

CITY OF LEE'S SUMMIT ENCROACHMENT POLICY

BACKGROUND:

Encroachments on City of Lee's Summit ("City") right-of-way, or City easements are only allowed as established by this Encroachment Policy. Such encroachments may interfere with the City's ability to provide services or maintain infrastructure, and may present safety concerns or risk of damage to property.

PURPOSE:

The purpose of this Encroachment Policy is to establish policies related to the protection of City right of way and City easements from unauthorized encroachment; to establish guidelines by which requests for encroachments may be consistently considered; to establish the responsibilities of City departments concerning right of way or City easements from unauthorized encroachments, and to establish policies regarding the disposition of existing unauthorized encroachments.

SUBJECT TO ORDINANCES AND LAWS:

This policy shall be subject to the provisions of the City Code of Ordinances and any applicable federal, state or other local laws and regulations.

EXHIBIT A:

Exhibit A, attached hereto, is a summary of uses of City right of way, or City easements. Exhibit A is incorporated by reference into this policy as if fully set forth herein.

EXHIBIT B

Exhibit B, attached hereto, is a summary of uses of City right of way, or City easements, within the Downtown Central Business District (CBD). Exhibit B is incorporated by reference into this policy as if fully set forth herein.

EXHIBIT C

Exhibit C, attached hereto, is an example Release and Waiver to be signed by Requesting Parties for certain Conditional Uses listed in Exhibit A.

EXHIBIT D

Exhibit D, attached hereto, is an example License Agreement to be executed by Requesting Parties for standard risks associated with non-allowed uses in Exhibit A, Conditional Uses listed in Exhibit B and all non-allowed uses in Exhibit B.

EXHIBIT E

Exhibit E, attached hereto, is an example License Agreement for Low Risk Agreements for select non-

allowed used in Exhibit A. The City Engineer will decide on a case-by-case basis if a low-risk agreement is permissible.

DEFINITIONS:

Definitions for referenced terms herein and attached Exhibits are hereby described; and where a term is not described, the definitions in Chapter 26 and Chapter 29 of the Code of Ordinances shall be referenced. The Code of Ordinances shall rule in the event of any conflict in terms and definitions.

Allowed Use – A use of City right of way or City easement, listed under Exhibit A and/or Exhibit B, that does not require a Release and Waiver or License Agreement, or is otherwise found by the City Engineer not to unreasonably interfere with the City’s use and enjoyment of City right-of-way or easement or otherwise authorized by law.

City Easement – “City Easement” or “easement” shall refer to any easement where the City is named as the grantee, including but not limited to general utility easements, water line easements, sanitary sewer easements, drainage easements, inundation easements, sidewalk easements, avigation easements, or any other easement granting the City limited or exclusive rights of access, maintenance, repair, or replacement of certain improvements or other rights as identified in the easement which are intended to protect human life and/or property.

City Right of Way - Land dedicated to the City of Lee’s Summit or it’s assigns through a plat, dedication, separate document, condemnation, or other means and reserved for use of the public for transportation, utilities, and all other rights defined under State Law.

Conditional Use – Uses within the City easement or right of way, as listed in Exhibit A, or otherwise determined by the City Engineer, where a “Release and Waiver” must be executed. Uses within the City Central Business District, as listed in Exhibit B, a Standard License Agreement must be executed as determined by the City Engineer, in consultation with the City Law Department.

Downtown Central Business District (CBD) – Shall mean the downtown core area described in the Unified Development Ordinance (UDO) Section 8.410

Encroachment – Shall mean the development, construction, installation, or placement and maintenance thereof such physical items, furnishings, etc. on or for use of City right of way, or City easements including but not limited to those defined in Exhibit A and/or Exhibit B and not otherwise covered by Section 26-101, et. seq.

Frontage Zone – Shall mean the area of City Right of Way adjacent to the property line where transitions between the sidewalk or Throughway Zone and the building or space within buildings occurs.

Furnishing Zone – Shall mean that portion of the sidewalk or space between Roadway (Curb inclusive) and Throughway Zone used for street trees, landscaping, transit stops, street lights, signing and public furnishings.

