



City of Grand Island

Tuesday, June 18, 2002

Study Session

Item -3

Discussion regarding Obstructions in the Right of Way

Easements and Alley/Street Right of Ways are used to build things such as electric lines, water mains, sanitary sewer mains, other utilities, streets and alleys. Easements allow use of the land while ownership remains with the original property owner. That enables the property owner to use their land with minimal impact on their property. Building or sign set backs are not impacted by the easements. Property for streets and alleys is acquired as Right of Ways. Right of Way does affect building set backs.

Keeping those easements and Right of Ways clear of obstructions is difficult. Easements throughout town have been built up with fences, sheds, dog kennels, landscaping, sprinkler systems, and other obstructions. These obstructions make access to the easements and the utilities within those easements difficult if not impossible. Alley Right of Ways are generally kept clear because they are only 16' to 20' wide and many of the alleys are regularly used by neighbors or garbage trucks. Street Right of Ways are easier to keep clear of obstructions in areas where we have conventional sidewalk located near the Right of Way line. Street Right of Ways in areas where the sidewalk is at the back of curb are especially hard to keep clear of obstructions. Many property owners consider the land behind the curb to be their yard.

Right of Ways are public property and any specific use by an individual at the expense of the general public use should be very limited. City staff and the council has an obligation and duty to maintain the public land be it a park, a street or a street park way. If every household in the city choose to enclose or acquire the public lands adjacent to their property it would become very difficult at best to travel about the city.

If an individual would like to use an easement or Alley/Street Right of Way they must obtain a license agreement with a \$100 application fee. The license agreement is approved administratively after review by city staff and filed with the property documents at the Register of Deeds Office. If staff denies an application for a license agreement, the applicant can appeal the decision to council for an additional \$50.

The system is difficult to administer. City staff does not have time to patrol the town looking for obstructions that are being built. Some individuals follow the rules and ask for permission to install an obstruction by applying for a license agreement. Other individuals put up obstructions without asking for permission and hope to sneak by without getting caught. When caught they usually ask for forgiveness.

We felt it was appropriate to brief council on the issue because there appears to be an increase in the number of violations. Obstructions in easements cause us grief, but the

obstructions (primarily fences) in the Right of Ways have staff concerned. Issues mentioned include safety for pedestrians using the sidewalk and where to put the snow during snow removal operations.

Photos of obstructions throughout town will be shown at the study session.

A copy of a blank license agreement application and blank license agreement are attached.

Staff Contact: Steve Riehle, Public Work's Director

! This Space Reserved for Register of Deeds !

LICENSE AGREEMENT

This License Agreement is made by and between the CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation, herein referred to as the "Licensor" and Name, hereinafter referred to as the "Licensee."

1. **STATEMENT OF PURPOSE.** The purpose of this License Agreement is to set forth the terms and conditions under which the Licensee may construct, maintain, repair, and utilize the following described improvement which will infringe upon real estate owned by the Licensor:

Describe Improvement

2. **DESCRIPTION OF LICENSEE'S REAL ESTATE.** The Licensee owns the following described real estate adjacent to the Licensor's real estate to which this License Agreement shall apply:

Legal Description

3. **LICENSEE'S DUTIES AND RISKS.** It is understood and agreed that the Licensee may construct, maintain, repair and utilize the above described improvement at the Licensee's sole risk. The Licensee hereby waives any claim for damages against the Licensor, its officers, employees, agents and independent contractors for any damage or injury that may result to said improvement. If the Licensor, in its sole discretion, determines that any part or all of the improvement must be removed or is damaged by the Licensor, its employees, agents or independent contractors working for the Licensor during the course of their employment or duties with the Licensor, the Licensee agrees to assume and pay all costs relating to the replacement or repair of the improvement.

4. RESTORATION OF PROPERTY. If the construction or maintenance of the improvement identified in Paragraph 1 above requires the excavation of earth, removal of hard surfacing, grass, vegetation, landscaping, or any other disruption of the surface of the public right-of-way or neighboring property, the Licensee shall restore the surface of the area to the same condition as it existed immediately prior to the Licensee's work in the area.

5. EFFECTIVE DATE. This License Agreement shall take effect on the date it is executed by the Mayor of the City of Grand Island as dated below. It shall continue for an indefinite term or until such time as it is terminated as provided hereafter.

6. TERMINATION. This License Agreement shall terminate upon one or more of the following occurrences:

(a) The service of sixty (60) days written notice of intention to terminate by any party upon the other party.

(b) The Licensee's application for a permit to alter said improvement or any part thereof, unless said permit is for work due to an occurrence as described in Paragraph 3 above and said work has the prior written approval of the Licensor.

(c) The Licensee's construction or installation of any structure or improvement of any nature upon the real estate owned by the Licensor except that described in Paragraph 1 above.

Upon the termination of this License Agreement, the Licensee shall be required, and hereby agrees, to remove said improvement from the Licensor's real estate at its own expense and without cost to the Licensor. Said removal to occur no later than sixty (60) days after receipt of the notice of intention to terminate or any of the occurrences set forth in Paragraph 6 above. Should the Licensee fail to do so, the Licensor may remove or cause the removal of said improvement from the Licensor's real estate and the Licensee agrees to reimburse the Licensor for all its costs.

7. SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors and assigns.

8. ENTIRE AGREEMENT. This License Agreement constitutes the entire agreement between the parties notwithstanding any other oral or written agreements to the contrary. This License Agreement shall be amended only in writing executed by all parties hereto.

9. CHOICE OF LAWS. This License Agreement shall be construed in accordance with the laws of the State of Nebraska and the City of Grand Island, Nebraska.

10. CONTENT OF LANGUAGE. Wherever the context of the language in this License Agreement is appropriate, the singular shall apply to the plural and the plural shall apply to the singular.

DATED: _____.

LICENSOR:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

By: _____
Ken Gnadt, Mayor

Attest: _____
Cindy K. Cartwright, City Clerk

LICENSEE:

Name

STATE OF NEBRASKA)
) ss
COUNTY OF HALL)

The foregoing document was executed before me on _____, 1998, by
Name.

Notary Public