



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: EN-2021-5

File ID: EN-2021-5 **Type:** Encroachment **Status:** Consent Item

Version: 1 **Reference:** Item 1616 **In Control:** City Council

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

File Name: Consent to Encroach 1959 Burning Tree **Final Action:**

Title: CONSENT TO ENCROACH EN-2021-5: FOR LOT 20, BLOCK 5, HALLBROOKE ADDITION, SECTION 6, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (1959 BURNING TREE)

Notes: ACTION NEEDED: Motion to approve or reject Consent to Encroachment EN-2021-5; and, if approved, direct the filing thereof with the Cleveland County Clerk.

ACTION TAKEN: _____

Agenda Date: 09/08/2020

Agenda Number: 16

Attachments: Consent Agreement and Covenant, City Clerk Memo, Request to Encroach, Plot Plan, Memo from Planning, Memo from Utilities, Memo from Public Works

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:

Text of Legislative File EN-2021-5

Body

BACKGROUND: An encroachment request has been filed in the office of the City Clerk by property owners, Joseph and Holly McCarty, 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) utility easement for the expansion of a concrete driveway. The owner is requesting that the expansion of the concrete driveway be allowed to encroach upon the existing utility easement located on the west side of the property.

A platted 7.5-foot easement exists along the west property line and will be encroached upon for the proposed expansion of the concrete driveway. An 8-inch PVC sanitary sewer line is located within this easement running north/south at an average depth of 11 feet. A portion of the proposed driveway will lie directly above this sewer line.

Utility companies were not notified since this encroachment is located within a City-owned sanitary sewer easement.

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 required to apply for and receive any applicable permits prior to commencing work;
3. The Owner Parties will be responsible for the cost the City and the NUA incurs to remove any paving, fence, curb, landscaping, retaining wall, and/or any other structure if needed to maintain or repair NUA facilities;
4. The Owner Parties will be responsible for the cost to repair or replace any paving, fence, curb, retaining wall, landscaping or any other structure after such repair;
5. 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;

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 easements, 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 easements.

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. Further evaluation will occur once such an application has been submitted by applicant relating to this project.

RECOMMENDATION: Based upon the above and foregoing, the City Attorney’s office is forwarding the above Consent to Encroach, EN-2021-5, for Council consideration.