Non-Allowed Use – Encroachments within City easements or right of way, as listed in Exhibit A and/or

Exhibit B, or otherwise determined by the City Engineer, which are not allowed unless otherwise specified in this policy.

Restoration of Allowed Use - The minimum level of service which the City is obligated to perform to restore an Allowed Use on City right of way and City easements when repairing, replacing or maintaining improvements within these areas.

Requesting Party – A person or entity seeking encroachment authorization pursuant to this policy.

Thoroughway Zone – Shall mean the portion of Sidewalk for pedestrian travel within City Right of Way. A continuous portion of Sidewalk having a consistent and uniform width as determined by the City Engineer, but such width shall be no less than four (4) feet.

I. GENERAL

A. Procedure for Encroachment Authorization. It is the City's policy that requests for authorization to encroach on City right-of-way or City easements shall be considered as follows:

1. General: The requesting party shall first examine Exhibit A and/or Exhibit B to determine whether the proposed use of City right of way or City easements are a "Non-Allowed Use", "Conditional Use", or "Allowed Use". Allowed Uses require no further action. Conditional Uses shall be executed by the Requesting Party in the form of a Release and Waiver (template as shown on Exhibit C) or License Agreement (template as shown on Exhibit D). The Requesting Party should be aware of Section IV "Restoration of Allowed or Conditional Uses" of this Encroachment Policy which absolves the City's obligation to restore the Encroachment whatsoever.
2. Non-Allowed Uses can be administratively approved by City staff, but shall require prior authorization and the execution of a license agreement. License agreement shall be subject to approval by the City Engineer, in consultation with the City Law Department, and execution by the City Manager.

Requests for Encroachment Authorization shall be forwarded to the Public Works Department; attention to the City Engineer. Public Works staff shall review the proposed encroachment and forward the request for encroachment authorization to the director of each City department that would be affected by the proposed encroachment. The applicable City department director (or designee) shall determine whether the requested action would violate any land use regulations; be detrimental to the City's property interests; preclude other appropriate use; and/or otherwise be prudent and reasonable. The proposed encroachment and proposed license agreement described in Section 1.B below shall be reviewed by the City Engineer in consideration of aforementioned impacted department(s) comments and legal consultation. The City Engineer shall render a decision of approval or denial. Any City Engineer approved license agreement shall then be submitted to the City Manager for execution. Following City Manager's for execution, the license agreement will be forwarded to all parties of the

agreement for recording by the applicant.

3. City Right-of-Way: Chapter 26, Article III of the Code of Ordinances contains definitions, provisions and prohibitions related to obstructions in City right-of-way. Those encroachments not covered by Section 26-101, et seq., shall be governed by this Policy, including the procedure specified hereinabove.
4. When an encroachment is associated with a development project which requires Preliminary Development Plan approval through the City Council, and the encroachment is disclosed in the Preliminary Development Plan, the encroachment may be authorized through adoption of the ordinance approving the Preliminary Development Plan. The encroachment shall be subject to the rules and procedures as provided above based upon the type of encroachment.
5. If a requested Encroachment is not listed in Exhibit A and/or Exhibit B, the City Engineer shall determine if the use is an “allowed use,” “conditional use” or a “non-allowed use.”
6. The document authorizing the Encroachment shall be recorded with the Jackson County Recorder of Deeds department by the Requesting Party. Recording shall be done in such a manner that the Release and Waiver or License Agreement can be associated with the appropriate parcel in that these documents are readily available to any future interests in the property initiating the encroachment.
7. The Frontage Zone available for encroachment shall be reviewed and approved by the City Engineer to ensure the ADA compliant Accessible Route is clearly marked within the Right of Way. The minimum area for a marked Frontage Zone shall be determined by the City Engineer. The limits for said Frontage Zone shall be marked by a scoring of one-quarter (1/4) inch pavement sawcut/joint that is sealed in grey color per City specifications. Responsibility for marking the Frontage Zone of an approved encroachment shall be determined by the City Engineer and shall be subject to other permitting requirements if such work is not performed by the City.

