

**CITY OF SANDY OAKS, TEXAS**

**ORDINANCE NO. 2020-176**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS PROVIDING FOR PROCEDURES FOR LICENSES TO ENCROACH; FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, AND ENFORCEMENT; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City of Sandy Oaks, Texas is a Type A general law municipality incorporated and operating under the laws of the State of Texas ("City"); and

**WHEREAS**, Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or police regulations that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, the City Council of the City seeks to promote reasonable, sound, and efficient land use and construction within the City; and

**WHEREAS**, pursuant to Texas Local Government Code Chapters 212, to protect the public health, safety, and welfare, the City Council has determined that it must adopt regulations that protect rights-of-way and easements within the City; and

**WHEREAS**, the City Council has determined that the adoption of a process to allow a license to encroach in certain instances where utility and other functions are not harmed by such encroachment provides appropriate flexibility to property owners; and

**WHEREAS**, the City Council finds that it is in the best interest of the City and its residents to adopt this Ordinance to allow for license agreements for encroachments into a City a public street, roadway, sidewalk, right-of-way, easement, or utility which such encroachment will not harm any other such use of the public street, roadway, sidewalk, right-of-way, easement, or utility;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS THAT:**

**SECTION 1. FINDINGS OF FACT.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

**SECTION 2. LICENSE TO ENCROACH.**

- A. Purpose. The purpose of a license to encroach is to allow flexibility to property owners whose proposed improvements, construction, structure or facility on their property may encroach into a public street, roadway, sidewalk, right-of-way, easement, or utility, if it is determined the potential impacts of proposed improvements, structures, facilities, and encroachments into a public street, roadway, sidewalk, right-of-way, easement, or utility will not negatively affect the City or its residents and the safety, mobility, and operational functionality of a public street, roadway, sidewalk, right-of-way, easement, or utility will be maintained.

B. Applicability. A license to encroach, in the procedures provided for in this section, is required for the following:

- (1) Encroachments of new improvements including air conditioning pads, fences, roof overhangs, sheds, and other improvements into a public street, roadway, sidewalk, or right-of-way within the city limits and easements located within the City limits or the extra-territorial jurisdiction.
- (2) If a property owner applies for a change to a property on which an encroachment currently exists where no license has been issued, and the change would increase the encroachment or create a new encroachment, an application for a license to encroach shall be submitted and a permit for the change only granted if a license to encroach is granted.

C. Those improvements, as defined above, that encroach into a public street, roadway, sidewalk, right-of-way, easement, or utility shall obtain approval from the City Council, in addition to this license.

D. Review of a license to encroach shall be done by the City Council and such decision of the City Council shall be final.

E. Criteria for Approval. No license to may be approved unless it is determined by the City Council that the proposed location or type of improvement will not negatively impact the function of the public street, roadway, sidewalk, right-of-way, easement, or utility or have an adverse effect upon the health, safety, or welfare of the general public or an easement holder denies encroachment. In making this determination, the following will be evaluated:

- (1) The proposed encroachment into a public street, roadway, sidewalk, right-of-way, easement, or utility by any person shall not interfere with the lawful use thereof.
- (2) Any proposed construction within a public street, roadway, sidewalk, right-of-way, easement, or utility shall be in accordance with the City's adopted building and construction standards, any other applicable local ordinances and regulations, and applicable federal and State law.
- (3) At any time during the construction of any structure within a public street, roadway, sidewalk, right-of-way, easement, or utility:
  - a. The applicable public street, roadway, or sidewalk shall be kept open for vehicular and pedestrian traffic in a reasonable manner and sidewalks shall not be obstructed as to prevent the use thereof by pedestrians;
  - b. Dirt and other material removed from the construction of any structure within a public street, roadway, sidewalk, right-of-way or easement shall not be allowed to remain on the street or sidewalk and shall be removed immediately at the sole cost, risk, liability, and expense of the licensee;
  - c. All excavations and obstructions of any kind that take place during the period of the licensee's construction shall be properly barricaded and well-illuminated during the night, subject to the approval of the Building Official.



F. Submission Requirements.

- (1) Any request for a license to encroach shall be accompanied by an application approved by the City, any required signatures, and the fee as set by City Council plus reimbursement of consultant fees, if any. The application shall be accompanied with a letter of consent or signature for the water, electric, and wastewater utility (if any) when an encroachment will extend or expand into an area used or which could be used in the future by the utility.
- (2) The City Council may determine further studies will be required. Such studies may include, but are not limited to, an engineering study, which may be required at the determination of the City Engineer. Only the elements of an engineering study that are necessary to answer specific questions that arise during the review process will be required for submittal.

G. Responsibility for Final Action. The City Council is responsible for final action on licenses to encroach into a public street, roadway, sidewalk, right-of-way, easement, or utility. Consent of public or private entities or utilities with interest or property rights into a public street, roadway, sidewalk, right-of-way, easement, or utility subject to an application for an encroachment license is required.

H. Expiration. The City shall provide written notice at least 60 days in advance to the licensee, its representatives, successors, or assigns, to take possession of and use all or any part of the licensed area in the event that such use be reasonably desired or needed by the City for street, sewer, transportation, or any other public or municipal use or purpose. During such time, it is the responsibility of the licensee, its representatives, successors or assigns to remove the encroachment(s). In such an event, the City shall have the right to cancel the license as to that portion of the licensed area so designated and required by the City. Additionally, the City may revoke a license at any time upon 60 days' notice to the grantee of the license. Notice to the grantee identified in the license agreement shall be deemed sufficient notice by the City under this section.

**SECTION 3. REPEALER.** In the case of any conflict between other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

**SECTION 4. SEVERABILITY.** Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

**SECTION 5. ENFORCEMENT AND PENALTIES.**

- A. No person may encroach or cause another person to encroach on a public street, roadway, sidewalk, right-of-way, easement, or utility without the express written permission of the City. Violators of this provision shall remedy any encroachment upon notice and at the request of the City. The City may also institute an action to enjoin or take any other appropriate action or proceeding to halt or remedy such encroachment.
- B. Any person who violates or causes, allows, or permits another to violate any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be

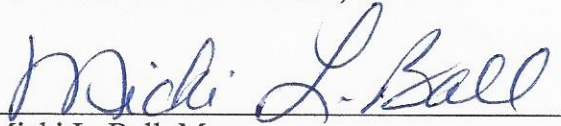
punished by a fine of not more than Five Hundred Dollars (\$500.00), or, in the case of a violation of a provision of this ordinance that governs fire safety, zoning, or public health and sanitation a fine of not more than Two Thousand Dollars (\$2,000.00). Each occurrence of any such violation of this ordinance shall constitute a separate offense. Each day on which any such violation of this ordinance occurs shall constitute a separate offense.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall be effective immediately upon its publication pursuant to section 52.011 of the Local Government Code.

**SECTION 7. PROPER NOTICE & MEETING.** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**PASSED, APPROVED AND ADOPTED THIS 10<sup>TH</sup> DAY OF DECEMBER 2020.**

**CITY OF SANDY OAKS, TEXAS**

  
Micki L. Ball, Mayor

**ATTEST:**

  
Katherine Yelton, City Secretary