



Legislation Text

File #: EN-1819-5, **Version:** 1

CONSENT TO ENCROACHMENT EN-1819-5: FOR LOT 6, BLOCK 1, CAMBRIDGE NO. III ADDITION, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (5220 MONTROSE CIRCLE)

BACKGROUND: An encroachment request has been filed in the office of the City Clerk by Marion F. Hutchison II, Trustee of Marion F. and Anne L. Hutchison Revocable Trust, owner of 5220 Montrose Circle, requesting a Consent to Encroach into a utility easement at the above-described property.

DISCUSSION: The application for the Consent to Encroachment concerns encroachment upon a City of Norman and Norman Utilities Authority (NUA) twenty foot (20') utility easement for a covered porch/patio to be built on the site. The owner is requesting that the covered porch/patio be allowed to encroach upon the existing utility easement located along the west lot line. At the present time, the NUA has an eight-inch (8") PVC public sewer line utility in this easement.

The applicant has obtained a response from Oklahoma Gas & Electric and Oklahoma Natural Gas, who are not opposed to the encroachment of the covered porch/patio so long as they are notified should their respective facility need to be relocated to accommodate excavation or construction. Also, AT&T Oklahoma has cautioned that it does not object to the encroachment so long as it does not interfere with access to its pedestal.

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) 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 property owner(s) or their agents.
2. The property owner(s) will be responsible for the cost the City and the NUA incurs to remove any fence, curb, landscaping, retaining wall, and/or any other structure if needed to maintain or repair NUA facilities.
3. The property owner(s) will be responsible for the cost to repair or replace any fence, curb, retaining wall, landscaping, or any other structure after such repairs.
4. The property owner(s) will waive and release any claims against the City and 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. Oklahoma Gas & Electric and Oklahoma Natural Gas have facilities located in the easement however they are not opposed to the encroachment, so long as they are notified should their respective facility need to be relocated to accommodate excavation or construction. Also, AT&T Oklahoma has cautioned they do not object to the encroachment so long as it does not interfere with access to their pedestal. Oklahoma Electric Cooperative and Cox Communications, Inc. also do not object.
6. By encroaching on said easement, the property owner(s) release Oklahoma Gas & Electric, Oklahoma Electric Cooperative, Oklahoma Natural Gas, AT&T Oklahoma, and Cox Communications, Inc., 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.
7. Damages to Oklahoma Gas & Electric, Oklahoma Electric Cooperative, Oklahoma Natural Gas, AT&T Oklahoma,

and Cox Communications, Inc. facilities resultant from any current/future construction may carry possible financial charges to the property owner(s).

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.

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