B. License Agreement Requirement. If the use is a Non-Allowed Use as defined by Exhibit A and/or Exhibit B, or Conditional Use in Exhibit B, or otherwise determined by the City Engineer, it is the City’s policy that encroachment authorization to encroach on City right-of-way or City easements only be granted by a written License Agreement (template as shown on Exhibit D and Exhibit E) which shall be reviewed and approved by the City Engineer in consultation with City’s Legal Department, and executed by the City Manager on behalf of the City. The License Agreement shall contain such stipulations and conditions deemed appropriate by the City to protect its property and interests, to also protect public health, safety and welfare, and to preserve the intended use of such right-of-way and/or easement for which it exists. Such stipulations shall include, but not be limited to, the following:

1. The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Requesting Party;
2. The Requesting Party shall agree to, at all times, indemnify and save the City free and harmless from and pay in full any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction, maintenance,

use, repair, operation or presence of the encroaching structure, including any loss, damage or expense arising out of (a) loss of or damage to property, or (b) injury to or death of a person.

3. The Requesting Party must agree to remove the encroachment within thirty (30) days after notice by the City to do so;
4. The City shall have the authority to remove any encroachment or cause its removal if the Requesting Party does not comply with the thirty (30) day notice required by Section I.B.3., and all costs related to such action shall be chargeable to the Requesting Party;
5. The City shall have the authority to immediately remove any encroachment, or cause its removal, without notice to the Requesting Party, when the director of the Department affected by the encroachment, or his or her designee, determines that immediate access covered by the written authorization is needed because of an emergency situation. The Requesting Party shall be liable for the costs related to the removal of the encroachment.
6. The License Agreement shall address any insurance concerns as provided in Section V of this policy, - INSURANCE REQUIREMENTS FOR USES AUTHORIZED THROUGH LICENSE AGREEMENTS.

II. EXISTING UNAUTHORIZED ENCROACHMENTS

Unless otherwise provided for in the City Code or other applicable law, upon discovery of an unauthorized encroachment, City staff shall provide the property owner with written notice of the presence of the unauthorized encroachment and of the need to seek approval of the City in the manner prescribed in this Policy within thirty (30) days. It is the City's policy to compel removal or other corrective action in the event of non-compliance by the property owner.

III. EMERGENCY SITUATIONS

Nothing in this Policy shall be construed to prevent the City from pursuing immediate removal of an encroachment when such removal is needed because of an emergency situation, pursuant to the City Code of Ordinances.

IV. RESTORATION OF ENCROACHMENTS

If repair, replacement, or maintenance of improvements within City right of way or City easements is performed by the City or its agents, which causes damage or destruction of any Allowed Use, Conditional Use, or Non-Allowed Use, the City is not obligated to perform any restoration. The City is only obligated to restore the impacted area to the surface elevation that existed prior to the repair, replacement, or maintenance of improvements, and shall not be responsible for replacement of the Use. This policy includes, but is not limited to asphalt repair, concrete repair, parking lot repair, concrete patio repair, special plant or special grass replacement, tree replacement, or other items listed in Exhibit A or Exhibit B.

The City will repair or replace the following encroachments if damage is caused to certain Allowed Uses by the City or its agents during construction activities:

1. Standard portland cement concrete or asphaltic concrete residential and commercial driveways which are within a City easement or right of way. Brick paver stone or decorative stamped concrete and other non-standard driveway materials will not be repaired or replaced. Parking lots and curb and gutter will not be repaired or replaced.
2. Chain link, vinyl, or wooden fences, to the extent that they will only be replaced or repaired with the original existing fencing material.
3. Residential and commercial building sewers and water supply lines to the extent that they are damaged during construction activities by the City or its agents.
4. Residential and commercial utilities to the extent that they are damaged during construction activities by the City or its agents.
5. Mailboxes to the extent that they are damaged or require re-location during construction activities by the City or its agents.
6. Newspaper sales boxes.

V. INSURANCE REQUIREMENTS FOR USES AUTHORIZED THROUGH LICENSE AGREEMENTS. As deemed necessary by the City, the Requesting Party shall be required to maintain and carry in force for the duration of any agreement authorized under this Policy. Insurance coverages, provisions and conditions shall meet the requirements of the City's Right of Way Ordinance: Chapter 26 Streets, Sidewalks and Other Public Places, Section 26-211. Proof of insurance shall be submitted to the City Engineer and the City Attorney in accordance with the License Agreement.