



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 02/11/2025

REQUESTER: AshLynn Wilkerson, Assistant City Attorney

PRESENTER: AshLynn Wilkerson, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONSENT TO ENCROACH EN-2324-6: FOR LOT 1B, BLOCK 8, WESTPORT PROFESSIONAL PARK, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA, FOR HYUNDIA OF NORMAN. (591 North Interstate Drive)

BACKGROUND:

An encroachment request has been filed in the office of the City Clerk by property owner(s), Donohue Investments, L.L.C., requesting a Consent to Encroach into a utility easement at the above-described property.

DISCUSSION:

The application for the Consent to Encroach concerns the encroachment upon a City of Norman and Norman Utilities Authority (NUA) utility easement for an existing building. The owner(s) are requesting that the existing building be allowed to encroach upon the existing utility easement located across the middle portion of the property.

A platted 17-foot utility easement exists along the south side of the existing building and the building encroaches the easement by approximately 1.86-feet. Franchise utilities and a 10-inch sanitary sewer line are located in this easement.

The applicants have obtained a response from Oklahoma Gas and Electric Company, Oklahoma Natural Gas, and Cox Communications who indicated that they have facilities located in the easement however they are not opposed to the encroachment so long as the owner abides by certain requirements as indicated in #6-8 below. Oklahoma Electric Cooperative did not indicate that they have existing facilities in the easement and they are not opposed to the encroachment. AT&T Oklahoma was notified of this request but did not respond. The City and Norman Utilities Authority (NUA) have facilities located in the easement as referenced above.

Staff has reviewed the application and the “hold harmless” clauses. From a legal perspective, it protects the City’s and the NUA’s concerns with respect to damage to the property owners’ property should the City and the NUA or other authorized entity be required to perform work within its easement. There are some conditions applied to this Consent to Encroachment as listed below:

1. The property owner(s), and property owners' heirs, successors, or assigns (hereafter collectively the "Owner Parties") shall be responsible for the cost to install or repair any damages to the City's utilities or infrastructure caused by any excavation, piercing or other construction activities conducted by the Owner Parties or their agents;
2. The Owner Parties shall be required to apply for and receive any applicable permits prior to commencing work;
3. The Owner Parties shall be responsible for the cost the City and the NUA incurs to remove any building, structure, paving, curb, retaining wall, landscaping, and/or any other item if needed to maintain or repair NUA facilities;
4. The Owner Parties shall be hereby solely responsible for the cost to repair or replace any building, structure, paving, curb, retaining wall, landscaping, or any other item after such repair;
5. The Owner Parties hereby waive and release any claims against the City and the NUA for any damages to the building and related improvements caused by failure or repair and maintenance of the City's and the NUA's facilities within the easement area;
6. Oklahoma Gas and Electric Company, Oklahoma Natural Gas, and Cox Communications do not oppose to the encroachment so long as Owner Parties contact OKIE811 location services prior to any work. AT&T Oklahoma was notified but provided no response or objection;
7. By encroaching on said easement, the Owner Parties release Oklahoma Gas and Electric Company, Oklahoma Natural Gas, and Cox Communications for any damages caused by any excavation by these utility companies for purposes of installing, maintaining or replacing the City's and the NUA's utility facilities within the easement area; and
8. Damages to Oklahoma Gas and Electric Company, Oklahoma Natural Gas, and Cox Communications facilities resultant from any current/future construction may carry possible financial charges to the Owner Parties.

The benefit to having the consent to encroach on file is that it is evidence of the property owners' understanding that, while the City and the NUA are allowing them to encroach upon the easement, the City and the NUA are not liable and will not be responsible for damage to the property owners' property in the event installation or maintenance has to be performed within the easement.

All necessary City departments have responded on this item and have no objection to the proposed Consent Agreement and Covenant, with the conditions stated therein. Please note that this Consent Agreement and Covenant concerns only the City's consent to encroach where a project is otherwise permissible under City Code. Further evaluation will occur once such an application has been submitted by applicants relating to this project.

RECOMMENDATION:

Based upon the above and foregoing, the City Attorney's office is forwarding the above Consent to Encroach, EN-2324-6, for Council consideration.