mailing Address: PO Box 369 E-mail: wwa

Section III. Application Checklist

Please provide the following documentation with application:

- Medical Plan
- Evacuation Plan
- Security Plan
- Executed Indemnity and Hold Harmless Agreement
- Liability Insurance

Section IV. Other

Please provide any additional information that may be helpful when considering this permit application:

Section V. Execution

The applicant is responsible for the regulation and removal of all debris, trash, et cetera arising from the special event / parade. The applicant must utilize the commercial solid waste disposal company currently having a franchise agreement with the City. Refer to the current fee schedule for applicable permit fees. The event chairperson must place an approved permit in a conspicuous location within the event location. If the applicant is applying on behalf of another entity, the applicant must submit written permission from the other entity to do so.

General liability and, if alcohol is to be sold, liquor liability insurances in an amount not less than \$1,000,000.00, naming the City as additional insured, required. The Applicant shall agree to pay any additional costs and to provide full reimbursement for such costs to the City within 60 calendar days of the conclusion of the event. The assessed reimbursement amount may be appealed to the City Council. A refundable deposit for estimated costs per event may be required. The deposit may be applied toward payment of City costs. Said deposit may be forfeited for nonpayment of City costs.

My signature below indicates that I have the authority to execute this application on behalf of myself and / or the organization identified on this application, and both the organization and myself agree to fully comply with any and all provisions of this application, the permit and its requirements, and the City of Johnson City Code of Ordinances.

Printed Name of Applicant: Whitney Walston

Relationship to Organization: City Secretary

Address: 303 E Pecan Phone: (830) 868 7111 Cell: (512) 850 8402

Signature:  Date: 06 / 03 / 2022

OFFICE USE ONLY:

Approved: ___ Disapproved: ___ Mayor: _____ Date ___/___/___

Approved: ___ Disapproved: ___ Police Chief: _____ Date ___/___/___

Approved: ___ Disapproved: ___ CAO: _____ Date ___/___/___

Appendix A: Medical and Evacuation Plans

What physical address will be given in the event of an emergency?

101 E Pecan Dr, Johnson City, TX 78636

Emergency operations will be coordinated by:

Name: Ross Allen

Telephone No.: (830) 968 - 4163
(Telephone number must be in service during event)

Name: _____

Telephone No.: (_____) _____ - _____
(Telephone number must be in service during event)

Emergency telephone numbers:

Emergency: 911
Fire Dept.: (888) 456-9740
Police Dept.: (830) 868-0995

Medical Plan

Event employees / volunteers shall immediately report all serious medical emergencies to the Emergency Coordinator(s) referenced above. Basic first aid shall be handled by the event Emergency Coordinator(s). Serious medical emergencies shall be reported to the North Blanco County Emergency Medical Service.

Please provide any additional medical plan information (attach additional sheets if necessary):

NBCEMS has been notified of the Independence Days Events. The JCVFD will be onsite to offer assistance during the Fireworks display.

Evacuation Plan

Attach a site plan of the event. Indicate on the site plan all exit locations for pedestrians and vehicular traffic. Please detail evacuation plan procedures for event attendees and employees / volunteers (attach additional sheets if necessary):

Nugent will remain open during the evening celebration along with Pecan and Cypress. This will allow for traffic and pedestrians to efficiently flow outward in the event of an emergency.

Appendix B: Security Plan

Parking plan submitted: Yes No

Police officers provided by the City of Johnson City Police Department: Yes No

Events requesting City Police Officers shall contact:

Chief Ross Allen
830.868.3209
policechief@johnsoncitytx.org

Police officers provided by the City of Johnson City Police Department will provide security and protection for event personnel, participants, patrons, and vendors. Such officers will maintain order and perform crowd control on event property. Such officers will be assigned duty posts, as directed and determined by the supervising officer. Such officers shall not handle event money, work as parking attendants, or complete any other duties that would deter them from performing their primary mission of event security and crowd control. Officers shall be paid by the event prior to the end of the event.

Police officers provided by the event: Yes No

Contracted Security Company: _____

Contact person (day of event): _____

Contact person telephone no.: () _____ - _____

Number of police officers provided for the event: 3-5

Please provide any additional security plan information (attach additional sheets if necessary):

<https://www.google.com/maps/d/u/0/edit?mid=1qNUGm1NQy0HVCSYNddCtDayJiSCxC9Y&usp=sharing>

REQUEST FOR AGENDA ITEM
BLANCO COUNTY COMMISSIONERS COURT

Meeting Date: June 14, 2022

Requestor: Whitney Walston, City Secretary, City of Johnson City

Item: Approval to hold Independence Day fireworks on July 2nd
in event of a burn ban and use parking around the courthouse
square and lawn of the courthouse for viewing.
Request to use the electronic blillboards for traffic control
and event notification.

