

## Legislation Details (With Text)

|                       |  |                      |                                |
|-----------------------|--|----------------------|--------------------------------|
| <b>File #:</b>        | RES. NO. 20-06   | <b>Name:</b>         |                                |
| <b>Type:</b>          | Resolution   | <b>Status:</b>       | Agenda Ready                   |
| <b>File created:</b>  | 11/13/2019   | <b>In control:</b>   | City Council - Regular Session |
| <b>On agenda:</b>     | 3/3/2020   | <b>Final action:</b> |                                |
| <b>Title:</b>         | A Resolution approving revisions to the City of Lee's Summit Encroachment Policy |                      |                                |
| <b>Sponsors:</b>      |  |                      |                                |
| <b>Indexes:</b>       |  |                      |                                |
| <b>Code sections:</b> |  |                      |                                |
| <b>Attachments:</b>   | 1. Resolution, 2. Encroachment Policy, 3. Exhibit A                              |                      |                                |

| Date     | Ver. | Action By                      | Action  | Result |
|----------|------|--------------------------------|---------|--------|
| 3/3/2020 | 1    | City Council - Regular Session | adopted | Pass   |

A Resolution approving revisions to the City of Lee's Summit Encroachment Policy

### Key Issues:

- Unauthorized encroachments into City owned property, right-of-way and easements present risks in regard to the ability of City staff to access City owned facilities and property, as well as safety concerns
- The City adopted an encroachment policy in July 2006 to manage allowed use, conditional use, and non-allowed work in public rights of way and easements owned by the City
- Proposed changes will eliminate conflicts with numerous changes in ordinances since 2006
- Proposed changes will address common requests for use not addressed in the existing policy

### Background:

The encroachment policy was adopted to protect the City and provide consistent rules to allow use of City-owned easements and right of way. The City has easement rights for right of way, access easements, general utility easement, water main easements, sewer main easements, and drainage easements.

Unauthorized encroachments into City controlled property had become a significant issue as the City rapidly grew from the 1980s to present. In many cases, residential fences were built within a sewer easement, which prevented City crews from accessing a sewer main. Other types of encroachments caused safety issues such as fences, landscaping or trees in the right-of-way that blocked motorists line of sight. Monument signs that were large, fixed objects created roadside traffic safety hazards. Installing objects both increased cost and liability risk to the City. As a result of those concerns, City Council adopted a policy in 2006 to govern the types of objects that can be installed, provide requirements to mitigate liability exposure to the City, ensure City staff had access to maintain public infrastructure, but still allow the shared use of City-controlled properties where appropriate.

The policy established non-allowed uses, conditional use and allowed use categories. The different types of uses are classified based on risk to the City and the need for the City to manage and maintain infrastructure. However, the City's needs must be balanced with private property owners needs to receive essential services as well as maintain the ability to make beneficial improvements to property.

Items classified as “non-allowed” must receive Council approval in the form of a license agreement to waive the Council’s policy. These are considered major encroachments that could create a public hazard, traffic safety issues, or prohibit City access to public infrastructure. The license agreement requires the owner of the encroachment to acquire liability insurance that also protects the City.

Conditional uses are objects placed in right of way or easement that are fairly common, may be necessary, and may be unseen. Common conditional uses are irrigation systems placed in the right of way or fences placed along property lines within a City utility easement. Fencing and irrigation lines are not necessary items and they provide a benefit solely to the private property owner. However, these items often conflict with occasional City work activities such as curb maintenance, sidewalk repairs, or repairs to underground utilities. Conditional use items require a waiver and release to hold harmless the City for any damages to the approved item encroaching in the easement or right of way. The hold harmless agreement also relieves the City of any costs or responsibility related to restoring objects placed on City easements.

Allowed uses are usually minor encroachments that do not present a risk or hazard to the public, or are necessary items. Allow uses commonly include driveways, mailboxes or certain types of landscaping. If these items conflict with traffic safety, ADA compliance or maintenance activities, the City has the right to remove or modify these items without any liability to restore to original condition.

The proposed revisions to the encroachment policy updates Exhibit A of the policy which identifies the type of use and allowances in the various types of easement the City owns. These changes add items commonly encountered in the right of way not listed in the 2006 version. Other changes modify the types of use based on estimated risk to the City. Some common homeowner uses were changed to conditional use because the items don’t rise to the level of requiring City Council approval of a license agreement. Also, notes clarifying other permit requirements and other conditions were updated.

Proposed City Council Motion:

I move for adoption of a Resolution approving revisions to the City of Lee's Summit Encroachment Policy.

George Binger, Deputy Director of Public Works/City Engineer

Recommendation: Staff recommends approval.