



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: EN-2021-9**

**File ID:** EN-2021-9

**Type:** Encroachment

**Status:** Consent Item

**Version:** 1

**Reference:** Item 21

**In Control:** City Council

**Department:** Legal Department

**Cost:**

**File Created:** 04/15/2021

**File Name:** Consent to Encroach 1704 Barwick Drive

**Final Action:**

**Title:** CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONSENT TO ENCROACH EN-2021-9 FOR LOT 8, BLOCK 1, BROOKHAVEN ADDITION, SECTION 10. (1704 BARWICK DRIVE)

### Notes:

**Agenda Date:** 05/11/2021

**Agenda Number:** 21

**Attachments:** Consent Agreement and Covenant, City Clerk Memo, Request to Encroach, Site 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:
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### Text of Legislative File EN-2021-9

Body

**BACKGROUND:** An encroachment request has been filed in the office of the City Clerk by property owner, Robert Kenneth Wilpitz, Jr., 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 an existing in-ground pool and patio, and the installation of an addition to the existing house. The owner is requesting that the existing in-ground pool and patio, and the addition to the house, be allowed to encroach upon the existing utility easement located across the west side of the property.

A platted 10-foot utility easement exists along the west property line and will be encroached upon for the proposed addition to the existing house. Also, an existing in-ground pool and patio lies within this easement. These structures currently or will encroach the easement by

approximately 2-feet.

The applicant has obtained a response from Oklahoma Natural Gas who indicated that they have facilities located in the easement however they are not opposed to the encroachment since the meter is also located in the easement and the property owner had agreed to move their yard line within their private property. Cox Communications did not indicate they had existing facilities within the easement, however they are not opposed to the encroachment so long as the owner abides by the certain requirements as indicated in #6 below. Oklahoma Gas & Electric indicated they have no facilities located in the easement and are not opposed to the encroachment. Oklahoma Electric Cooperative did not indicate that it had existing facilities in the easement and they are not opposed to the encroachment. AT&T was provided with sufficient notice of the encroachment request but did not provide a response.

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”) will be responsible for the cost to 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 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 improvements, structure, paving, curb, landscaping, retaining wall, and/or any other item if needed to maintain or repair NUA facilities;
4. The Owner Parties will be responsible for the cost to repair or replace any improvements, structure, paving, curb, landscaping, retaining wall, or any other item 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;
6. Oklahoma Natural Gas has facilities located in the easement but will not oppose the encroachment because the meter is also located in the easement and as long as the property owner moves the yard line to lie within their private property. Cox Communications does not oppose to the encroachment so long as Owner Parties contact OKIE811 location services prior to any work. Oklahoma Gas & Electric and Oklahoma Electric Cooperative also do not object;

7. By encroaching on said easements, the Owner Parties release Oklahoma Natural Gas, Cox Communications, Oklahoma Gas & Electric, Oklahoma Electric Cooperative, and AT&T 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 areas; and
8. Damages to Oklahoma Natural Gas, Cox Communications, Oklahoma Gas & Electric, Oklahoma Electric Cooperative, and AT&T 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 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 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-2021-9, for Council consideration.