Comments: The City has secured the lower track at LBJ High School to
serve as the launch site. The show will be coordinated by
American Fireworks. They will use an electronic firing system
and have fire supression equipment on site.

Submitted by:



Date submitted:

Approved by:

**JOHNSON CITY INDEPENDENT SCHOOL DISTRICT
FACILITIES USE AGREEMENT**

Johnson City Independent School District agrees to allow ^{City of Johnson City} _____ to use the
Lower Track/ Walking Track _____ at the LBJ Highschool _____ located at
505 N Nugent Ave, Johnson City, TX 78636 on July 2nd _____ between the hours about 8 and
10 pm subject to the following conditions:

1. That the group pays _____ rental fee and _____ (deposit). The deposit is refundable if premises are left in a condition satisfactory to the Superintendent or designee. Fees as determined by the JCISD Fee Schedule and any deposit required must be made to the JCISD central office at the time the agreement is signed.
2. That the Lessee will also pay a charge of _____ per hour for school personnel needed in connection with its use of the facility and as specified on the JCISD Schedule of Fees. When the cafeteria is used for food preparation and/or service, a food service worker will be present at all times for a fee of _____ per hour. The food service worker is to help with the opening/closing of facilities and operation of kitchen or other equipment as needed. They are not responsible for cooking or clean-up.
3. That the Lessee will use the facility only for the purposes consistent with law, District policy, and as follows (event description): Staging and firing location for community fireworks
4. That all use of the facility be carried out in the presence of a responsible adult.
5. That, upon completion of this use, the Lessee will be responsible for restoring the facility to the condition observable prior to this use, and will be liable for costs associated with any clean-up of facilities to school-ready condition at the rate of _____ per hour per school employee utilized to complete the task.
6. That the District may cancel a scheduled non-school use if an unexpected conflict arises with a District activity.
7. That the District may revoke its permission to use the facility at any time it is determined that a group's use damages or threatens to damage school property or violates Board policy and/or administrative regulations.
8. That the Lessee will not allow the possession or use of alcohol, firearms, or illegal drugs, or the use of tobacco products on District property.
9. That the Lessee accepts full responsibility for protecting school property and equipment and assumes any and all liability for repairs or replacement for any damage done to buildings, equipment, or other school property used by the Lessee.
10. That the Lessee also assumes full responsibility for the conduct of any and all persons using the facility during the rental.

11. That the Lessee agrees to assume all liability and hold harmless and indemnify the District, its Trustees, employees, and agents from any and all liability arising out of the Lessee's use of District facilities.
12. That the Lessee will furnish, if requested, evidence of liability insurance coverage for the event and shall name the District as an additional insured on the policy as specified by the District.

Executed on this _____.

Lessee Information

Name: Whitney Walston 05/16/2022
Name/Position: City Secretary Date
Phone: 830-868-7111 x 7
Email: wwalston@johnsoncitytx.org

Organization: City of Johnson City Date of use: 07/02/2022

JCISD Authorized Official

Name: Lynn Webb
Position: Superintendent Secretary
Date:

Organization/Event Name:
Date of intended use:
Facility Open time: Facility Close time:
Event Start Time: Event End Time:
Room/Facility requested:

Please describe the requested set-up of tables/chairs below:

Other comments: None

Name of event contact:
Phone:
Email:

Facility Rental Fee:	\$___/per hour (x__ hrs)	\$
Custodian Fee:	\$___/per hour (x__ hrs)	\$
Set up (tables and chairs) Fee:		\$
	Total Rental Fee Due:	\$
	Total Deposit Fee Due:	\$

-----For office use only-----

Staff Assigned:

Administrative:

Custodial:

Cafeteria: N/A

Other:

Johnson City Independent School District
Hold Harmless and Indemnification Agreement

City of Johnson City _____ agrees to hold harmless and indemnify the Johnson City Independent School District, its Board Members, officials, employees and volunteers from any suits or expense arising out of the use of the District property.

It is further stipulated and agreed that the laws of the State of Texas shall control in the construction of this instrument.

