

## Legislation Text

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**File #:** RES. NO. 21-21, **Version:** 1

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

### Key Issues:

- City Staff was asked to update Chapter 26 of the Code of Ordinances (Right of Way) and the Encroachment Policy for the following:
  - Provide allowances and guidance for certain furnishings within the downtown right of way that are currently prohibited;
  - Maintain public safety and accessible routes;
  - Manage risk to the City; and
  - Develop an administrative process to approve license agreements.
  
- A new table is proposed in the Encroachment Policy specific to furnishings in the Central Business District (e.g. Downtown) Right of Way that:
  - Proposes a “Furnishing Zone” that allows encroachments with managed items, themes, etc. while preserving public access in the downtown area. This zone is generally described as the brick area or place between sidewalk and curb.
  - Preserves an accessible route along the sidewalks to comply with the Americans with Disabilities Act (ADA) and protect space for intended public purposes.
  - Proposes a “Frontage Zone” that allows owners/tenants of private business to place appropriate, ADA-compliant, items along the building face.
  - Proposes a licensing process to allow these encroachments with opportunity for Staff to review and manage risk within the City’s ROW.
  
- Changing the license review process from a Council Approval to Administrative approval will be addressed in proposed changes to Chapter 26 of the Code of ordinances:
  - The proposed Encroachment Policy amendments should be adopted in conjunction with Chapter 26 Revisions.
  - Proposed Chapter 26 Revisions should be on the same agenda and timeline as this Policy.

### Proposed Committee Motion:

I move to recommend to City Council approval of a Resolution approving revisions to the City of Lee's Summit Encroachment 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. Unauthorized encroachments into City controlled property, rights-of-ways and easements had become a significant issue as the City rapidly grew from the 1980s to present. Encroachments can create safety hazards, increase the City’s liability exposure, create maintenance issues, degrade aesthetics, or obstruct accessible routes. Because of those concerns, City Council adopted an Encroachment Policy in 2006 to manage safety and liability concerns, protect the use of public property, but

still allow the shared use of City-controlled rights-of-ways and easements where reasonably appropriate, lawful, and in a fair and consistent manner.

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 and intended public purpose.

However, the City's current policy makes no special provisions for activities in the right of way within the Central Business District (e.g. Downtown Area), such as outdoor dining, displaying decorations, awnings, etc. These encroachments are non-allowed and prohibited under the current ordinances and policy of the City. The City's emergency declaration authorized outdoor dining in the Central Business District (CBD) in response to the COVID pandemic occupancy and activity restrictions. Many businesses in the Downtown area began placing non-allowed encroachments in the right-of-way in part to increase COVID related accommodations. These unlawful encroachments have increased in locations and frequency with businesses expressing a desire to continue placing objects in the Downtown right-of-way; extending the business into these public spaces including the building frontage, along and within adjacent sidewalk, and area between the sidewalk and street for various reasons. In certain locations, the encroachments present great risk to the City and public, safety hazards or obstruct access and public use of the right-of-way and its public furnishings. However, in certain other locations these encroachments do not present obvious conflicts.

In an effort to accommodate outside amenities within public right of way, updates to the encroachment policy have been proposed to allow tenants or property owners to place items in the right of way as long as (a) a continuous, un-obstructed, accessible route is maintained in compliance with the Americans with Disabilities Act (ADA), (b) items placed in the right of way are compatible with the ADA, (c) those placing items in public right of way are willing to accept the appropriate levels of risk and liability and insurance for placing those items in the right of way, and (d) the public use of right-of-way is preserved for its intended purpose.

The policy proposes establishing zones along the sidewalks for various uses. A generic illustration is attached as Figure 1 of this packet. The first defined CBD zone is the Roadway, which includes streets and alleys. A Parking zone is defined. The "Furnishing Zone" is described as the area between the roadway curb and the "Throughway Zone." In most areas, this will be the paver bands with the pedestrian lighting, street trees, open signs, benches, and planters managed through the Downtown Lee's Summit Main Street organization (DLSMS). The Furnishing Zone is also the location for official signs (e.g. parking signs, stop signs, etc.) placed by the City. The Furnishing Zone is intended to provide an area where items of official public infrastructure (e.g. signs, lighting) and other items of general public use can be managed by the City (or its assigns) for design, theme, and content to provide a consistent aesthetic appearance and function in the downtown area, and preserve easy access for people opening car doors or walking across the curb line. The Furnishing Zone is not a place of private business or extension of adjacent business operations.

From the City's perspective, the "Throughway Zone" is the most important area to preserve because it creates the greatest liability exposure and has the most strict regulation under ADA. This is generally the accessible route along the sidewalk. To be ADA compliant the sidewalk must be clear of all hazard such as tables, fixed objects, columns, awnings, signs, etc. In most cases, the throughway zone will be defined as the area from the edge of the paver band with a minimum four-foot width towards the building.

The "Frontage Zone" will be a minimum area remaining between the Throughway Zone and the right of way (ROW) line. Within the CBD, the face of the building is usually the ROW line. Some buildings may have no room for a frontage zone, some may have two feet, others may have six feet, depending width of the ROW. The Frontage Zone will allow owners/tenants to place certain objects, but not all, in the ROW if they do not encroach or obstruct the Throughway Zone, and those objects are ADA compatible with the Throughway Zone. The Encroachment Policy Table defines which objects/items are allowed, non-allowed, conditionally allowed, etc. within each zone.

ADA compliance is most easily described on the U.S. Access Board, Guide to ADA Accessibility Standards website, under Chapter 3, Protruding Objects ( <https://www.access-board.gov/ada/guides/chapter-3-protruding-objects/> ). The width and cross slope of the Throughway Zone is generally governed by the ability for a wheelchair to safely travel along the route. Possible obstructions caused by objects in the Furnishing or Frontage Zones are generally governed by an ability for the visually impaired to detect using caning while traveling along the route. This illustrated in Figure 2.

The City manages encroachments based on the type of encroachment and location of encroachment. Items will be classified as “Allowed”, “Conditional Use”, and “Non-allowed.” Owners/tenant may request waivers for “Non-allowed” items in accordance with the Encroachment Policy.

Items classified as “non-allowed” must receive City approval in the form of a license agreement. These are considered major encroachments that could create a public hazard, traffic safety issues, or inhibit City access to public infrastructure or prevent public use of the easement/infrastructure as intended. The license agreement requires the owner of the encroachment to provide liability insurance that protects and indemnifies the City. The City also reserves rights to remove encroachments as needed and bears no cost for associated maintenance, removal, installation, etc. The license agreement requires installation and maintenance by the requesting party of the encroachment.

Conditional uses are objects placed in right of way or easement that are common, may be necessary, and may be unseen. Examples could be trees, newspaper boxes, fences or an irrigation system. Conditional use items require a waiver and release to hold the City harmless for any damages to the approved item(s) 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. Allowed uses commonly include driveways, mailboxes or certain types of low growth 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 provide an updated Release and Waiver, revises the standard liability insurance for a license agreement, and establishes a low-risk license agreement (mainly for private, owner-occupied homes). Notes clarifying other permit requirements and other conditions were updated.

George Binger, City Engineer

Staff recommends approval.

