

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

ORDINANCE

AUTHORIZING THE RIGHT-OF-WAY ENCROACHMENT PERMIT OF AN EXISTING BALCONY AND SUPPORT COLUMNS FROM A HISTORIC BUILDING TO BE PRESERVED AS PART OF CATTLEMAN SQUARE LOFTS DEVELOPMENT IN COUNCIL DISTRICT 5, AS REQUESTED BY ACG CATTLEMEN SQUARE LOFTS GP, LLC, FOR A FEE OF \$5,000.00 AND WAIVING SECTIONS OF CHAPTER 37 OF THE CITY CODE.

* * * * *

WHEREAS, ACG Cattleman Square Lofts GP, LLC, Petitioner, requests a right-of-way encroachment permit for an existing balcony and support columns that are part of a historic building, which encroaches onto a city sidewalk at 811 West Houston Street as shown on **Attachment I**; and

WHEREAS, Petitioner is requesting an increase from the 10-year term currently provided in Chapter 37 of the City Code to an initial 50-year term for the permit; and

WHEREAS, in addition to the 50-year initial term, Petitioner has requested an automatic renewal for two (2) additional twenty-five (25) year renewal terms; and

WHEREAS, any future re-renovation or modifications must be approved through the office of historic preservation and are at the sole expense of the owner; and

WHEREAS, Chapter 37, Section 37-2, of the City Code states that “permits shall be issued for a period of 10 years.”; and

WHEREAS, City Council has the authority to approve permits which exceed the 10-year term; and

WHEREAS, in accordance with Section 37-22, Fee and Consideration Schedule, the fee for a 10-year permit is \$500.00; and

WHEREAS, the fee for the initial 50-year term is \$2,500.00 and the additional (2) 25 year terms is an additional \$2,500.00 thus resulting in a total permit fee of \$5,000.00; and

WHEREAS, the issuance of the permit will not interfere with City of San Antonio use of the right of way; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and his designee, severally, are authorized and directed to execute and deliver to ACG Cattleman Square Lofts GP, LLC on behalf of the City a permit in substantially the same form of **Attachment II**, which is incorporated by reference for all purposes as if fully set forth. The general area subject to the license is shown in **Attachment I**. The City Manager or his designee, severally, should take all other actions reasonably necessary or convenient to effectuate this transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. The restriction of Chapter 37, Section 3 (b), of the city code related to a ten year term for permits is waived.

SECTION 3. Funds generated by this Ordinance will be deposited in Fund 11001000, Internal Order 223000000254 and General Ledger Account 4202410.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this ____ day of February, 2021.

**M A Y O R
Ron Nirenberg**

ATTEST:

APPROVED AS TO FORM:

Tina J. Flores, City Clerk

Andrew Segovia, City Attorney

Attachment I – Map

SP 2252 – Cattleman’s Square Encroachment Permit Exhibit A



SP 2252 – Cattleman’s Square Encroachment Permit
Exhibit A



DRAFT

Attachment II – Public Street or Alley Encroachment Permit

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's Permit Number.

State of Texas §

County of Bexar §

Public Street or Alley Encroachment Permit

This Permit is issued under Sec. 37-3 of the City Code of San Antonio, Texas. Permittee may construct, maintain, repair, replace, and reconstruct the Permitted Encroachment on the Affected Right of Way subject to this permit and Sec. 37-23 of the City Code of San Antonio, Texas.

This permit does not relieve Permittee of any building code requirements, zoning restrictions, other city-imposed requirements, or other applicable land use restrictions. If the Permitted Encroachment entails excavation or entails intrusion into space near overhead or underground utilities, Permittee must follow all rules imposed by public utilities whose facilities may potentially be affected. If excavation is involved, Permittee must obtain a permit from the City's Right-of-Way Division.

Delegated Authority: City Code of San Antonio, Texas § 37-3

Name of Permittee: ACG Cattleman Square Lofts GP, LLC

Address of Permittee: 4100 E. Peidras Dr., Suite 200
San Antonio, Texas 78228-1415

Permitted Encroachment Description: Existing balcony and support columns as a part of a historic building that will be preserved as described immediately below and in **Exhibit A** and **Exhibit B**.

Description of Affected Right of Way: within NCB 286 located at 811 W. Houston as more specifically described in **Exhibit A** and **Exhibit B**.

Term: 50 years subject to renewal under Section 1.6

Fee: \$5,000.00

1.1 The City agrees to permit the Permittee, or its tenants, to place the Improvements (see Permitted Encroachment Description) within the Affected Right Of Way in the location documented as Description of Affected Right of Way.