Signature: _____

Date: _____

INDEMNIFICATION UNDER CONTRACT

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and clarifies such coverage as is afforded by the provisions of the coverage shown below:

- GENERAL LIABILITY**
- AUTOMOBILE LIABILITY**
- LAW ENFORCEMENT LIABILITY**
- AIRPORT (GENERAL LIABILITY HAZARDS) PREMISES LIABILITY**

Entity Name : Johnson City
Entity ID : 8139
Effective Date : 7/2/22

It is agreed that coverage is provided for the liability assumed by the **Fund Member** to indemnify the person or organization named below under a contract between such person or organization and the **Fund Member**, but such coverage shall not exceed the limits of coverage set forth in the **Declarations**.

Person or Organization : Johnson City Independent School District
Address : PO Box 498
City, State & Zip Code : Johnson City, TX 78636

Description

Facilities Use Agreement for Johnson City's use of Lower Track/Walking Track at LBJ High School - located at 505 N Nugent Ave, Johnson City, TX 78636 - on July 2, 2022 between the hours of approximately 8am and 10pm for staging and firing of community fireworks.

Whitney Walston

From: Scott Berry <sberry@jcisd.txed.net>
Sent: Tuesday, May 17, 2022 11:24 AM
To: Whitney Walston
Cc: rkolek@jcisd.txed.net
Subject: Re: CoJC 4th of July Fireworks

Follow Up Flag: Follow up
Flag Status: Completed

Hello Whitney,

Thank you for completing the required facility use agreement. I reached out to our insurance carrier about insurance for the event. Their response is below:

"The City of Johnson City needs to acquire a special events insurance policy for the fireworks show as well as provide Johnson City Independent School District with proof of insurance. Also the city needs to list the district as an additional insured. If you have any further questions please feel free to contact me at 210-260-5275.

Thank you, Craig Pruski"

If you have any questions about the insurance requirements please reach out to Craig Pruski at the phone number above.

Thank you,

W. Scott Berry, P.E.
Chief Financial Officer
Johnson City ISD
(830)868-7410

On Mon, May 16, 2022 at 3:36 PM Whitney Walston <wwalston@johnsoncitytx.org> wrote:

Good afternoon,

Can you please provide me with what we need to complete the reservation of the lower track at the high school?

Thank you,

Whitney Walston



WHITNEY WALSTON
City Secretary

P.O. Box 569 Tel: (850) 868-7111 x7
305 E. Pecan Drive Fax: (850) 868-7718
Johnson City, TX 78636 Cell: (512) 850-8402

WWW.JOHNSONCITYTX.ORG

From: Richard Kolek <rkolek@icisd.txed.net>
Sent: Wednesday, April 27, 2022 12:45 PM
To: Whitney Walston <wwalston@johnsoncitytx.org>
Cc: Scott Berry <sberry@icisd.txed.net>
Subject: Re: CoJC 4th of July Fireworks

Whitney,

I'm good with the City using the lower track at the high school for the fireworks show on July 4. You will need to complete a facility use application. Please contact Scott Berry, our CFO, to reserve the facility. Scott is copied on this email.

Respectfully,

Richard Kolek

Superintendent

Johnson City ISD

830-868-7410

rkolek@jcisd.txed.net

"Soaring to Excellence"

NOTICE OF CONFIDENTIALITY: This message contains confidential information and is intended only for the use of the intended recipient. If you are not the named addressee you should not disseminate, distribute or copy this e-mail as this may be a violation of federal and/or state law. Please notify the sender immediately if you have received this e-mail by mistake and destroy all forms of this communication (electronic or paper). Thank you for your cooperation.

On Tue, Apr 26, 2022 at 2:21 PM Whitney Walston <wwalston@johnsoncitytx.org> wrote:

Good afternoon,

The City would like to use the inner grass area of the lower track to set off 4th or July fireworks. All trash will be picked up post-show. The fireworks show will be done by a licensed pyrotechnic using an electronic firing system along with having the VFD on site for assistance.

Thank you,

Whitney Walston



WHITNEY WALSTON
City Secretary

P.O. Box 369 Tel: (850) 868-7111 x7
505 E. Pecan Drive Fax: (850) 868-7718
Johnson City, TX 78656 Cell: (512) 850-8402

WWW.JOHNSONCITYTX.ORG



THE HOTEL TAX "TWO-STEP"

The Hotel Tax "Two-Step"
By Bill Longley, TML General Counsel

In the grand scheme of things, city hotel occupancy taxes account for just a small amount of city revenue. Property taxes and sales taxes are far more important to most cities. Why does it seem, then, that hotel taxes generate so much confusion and controversy?

