



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 01/20/2026

ITEM NO: 16

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DATE: January 20, 2026  
TO: Mayor and Town Council  
FROM: Chris Constantin, Town Manager  
SUBJECT: **Adopt the Draft License Agreement for Encroachments for Private Use of Public Property Policy**

RECOMMENDATION: Adopt the draft License Agreements for Encroachments for Private Use of Public Property Policy, to establish clear, consistent procedures for permitting, licensing, inspection, enforcement, and revocation of private encroachments within the public right-of-way (ROW) and on Town-owned property.

FISCAL IMPACT:

Adoption of the License Agreements for Encroachments for Private Use of Public Property Policy itself has no direct fiscal impact. The policy supports recovery of regulatory costs through Council-adopted fees and allows the Town to require license consideration where appropriate. Over time, implementation is expected to improve cost recovery, reduce enforcement uncertainty, and limit the Town's exposure to liability associated with unauthorized private use of public property. Any applicable fees will be assessed in accordance with the Town's adopted Fee Schedule.

STRATEGIC PRIORITY:

This item is not associated directly with a specific strategic priority; however, it aligns with the Town's core goal of good governance.

BACKGROUND:

The Town routinely encounters private improvements located within the public right-of-way or

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Town Engineer

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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on Town-owned property, including fences, retaining walls, landscaping, driveways, and structures extending above or below the ROW. Historically, these situations have been addressed through a combination of encroachment permits, ad hoc license agreements, and code enforcement actions. In some cases, private improvements were installed without prior authorization, resulting in so-called “legacy encroachments.”

The Town Code (Chapters 12, 23, and 29) provides authority to regulate, inspect, and remove unauthorized obstructions in the ROW. However, the Town has lacked a policy clearly defining when license agreements are appropriate, the level of approval required, and the conditions under which private use of public property may be allowed. The proposed policy addresses this gap by establishing uniform procedures and expectations for property owners and staff.

#### DISCUSSION:

The License Agreements for Encroachments for Private Use of Public Property Policy establishes procedures for permitting and regulating private improvements in the public ROW and on Town-owned properties. The policy emphasizes that all private use of public property remains subordinate to the public interest and does not create a vested property right. All approvals are revocable at the Town’s discretion.

The policy applies broadly to private improvements, with limited exemptions for standard-material driveways, walkways, and code-compliant mailboxes. Utilities and agencies operating under separate statutory authority are excluded and remain subject to applicable laws and departmental oversight.

The policy clearly delineates approval authority between the Town Manager (or designee) and the Town Council:

- **Town Manager or Designee:** May approve residential, minor, and low-impact encroachments that do not pose safety hazards or materially interfere with public facilities.
- **Town Council:** Required to approve license agreements for commercial encroachments, permanent structures, encroachments occupying a substantial portion of the ROW, or proposals with broader community impacts or precedent-setting implications.

Where an encroachment is associated with a land use entitlement, approval occurs concurrently with the applicable planning approval. This structure ensures appropriate oversight while allowing efficient administrative processing of routine requests.

Encroachment requests are evaluated based on safety, ADA compliance, drainage, utilities, zoning consistency, neighborhood character, and potential impacts on current or future Town projects. The proposed policy expressly prohibits encroachments that obstruct sidewalks, ADA

SUBJECT: Adopt a License Agreement Policy

DATE: January 20, 2026

routes, sight distance triangles, utilities, drainage facilities, emergency access, or public parking, except where a clear and demonstrable public benefit exists.

All license agreements include standardized conditions such as indemnification, insurance, maintenance obligations, performance security, possessory interest tax notification, revocation rights, and restoration requirements. License agreements are recorded, are binding on the property owner and successors, and include a sunset clause requiring renewal at least every ten years.

The policy establishes a structured approach to addressing unpermitted and legacy encroachments. Staff conducts a threshold review to determine whether removal is required or whether a discretionary retroactive license application may be considered. Encroachments that pose hazards, impair access or utilities, conflict with public projects, or fail to comply with the Town Code are ineligible for retroactive licensing and must be removed. The policy emphasizes that retroactive licensing is exceptional, does not ratify unauthorized construction, and does not limit the Town's authority to require future removal.

CONCLUSION:

The proposed Policy on Private Use of Public Property provides a clear, legally grounded, and consistent framework for managing private encroachments in the public ROW and on Town-owned property. Adoption of the policy will enhance transparency, protect the public interest, and support efficient administration and enforcement. Staff recommends that the Town Council adopt the policy as proposed.

COORDINATION:

This item was coordinated with the Town Manager's Office, Community Development, Parks and Public Works, Finance, and the Attorney's Office.

ENVIRONMENTAL ASSESSMENT:

Adoption of the policy establishing procedures and criteria for licensing private encroachments does not constitute a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 and 15378(b)(5). Individual encroachment approvals will be subject to appropriate environmental review as required.

Attachments:

1. Draft License Agreements for Encroachments for Private Use of Public Property Proposed Policy