1.2 The City and the Permittee agree that the above-described Permit is granted subject to the following conditions, terms and reservations:

- a) The Permittee is responsible for paying for the Improvements stated herein.
- b) The Permittee is responsible for the maintenance and replacement of the Improvements.
- c) In the event the City disturbs the Improvements while maintaining the City's right of way, the City shall not be responsible for repair or replacing the Improvements installed by the Permittee or its tenants.
- d) The placement of Improvements must meet or exceed all applicable federal, state, and city regulations. Improvements must be free and clear of utility lines and tree lines.
- e) All generally applicable conditions and restrictions of Chapter 37 of the City Code of San Antonio related to permits issued under section 37-3 (Permits for Encroachment onto public streets, alleys, or drainage easements).
- f) All Chapter 35 of the City Code of San Antonio (Unified Development Code) requirements must be met related to clearance, design, permits and installation.
- g) Permittee shall notify City of any change of address within 5 business days of such change.
- h) Nothing contained herein shall prevent Permittee from requiring its tenants to be legally responsible for complying with the above conditions and terms.
- i) Provided proper plans are submitted and permits are secured.
- j) Provided no changes are made to the existing structure that reduces the vertical or horizontal clearances beneath the balcony nor project into the existing roadway.
- k) Permittee shall contact and confirm with all utilities that there are no conflicts; specifically, a column may be encroaching into a storm sewer pipe and inlet. Permittee shall provide design drawings and calculations as required for a building permit if these items prove the column doesn't impact the drainage system. Permittee will be responsible for cost of any future removal, if required. The column and any damage to the top of the inlet due to the column will be the responsibility of Permittee to repair.

- m) Permittee must call Texas 811 Locates and verify location of all gas facilities. Permittee must maintain a 5-foot separation from all gas facilities. CPS Energy will require compensation for any offsets or relocation of the gas facilities if required.
- n) CPS Energy perpetual access to its facilities at all times for the purpose of inspecting, maintaining, constructing, reconstructing, replacing, and removing of said facilities, and should CPS Energy damage or destroy Permittee's property during its operations, CPS Energy shall have no obligation to restore or replace any of Permittee's property.
- o) The City does not warranty that environmental impacts are not to be encountered when disturbing the land. The City shall not bear any financial burden related to environmental impacts (if any) encountered during the disturbance of the land. It is the Permittee's responsibility to conduct their own due diligence for this area. If environmental impacts are encountered, it is the Permittee's responsibility to notify the City and the appropriate regulatory agencies of the issue.
- p) The structure cannot block current ADA access on the sidewalk.

1.3 This Permit is made subordinate to the right of the City to use the Affected Right of Way for a public purpose. It is understood and agreed that should the City deem that the use of the Affected Right Of Way by Permittee either interferes with the ability of the City or public to use the Affected Right of Way or creates a public safety risk, then, and in those events, the City acting through the Director of Public Works may suspend this Permit on 30 days prior written notice and the Permittee, or anyone claiming any rights under this instrument, shall remove any Improvements and encroachments from the Affected Right Of Way at the Permittee's expense. The Permittee shall have a right of cancellation upon giving the City 30 days written notice of the Permittee's intention to cancel. Upon cancellation, this Permit shall become null and void, and the Permittee, or anyone claiming any rights under this instrument, shall remove any Improvements and encroachments from the Affected Right Of Way. All work shall be done at the Permittee's sole cost and to the satisfaction of the City. The determination by the Director of Public Works or designee as to the public necessity of the use of the Property shall be final and binding upon the parties.

1.4 This Permit is subject to all state and federal laws, the provisions of the Charter of the City, as it now exists or as it may hereafter be adopted or amended, and the ordinances of the City now in effect or which may hereafter be passed, adopted, or amended.

1.5 The Permittee must apply for and receive any necessary permits from pertinent City boards or departments.

1.6 This Permit shall be for an initial term of 50 years. The Permit shall automatically renew for two (2) additional twenty-five (25) year renewal terms so long at the time of the renewal Permittee is conducting meaningful business activities. The timeline of the Permit shall be as follows:

Initial Term: February 28, 2021 – February 27, 2071
Eligible for Renewal (1st): February 28, 2071 – February 27, 2096
Eligible for Renewal (2nd): February 28, 2096 – February 27, 2121

Miscellaneous Provisions

2.1 The phrases, clauses, sentences, paragraphs or sections of this Permit to use agreement are severable and, if any phrase, clause, sentence paragraph, or section hereof should be declared invalid by the final decree or judgment of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Permit.