The answer is this: hotel taxes, unlike most other taxes, are levied on a specific category of businesses – hotels. As a result, these businesses tend to pay close attention to how cities expend these funds. Spend city sales taxes in a controversial way, and no particular category of business feels singled out enough to raise a fuss. Perceived misuses of hotel taxes, on the other hand, are a different story.

Fortunately, it's very easy for a city official to remember how to legally spend hotel taxes. A city simply needs to remind itself to always follow the "two-part test." The key element of a two-part test is – surprise – that it has two parts! Cities frequently remember to meet one element of the test, but then entirely forget the other part. This article will succinctly describe the two-part test, and then describe some common situations to which we can apply the test.

Part One: Heads in Beds

The first element of the two-part test is this: every expenditure of hotel taxes must generally put "heads in beds." State law requires local hotel tax expenditures to "promote tourism and the convention and hotel industry." What this means is that every funded project must attract overnight tourists to the city's hotels and motels or have some other direct economic impact at an area hotel, thus promoting the city's hotel industry.

For example, how about a weekend-long arts and crafts show? There's a very good chance that out-of-town guests might come to visit such an event, so expenditure of hotel tax money on that event would likely qualify.

On the other hand, what about a quilting bee at a local retirement home? While a worthy cause, the quilting bee is unlikely to attract overnight tourists and, therefore, probably wouldn't qualify to receive hotel tax funds.

Part Two: The Nine Categories

Once a project has cleared the first part of the test, it's time for – you guessed it – the second part of the test. Here it is: every expenditure of local hotel taxes must *also* fit into one of nine statutorily authorized categories. These are the nine categories: (1) convention and visitor centers; (2) convention delegate registration; (3) advertising and promotional programs to attract tourists and visitors to the city; (4) promotion of the arts; (5) historical restoration and preservation; (6) sporting events in a county under one million in population; (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (8) tourist transportation systems; and (9) signage directing the public to sights and attractions that are frequently visited by hotel guests in the city.

Thus, even if an event puts heads in beds or otherwise economically benefits area hotels, it cannot receive hotel tax money unless it *also* fits into one of the nine categories. For instance, what about a livestock auction that will attract attendees from surrounding counties? While that event is likely to attract overnight tourists, it doesn't fit neatly into one of the nine categories. Therefore, it's likely not a valid recipient of hotel tax money.

It's not enough to meet one of the two prongs of the two-part test. A city must meet both! The following are some real-life examples that have been the focus of inquiries received by the Texas Municipal League (TML) legal department,

Fireworks, Anyone?

The prototype hotel tax controversy is an event like a fireworks show or a parade. Cities frequently ask if they can fund a fireworks show with hotel tax money.

Let's subject a fireworks show to the two-part test. Does a fireworks show put heads in beds? The answer is "probably not," unless it is a truly spectacular event. But let's give it the benefit of the doubt. Suppose the Town of Pyrotechnic, Texas, truly does put on a fireworks extravaganza that attracts tourists from around the state. So far, so good.

But what about the second part of the test – the nine categories? Do fireworks shows fit neatly into any of the nine? Not really. Some may argue that such shows "advertise" the city, but this is likely not what that category means. Advertising the city literally means some sort of print or other media that explicitly promotes the city. Otherwise, a city could simply say that any popular event "advertises" the city that holds it. Direct funding of fireworks displays and the like are usually not a very good fit.

Signs of the Times?

Another frequent question concerns highway signs promoting the city. May a city fund a billboard touting the city's attractions, restaurants, and hotels? Let's put it to the two-part test. Heads in beds? Well, why not? If a billboard encourages motorists to stop in town, those motorists might stay the night, whereas without the sign they would have driven on to the next city. This is exactly what the statute intends. The nine categories? How about advertising? Prior to 2009, a convincing argument could be made that because a billboard literally advertises the city it refers to, that it would fit within the advertising category. All doubt was erased in 2009, when the Texas legislature added the ninth category – signage directing the public to sights and attractions. Wayfinding signs for tourist attractions are a perfect fit for hotel occupancy tax expenditures.

Chambers of Commerce?

