

APPROVED
10/28/2019 CC



CITY COUNCIL MEETING AGENDA ITEM HISTORY/COMMENTARY

ITEM TITLE Revised Encroachment Permit (Chris Davies)	AGENDA NO. _____ AGENDA DATE _____ CONSENT: <input type="checkbox"/> ACTIVE: <input type="checkbox"/>	1ST READING _____ 2ND READING _____ 3RD/ADOPTION _____
ORIGINATING SOURCE Chris Davies, PW Director Date: <u>8-19-19</u>	FUNDING CERTIFICATION (IF APPLICABLE) Date: _____	
DIVISION MANAGER REVIEW (If applicable) Date: _____	DEPARTMENT MANAGER REVIEW (If applicable) Chris Davies, PW Director Date: <u>9-19-19</u>	
RECOMMENDED FOR COUNCIL ACTION	CITY MANAGER Alan Nygaard, City Manager Date: _____	
ITEM HISTORY (PREVIOUS COUNCIL REVIEWS, ACTION RELATED TO THIS ITEM, OTHER PERTINENT HISTORY) Encroachment permits are requested when property owners propose encroaching upon City right of way or easements. Encroachment permits allow the encroachment with the understanding that if needed for any reason the encroachment may be removed by the City.		
ITEM COMMENTARY (BACKGROUND, DISCUSSION, KEY POINTS, RECOMMENDATIONS, ETC.) Please identify any or all impacts this proposed action would have on the City budget and/or personnel resources. Changes to this permit incorporate addressing sidewalk vaults and a more robust understanding of conditions. The holder of an encroachment permit does not have a property interest in the encroachment permit.		
ACTION PROPOSED Approval to use the Revised Encroachment Permit		



Above space for Recorder's use

Request for Encroachment on Public Right-of-Way

Owner's Name(s): _____

Address of Requested Encroachment: _____

Lot/Blk: _____ Subdivision: _____

Reason For Encroachment Request:

Description of Encroachment:

Sketch of Encroachment:

(Include North arrow and distance from center of street and edge of asphalt or curb)

Attach Separate Page if Needed

RELEASE, WAIVER, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT

In consideration of being granted an encroachment permit from the City of Lewiston Public Works Department, I, intending to be legally bound, do hereby forever release, waive, and discharge all rights, claims, demands, losses, liabilities, damages, actions, causes of action, expenses, and suits of any kind whatsoever, foreseen or unforeseen, that I, my heirs, executors, administrators, and assigns may have or that may hereafter accrue against the City of Lewiston and/or its officers, agents, and employees (hereinafter collectively "City of Lewiston") that arise out of or are in any way connected to this encroachment permit.

I hereby assume full responsibility for the risk of bodily injury, death, and/or property damage that is in any way connected to this encroachment permit. If this encroachment permit is for use of a vault located below a sidewalk or within the right-of-way in the City of Lewiston, I understand and agree that I am responsible for the maintenance, safe condition, and security of said vault. I hereby expressly agree that I assume full responsibility for any property damage to items stored in a vault. I also understand that the City of Lewiston does not make any warranties or representations about the safety or condition of vaults, including, but not limited to, structural stability of vaults and whether vaults are waterproof.

I agree to forever hold harmless, defend, and indemnify the City of Lewiston from any and all claims, including those arising from ordinary negligence, which may arise out of or are in any way connected to this encroachment permit. This includes, but is not limited to, any economic or non-economic losses due to bodily injury or property damage sustained in connection with this encroachment permit. I agree that the City of Lewiston shall not be liable to me for any direct, indirect, special, incidental, consequential, or exemplary damages.

I expressly agree that this Agreement is intended to be broad and inclusive as permitted by the laws of the State of Idaho, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I acknowledge that I have carefully read this Agreement and know and understand the contents thereof and sign this Agreement upon my own free will. I understand that by signing this Agreement, I give up substantial rights that I might otherwise have to recover damages for any losses occasioned by the fault of others, and knowing this, I still choose to sign this Agreement voluntarily, without inducement.

ADDITIONAL CONDITIONS

By signing below, I expressly understand and agree that this encroachment permit is revocable and that I do not have a property interest in this encroachment permit. Additionally, I expressly understand and agree that this encroachment permit may be revoked by the City of Lewiston Public Works Director (or designee) at any time. In such event, I agree to remove the structure(s) within thirty (30) calendar days, at my own expense, upon written request from the City of Lewiston.



If this encroachment permit is for use of a vault located below a sidewalk or within the right-of-way in the City of Lewiston, I expressly understand and agree to the following:

- I will only use the vault for office space, storage, overflow seating, and other similar uses approved by the City of Lewiston.
- I will not install equipment or hardware in the vault that I cannot quickly and easily remove; provided, however, that grease interceptors and utilities may be installed in the vault.
- My use of the vault will comply with the Lewiston City Code and applicable building and fire codes.
- I do not have a property interest in the vault, and I will not raise a future hardship claim if the City of Lewiston revokes this encroachment permit.
- The City of Lewiston reserves the right to enter and inspect the vault during regular business hours or upon providing me with at least twenty-four (24) hours' written notice.

Approval of this encroachment permit shall be binding on the property owner(s), their heirs, executors, administrators, assigns, and successors in interest. It is intended that the provisions and covenants herein contained shall be covenants running with the land and that they shall be enforceable by the City of Lewiston.

