

Review Date: October 14, 2026

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Recommendation: Approval

Request: Amends Section 5.1.6. of the Land Development Code (LDC) – Protection of easements, to remove the requirement for property owners to execute and record a Hold Harmless and Indemnification Agreement as a condition of permitting certain encroachments into public utility easements (PUEs).

Positive aspects of the amendment	• Simplifies the permitting process by eliminating an unnecessary administrative step. • Improves operational efficiencies for both applicants and City staff. • Reduces costs and delays associated with preparation, execution, and recording of Hold Harmless Agreements. • Maintains the City's existing authority under the LDC to require removal of improvements from easements at the property owner's expense.
Negative aspects of the amendment	• None identified. The LDC already places full financial responsibility for removal, relocation, repair, or replacement of improvements within easements on the property owner.
Mitigating factors	• Existing provisions in Section 5.1.6.G. continue to hold property owners responsible for all costs associated with utility work affecting improvements placed in easements. • Utility providers retain the ability to remove or disturb materials as needed for maintenance or expansion.

BACKGROUND

Section 5.1.6. of the Land Development Code regulates the protection of public utility easements (PUEs) and establishes limited circumstances under which certain improvements may be placed within those easements. In the Residential (R-1) zoning district, on properties improved with a principal residential structure, stairs, hardscape features, landscape features, fall protection planters, elevated walkways, decks, and access ramps may be constructed and placed in the six-foot PUE along a side or rear property line, subject to certain requirements. The section also addresses permitted improvements in other zoning districts and assigns responsibility for costs associated with removal or disturbance of such improvements to the property owner.

Under the current version of Section 5.1.6. of the Land Development Code, prior to issuance of a permit for any structure, construction, driveway, or other material in an easement, the City requires the property owner to execute an agreement to indemnify and hold the City harmless from costs or expenses incurred as a result of removal from the easement or the location, placement, construction, or installation of improvements in the easement. In addition, when an administrative deviation is requested under subsection B.6., the applicant must execute a hold-harmless and indemnification agreement in a form approved by the City Attorney's Office and record that agreement in the Public Records of Lee County at the applicant's expense.

Staff has determined that these Hold Harmless Agreement requirements are redundant. The Land Development Code already expressly provides that if a utility removes, damages, or disturbs construction or other material within an easement as allowed by Section 5.1.6., the property owner is responsible for the cost of its removal, relocation, repair, or replacement. This statutory authority under the LDC is sufficient to protect the City's interests and the interests of utility providers. Requiring a separate contractual agreement and recording adds administrative steps, cost, and processing time without providing meaningful additional legal protection.

The proposed amendment therefore deletes the Hold Harmless Agreement requirements from Section 5.1.6. while retaining all substantive standards governing what may be placed in easements, the dimensional limitations, structural independence requirements, utility conflict prohibitions, and the property owner's financial responsibility for any removal or restoration work.

PURPOSE OF THE AMENDMENT

The purpose of this amendment is to simplify the permitting process and improve administrative efficiencies by eliminating the requirement for a Hold Harmless and Indemnification Agreement as a condition of placing certain allowed improvements within public utility easements. Because the Land Development Code already vests the City with clear authority to require property owners to bear the costs of removal, relocation, repair, or replacement of improvements placed in easements, a separate contractual agreement is unnecessary. Removal of this procedural requirement will reduce applicant costs, shorten permit review timelines, and free staff resources while preserving the City's substantive protections.

ANALYSIS OF PROPOSED CHANGES

The proposed LDC amendment provides several benefits that are summarized below.

- **Streamlines permitting.** Elimination of the Hold Harmless Agreement removes an extraneous document preparation, review, execution, and recording step from the permit process for PUE encroachments.
- **Reduces applicant cost and delay.** Applicants will no longer incur recording fees associated with preparing and recording the agreement, nor the associated processing time.
- **Improves staff efficiency.** City staff will no longer need to track, review, or confirm recording of Hold Harmless Agreements for routine PUE-related permits or administrative deviations.
- **Preserves substantive protections.** All existing dimensional, structural, and conflict standards remain in place, and Section 5.1.6.G. continues to assign full cost responsibility for removal or restoration to the property owner.
- **Aligns procedure with legal authority.** The amendment recognizes that the City's authority to require removal of improvements from easements derives from the Land Development Code itself and does not depend on a separate private agreement.

