



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: EN-2021-2**

**File ID:** EN-2021-2                      **Type:** Encroachment                      **Status:** Consent Item

**Version:** 1                                      **Reference:** Item 14                                      **In Control:** City Council

**Department:** Legal Department                      **Cost:**                                      **File Created:** 08/19/2020

**File Name:** Consent to Encroach 1832 Cedar Hill Road                      **Final Action:**

**Title:** CONSENT TO ENCROACH EN-2021-2: FOR LOT 8, BLOCK 3, BROOKHAVEN ADDITION, SECTION 17, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (1832 CEDAR HILL ROAD)

**Notes:** ACTION NEEDED: Motion to approve or reject Consent to Encroachment EN-2021-2; and, if approved, direct the filing thereof with the Cleveland County Clerk.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 09/08/2020

**Agenda Number:** 14

**Attachments:** Consent Agreement and Covenant, City Clerk Memo, Request to Encroach, Responses from Franchises, Memo from Planning, Memo from Public Works, Memo from Utilities

**Project Manager:** Beth Muckala, Assistant City Attorney

**Entered by:** sarah.encinias@normanok.gov

**Effective Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File EN-2021-2

Body

**BACKGROUND:** An encroachment request has been filed in the office of the City Clerk by property owner, Patrick K. Smith, requesting a Consent to Encroach into a utility easement at the above-described property.

**DISCUSSION:** The application for the Consent to Encroachment concerns the encroachment upon a City of Norman and Norman Utilities Authority (NUA) ten foot (10') utility easement for an existing gazebo and swimming pool deck. The owner is requesting that the existing gazebo and swimming pool deck be allowed to encroach upon the existing utility easement located on the west side of the lot. At the present time, the City and the NUA do not have a utility in this

easement.

The applicant has obtained a response from Cox Communications, Oklahoma Gas & Electric, and Oklahoma Natural Gas, which have indicated that they have facilities located in the easements, however they are not opposed to the encroachment so long as the owner abides by the certain requirements as indicated in #6 below. AT&T made no objection to the encroachment request. The area is not served by Oklahoma Electric Cooperative.

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 owner’s 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”) will be responsible for the cost to repair any damages to the City’s and the NUA’s utilities caused by any excavation, piercing or other construction activities conducted by the Owner Parties or their agents;
2. The Owner Parties will be responsible for the cost the City and the NUA incurs to remove any gazebo, deck, pavement, fence, curb, landscaping, retaining wall, and/or any other structure if needed to maintain or repair NUA facilities;
3. The Owner Parties will be responsible for the cost to repair or replace any gazebo, deck, pavement, fence, curb, retaining wall, landscaping or any other structure after such repair;
4. The Owner Parties will waive and release any claims against the City and the NUA for any damages to the residence and related improvements caused by failure or repair and maintenance of the City’s and the NUA’s utilities within the easement area;
5. Cox Communications, Oklahoma Gas & Electric, and Oklahoma Natural Gas have facilities located in the easement however they are not opposed to the encroachment, so long as Owner Parties contact OKIE811 location services and that the facility owners are notified should their respective facility need to be relocated to accommodate excavation or construction. AT&T has also stated that they do not object. The area is not served by Oklahoma Electric Cooperative;
6. By encroaching on said easement, the Owner Parties release Cox Communications, Oklahoma Gas & Electric, Oklahoma Natural Gas, AT&T, and Oklahoma Electric Cooperative for any damages caused by any excavation by these utility companies for purposes of maintaining or replacing the City’s and the NUA’s utility facilities within the easement area; and
7. Damages to Cox Communications, Oklahoma Gas & Electric, Oklahoma Natural Gas, AT&T, and Oklahoma Electric Cooperative 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 is 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 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, 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.

**RECOMMENDATION**: Based upon the above and foregoing, the City Attorney's office is forwarding the above Consent to Encroach, EN-2021-2, for Council consideration.