2.2 The rights under this permit may be transferred or assigned to a new owner of property that is adjoining the permitted encroachment area, or to an eligible property owners association, provided such transferee would qualify under the city code as if applying for the original permit. Permittee must provide City of San Antonio written notice prior to any transfer.

2.3 Any notice required to be given pursuant to the terms and provisions of this Permit shall be in writing and shall be mailed by certified, return receipt requested, addressed as set forth below, or at such other address as may be specified by written notice

2.4 The City and the Permittee agree that this Permit shall be construed in accordance with the laws of the State of Texas.

2.5 Venue for any dispute arising out of this Permit shall lie in a court of competent jurisdiction in Bexar County, Texas.

If to: **CITY OF SAN ANTONIO**

City Hall, P.O. Box 839966
(Attention: Director, Public Works Department)
San Antonio, Texas 78283

If to: **PERMITTEE**

ACG Cattleman Square Lofts GP, LLC

BY: _____

NAME:

ITS:

City of San Antonio, a Texas municipal corporation

By: _____

Kevin Sadler,
Real Estate Supervisor,
Public Works Department

Date: _____

Approved as to Form:

City Attorney

State of Texas §
 §
County of Bexar §

This instrument was acknowledged before me this date by Kevin Sadler of the City of San Antonio in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public State of Texas

My Commission Expires: _____

Permitee:

ACG Cattleman Square Lofts GP, LLC.

BY: _____

NAME:

ITS:

THE STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this date by _____, in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

Exhibit A

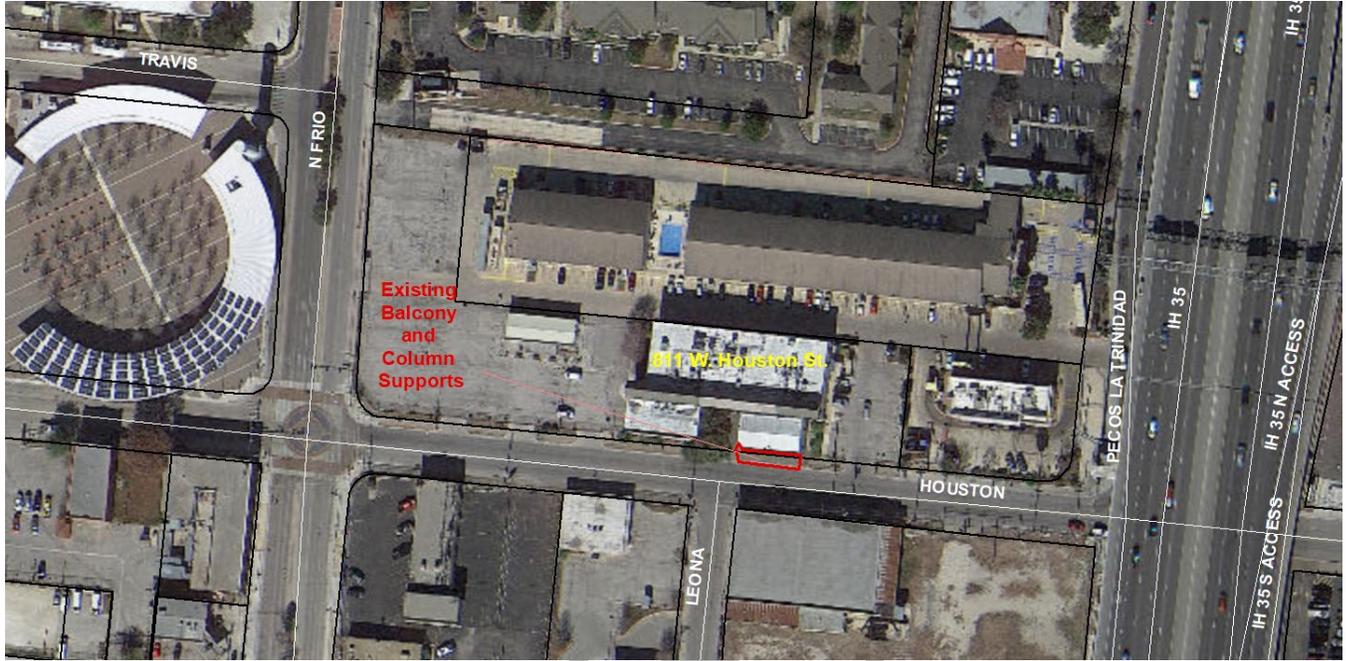


Exhibit B



HISTORIC BLDG ELEVATION