COMPREHENSIVE PLAN ANALYSIS

The amendment is consistent with the goals and policies of the Comprehensive Plan that emphasize efficient administration of land development regulations and protection of public infrastructure while supporting orderly private development.

Future Land Use Element

Policy 1.17: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address buffering and open space requirements, and will protect existing residential land uses from incompatible land uses.

Staff analysis: The proposed amendment does not alter any buffering, setback, or compatibility standards. It merely removes a redundant procedural requirement while retaining the substantive rules that govern what may be placed in PUEs adjacent to residential structures. The amendment therefore continues to support protection of residential areas and efficient administration of the LDC.

The amendment is also consistent with the broader Comprehensive Plan objective of providing clear, efficient, and predictable land development regulations that facilitate appropriate private investment while safeguarding public facilities and the public interest.

RATIONALE FOR LDC TEXT AMENDMENTS

LDC Section 3.5.4.A. states that text amendments shall be considered for one or more of eight stated reasons. This LDC amendment is consistent with Section 3.5.4.A.1 and Section 3.5.4.A.2.

1. The amendment clarifies the intent of the LDC.

Staff analysis. The intent of Section 5.1.6. is to protect public utility easements while allowing limited, carefully regulated private improvements. The Code already places full financial responsibility for any disturbance of those improvements on the property owner. Requiring a separate Hold Harmless Agreement does not add substantive protection and has created an unnecessary procedural layer. Removing the requirement clarifies that the LDC itself is the operative source of the City's authority and the owner's obligations.

2. The amendment corrects an error in the LDC.

Staff analysis. Inclusion of a mandatory Hold Harmless Agreement requirement created an administrative redundancy. Because the LDC already imposes the same substantive obligations, the separate agreement requirement is unnecessary.

MANNER OF INITIATION

LDC Section 3.5.4.B. states that applications for an LDC text amendment may be initiated by the City Council, the Planning and Zoning Commission, or by the City Manager. This amendment is a City-initiated request advanced by the Development Services Department to improve permitting efficiency and eliminate a redundant procedural requirement.

REVIEW CRITERIA FOR PROPOSED LDC TEXT AMENDMENTS

LDC Section 3.5.4.C. identifies four review criteria for proposed text amendments to the LDC. Each criterion is evaluated below.

1. Whether the proposed LDC text amendment is consistent with the goals, policies, and future land use designations of the City Comprehensive Plan.

Staff analysis. The amendment is consistent with Comprehensive Plan policies that call for efficient land development regulations and protection of public infrastructure. It does not alter any future land use designations or intensity standards.

2. The amendment results in compatible land uses within a zoning designation.

Staff analysis. The amendment does not add, remove, or reclassify any land use. It solely removes a procedural requirement applicable to already-permitted encroachments. Compatibility of uses is unaffected.

3. The amendment protects the health, safety, and welfare of the community.

Staff analysis. Health, safety, and welfare remain protected by the retained substantive standards of Section 5.1.6., including dimensional limits, structural independence requirements, prohibitions on encroachments that conflict with existing or proposed utilities, and the owner's continuing financial responsibility for any removal or restoration. Elimination of the redundant agreement does not diminish these protections.

4. Other factors deemed appropriate by the Planning and Zoning Commission and City Council.

Staff analysis. The amendment advances the City's interest in efficient customer service and responsible use of staff resources. It reduces unnecessary paperwork and recording costs for residents while preserving the City's full legal authority under the LDC.

RECOMMENDATION

The proposed amendment removes a redundant Hold Harmless and Indemnification Agreement requirement from Section 5.1.6. of the Land Development Code. The Land Development Code already provides clear authority for the City and utility providers to remove or disturb improvements placed in public utility easements and assigns the full cost of such work to the property owner. Retention of the separate contractual agreement requirement therefore adds administrative burden and cost without commensurate public benefit. The amendment preserves all substantive dimensional, structural, and conflict standards that protect public infrastructure and neighboring properties. The proposed amendment is consistent with the Comprehensive Plan and with the review criteria of LDC Section 3.5.4.C. Staff recommends **approval** of Ordinance 56-26.

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