Cities frequently wonder if they can fund the local chamber of commerce using hotel tax money. Do chambers put heads in beds? Maybe, but maybe not. Chambers of commerce are typically charged with promoting economic development, not tourism. Even assuming a chamber *does* promote tourism though, how about the nine categories? Funding a chamber doesn't, in itself, fall into any of the nine categories.

Fortunately, there is an easy solution. The laws governing hotel tax expenditures permit the city to delegate expenditure of hotel tax money to another entity, typically a chamber or convention and visitor bureau. As long as the chamber spends the money on projects that otherwise meet the two-part test mentioned above, it's fine to delegate some funds to them. There must be a written contract laying out the duties of the chamber, though. Also, the chamber must keep the hotel funds in an account separate from its general operating fund.

Arts Organizations

City arts organization proposals are a common source of questions on hotel tax expenditures. Arts councils throughout the state know that promotion of the arts is one of the nine categories on which city hotel taxes may be expended. Cities know this because these arts groups frequently seek local hotel tax funding.

Cities should encourage arts groups to seek funding for their festivals and shows that attract overnight tourists to the city or otherwise have a financial impact on area hotels. By limiting arts expenditures to such costs, a city can ensure its expenditure meets both parts of the test.

Don't Forget to Report

Legislation passed in 2017 requires cities to annually report hotel occupancy tax information to the comptroller, including information on how the funds are spent. Not later than February 20 of each year, a city that imposes a hotel occupancy tax must submit to the comptroller information that includes the city's hotel occupancy tax rate, the amount of revenue generated by the tax, and the amount and percentage of the revenue spent for each of the following purposes:

- Convention or information centers
- Convention delegates registration
- Advertising to attract tourists
- Arts promotion and improvement
- Historical restoration and preservation projects
- Signage directing the public to sights and attractions

Cities must comply with the annual reporting requirements by either submitting the report to the comptroller on a form prescribed by the comptroller, or alternatively providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the city's website. City reporting data can be accessed at <https://comptroller.texas.gov/transparency/local/hotel-receipts>.

What Else?

There are numerous other technical details about how to legally expend hotel tax funds. In truth, by simply learning and remembering the two-part test, city officials are 99 percent of the way toward full compliance with hotel tax laws. City officials with questions about the hotel occupancy tax should call the TML legal department at 512-231-7400. ★

Legal Q&A

By **Bill Longley**, TML Legislative Counsel

What are hotel occupancy taxes?

Cities may levy a tax on a person who—under a lease, concession, permit, right of access, license, contract, or agreement—pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping. TEX. TAX CODE § 351.002(a).

How much hotel occupancy taxes may a city levy?

Generally speaking, a city may levy a hotel occupancy tax in any amount up to, and including, seven percent of the price paid for the room. *Id.* § 351.003. Select cities are authorized to levy up to eight-and-a-half or nine percent of the price of the room, so long as a portion of the revenue generated by the increased rate goes toward certain specified projects. *Id.* §§ 351.003, 351.1055, 351.1065, and 351.107. The price of the room does not include food and drink. *Id.* § 351.002(b).

What is the definition of a hotel for purposes of hotel occupancy taxes?

A hotel is defined as a building in which members of the public obtain sleeping accommodations in return for money. It includes motels, lodging houses, inns, rooming houses, and bed and breakfasts. *Id.* § 156.001. It does not include, and thus no tax is due for, dormitories, hospitals, nursing homes, and oilfield portable units. *Id.* § 156.001(a). In 2015, legislation passed clarifying that the definition of “hotel” includes a residential short-term rental property for purposes of the imposition of hotel occupancy taxes. *Id.* § 156.001(b).

Is the hotel occupancy tax limited to hotels within the city limits?

Ordinarily yes, except that a city with a population under 35,000 may extend the application of its hotel occupancy tax by ordinance to the extraterritorial jurisdiction (ETJ) of the city. *Id.* § 351.0025(a). However, a city under 35,000 population may not apply its hotel occupancy tax in the ETJ if, as a result of the adoption of the city tax, the combined rate of state, county, and city hotel taxes would exceed fifteen percent at hotels in the ETJ. TEX. *Id.* § 351.0025(b). Provided the combined tax does not exceed fifteen percent at the time the city levies its tax, the city’s tax is unaffected by future taxes levied by counties or other entities that might have the effect of imposing a combined rate in excess of fifteen percent. Op. Tex. Att’y Gen. No. GA-408 (2006).

A city may extend its hotel occupancy tax to the ETJ by a provision in its hotel occupancy tax ordinance specifying that the tax extends to the ETJ.

How does a city levy a hotel occupancy tax?

A hotel occupancy tax must be levied by ordinance. TEX. TAX CODE § 351.002(a). No election or other approval of the citizens is required. Sample hotel occupancy tax ordinances can be obtained from the TML Legal Department at (512) 231-7400 or legalinfo@tml.org.

How may hotel occupancy tax revenues be spent by a city?

Hotel occupancy tax revenues are known as “dedicated revenues,” as distinguished from general tax revenues such as property taxes and some sales taxes. General revenues may be spent on nearly any lawful pursuit of a city. Dedicated revenues, however, may only be spent on certain, statutorily-defined purposes.

Very generally speaking, all expenditures of city hotel tax revenue must promote tourism within the city. This general rule can be further broken down into two parts (often referred to as the “two-part test”):

- (a) all expenditures must promote tourism and the convention and hotel industry; and
- (b) all expenditures must further fall into one of nine statutory categories:
 - (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities and visitor information centers;
 - (2) expenses associated with registration of convention delegates;
 - (3) advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity;
 - (4) promotion of the arts;
 - (5) historical restoration or preservation projects;
 - (6) sporting events that promote tourism in counties of less than one million population;
 - (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities);
 - (8) transportation systems that transport tourists from hotels to the commercial center of the city, a convention center, other hotels, or tourist attractions, provided the system doesn’t serve the general public; and

- (9) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.

Id. § 351.101. Further, the Tax Code has some fairly specific provisions relating to how the expenditures within the nine statutory categories should be allocated, depending on the population of the city. Generally speaking, funding of the arts is limited to no more than fifteen percent of total tax revenues, and a certain portion must be spent on promoting the city and on convention facilities, again depending on the size of the city. *Id.* § 351.103.

Can a city fund a fireworks show using hotel occupancy taxes?

The prototype hotel tax controversy involves an event like a fireworks show or a parade. City officials frequently ask if they can fund a fireworks show with hotel tax money.

All expenditures must be subjected to the “two-part test” spelled out in the previous question. In the first place, a fireworks show must be shown to promote tourism and the convention and hotel industry. Put another way, does the expenditure “put heads in beds”? The answer is likely not.

Even if a fireworks show attracted overnight tourists to the city, hotel tax expenditures on such an event don’t fit neatly into one of the nine statutory categories. Some may argue that such shows “advertise” the city, but this is likely not what that category means. “Advertising the city” literally means some sort of print or other media that explicitly promotes the city. Thus, direct funding of fireworks displays and the like is usually not a proper hotel tax expenditure.

May a city delegate the expenditure of hotel taxes to another entity?

Yes. A city may delegate expenditures of hotel taxes to another entity such as a chamber of commerce or convention and visitors bureau. So long as the chamber or other entity spends the money on projects that otherwise meet the two-part test mentioned above, such entities are legal agents to spend the city’s hotel tax funds. There must be a written contract laying out the duties of the entity, and the entity must keep the hotel tax funds in an account separate from the general operating fund. *Id.* § 351.101(c).

What is the relationship between city and state hotel occupancy taxes?

The state collects its own hotel occupancy tax at the rate of six percent. *Id.* § 156.052. The state plays no part in collecting or enforcing the city’s hotel occupancy tax, however. A city is responsible for its own levy, collection, and enforcement. Legislation passed in 2015 provides that a city may spend up to one percent of the revenue derived from the tax for the creation, maintenance, operation, and administration of an electronic tax administration system. *Id.* § 351.1012(a). A city may contract with a third party to assist in the creation, maintenance, operation, or administration of the electronic tax administration system. *Id.* § 351.1012(b).

What can a city do if a hotel is delinquent or refuses to pay hotel occupancy taxes?

Cities have all of the following remedies available against hotels that don't collect the tax or are delinquent in collecting the tax: civil lawsuit, injunction against operation of the hotel until taxes are paid, a fifteen-percent civil penalty against the hotel when suit is necessary (if the tax has been delinquent for one complete municipal fiscal quarter), reasonable attorney's fees, misdemeanor prosecution against the hotel (assuming the city's ordinance provides for an offense), and audit powers. *Id.* § 351.004. If an audit conducted by the city shows a concurrent delinquency in state hotel occupancy taxes, the city must notify the comptroller of the delinquency, and if the state proceeds with collection and enforcement efforts, the comptroller must distribute an amount to the city to defray the costs of the audit. *Id.* § 351.008.