This encroachment permit shall be recorded with the Nez Perce County Recorder's Office in Lewiston, Idaho, and shall constitute an encumbrance against the real property noted above.

Signature of Property Owner(s): _____

STATE OF _____)
) ss.
 County of _____)

On this _____ day of _____ 20____, before me, a Notary Public, personally appeared _____, known or identified to me to be the person whose name is subscribed to within the instrument, and acknowledged to me that he or she executed the same.

 Notary Public for _____
 Commission Expires _____



STATE OF _____)
) ss.
County of _____)

On this ____ day of _____ 20____, before me, a Notary Public, personally appeared _____, known or identified to me to be the person whose name is subscribed to within the instrument, and acknowledged to me that he or she executed the same.

Notary Public for _____
Commission Expires _____

Please refer to the following Lewiston City Code sections for more information:

31-2 (Definitions, including clear vision area, encroachment, and right-of-way), 31-67 (Posts, uprights and supports prohibited), 31-68 (Buildings projecting over streets or sidewalks), 31-69 (When railing required), 31-70 (Excavations and structures under sidewalks; permits; specifications; may be declared nuisances), 31-71 (Gates and doors swinging over sidewalks prohibited; same declared a nuisance), 31-73 (Cellarways; when cover required), 31-74 (Temporary right-of-way uses), 31-75 (Permanent and semi-permanent encroachments in the right-of-way), and 31-76 (Insurance required)

OFFICIAL USE ONLY

Public Works Director or Designee: Approved Disapproved Date Received: _____

By: _____ Date: _____

Comments:



Above space for Recorder's use

Request for Encroachment on Public Right-of-Way

Owner's Name(s): _____

Address of Requested Encroachment: _____

Lot/Blk: _____ Subdivision: _____

Reason For Encroachment Request:

Description of Encroachment:

Sketch of Encroachment:

(Include North arrow and distance from center of street and edge of asphalt or curb)

Attach Separate Page if Needed

RELEASE, WAIVER, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT

In consideration of being granted an encroachment permit from the City of Lewiston Public Works Department, I, intending to be legally bound, do hereby forever release, waive, and discharge all rights, claims, demands, losses, liabilities, damages, actions, causes of action, expenses, and suits of any kind whatsoever, foreseen or unforeseen, that I, my heirs, executors, administrators, and assigns may have or that may hereafter accrue against the City of Lewiston and/or its officers, agents, and employees (hereinafter collectively "City of Lewiston") that arise out of or are in any way connected to this encroachment permit.

I hereby assume full responsibility for the risk of bodily injury, death, and/or property damage that is in any way connected to this encroachment permit. If this encroachment permit is for use of a vault located below a sidewalk or within the right-of-way in the City of Lewiston, I understand and agree that I am responsible for the maintenance, safe condition, and security of said vault. I hereby expressly agree that I assume full responsibility for any property damage to items stored in a vault. I also understand that the City of Lewiston does not make any warranties or representations about the safety or condition of vaults, including, but not limited to, structural stability of vaults and whether vaults are waterproof.

I agree to forever hold harmless, defend, and indemnify the City of Lewiston from any and all claims, including those arising from ordinary negligence, which may arise out of or are in any way connected to this encroachment permit. This includes, but is not limited to, any economic or non-economic losses due to bodily injury or property damage sustained in connection with this encroachment permit. I agree that the City of Lewiston shall not be liable to me for any direct, indirect, special, incidental, consequential, or exemplary damages.

I expressly agree that this Agreement is intended to be broad and inclusive as permitted by the laws of the State of Idaho, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I acknowledge that I have carefully read this Agreement and know and understand the contents thereof and sign this Agreement upon my own free will. I understand that by signing this Agreement, I give up substantial rights that I might otherwise have to recover damages for any losses occasioned by the fault of others, and knowing this, I still choose to sign this Agreement voluntarily, without inducement.

ADDITIONAL CONDITIONS

By signing below, I expressly understand and agree that this encroachment permit is revocable and that I do not have a property interest in this encroachment permit. Additionally, I expressly understand and agree that this encroachment permit may be revoked by the City of Lewiston Public Works Director (or designee) at any time. In such event, I agree to remove the structure(s) within thirty (30) calendar days, at my own expense, upon written request from the City of Lewiston.



STATE OF _____)
) ss.
County of _____)

On this ____ day of _____ 20____, before me, a Notary Public, personally appeared _____, known or identified to me to be the person whose name is subscribed to within the instrument, and acknowledged to me that he or she executed the same.

Notary Public for _____
Commission Expires _____

Please refer to the following Lewiston City Code sections for more information:

31-2 (Definitions, including clear vision area, encroachment, and right-of-way), 31-67 (Posts, uprights and supports prohibited), 31-68 (Buildings projecting over streets or sidewalks), 31-69 (When railing required), 31-70 (Excavations and structures under sidewalks; permits; specifications; may be declared nuisances), 31-71 (Gates and doors swinging over sidewalks prohibited; same declared a nuisance), 31-73 (Cellarways; when cover required), 31-74 (Temporary right-of-way uses), 31-75 (Permanent and semi-permanent encroachments in the right-of-way), and 31-76 (Insurance required)

OFFICIAL USE ONLY

Public Works Director or Designee: Approved Disapproved Date Received: _____

By: _____ Date: _____

Comments:
