

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 19 -003

AN ORDINANCE REPEALING AND REPLACING A SECTION OF THE GEORGETOWN CODE OF ORDINANCES CHAPTER 15, ARTICLE IV REGARDING ENCROACHMENTS INTO PUBLIC & PRIVATE EASEMENTS AND RIGHTS OF WAY.

SUMMARY

1. Repeals and replaces Chapter 15, Article IV of the Georgetown Code of Ordinances establishing the requirement to obtain a permit prior to making street cuts, setting a fee for said permit, requiring permittee to provide a construction and maintenance surety bond, and outlining the other responsibilities associated with holding the permit and conducting the work.
2. Provides for repeal of inconsistent ordinances, severability of provisions and an effective date upon passage and publication.

The full text of Ordinance 19-003 is available for examination in the City Clerk's Office, 100 North Court Street, Georgetown, Kentucky 40324 or at [www.georgetownky.gov](http://www.georgetownky.gov).

---

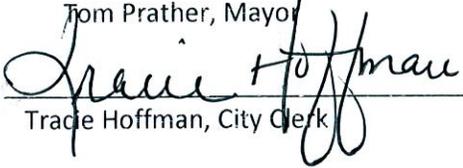
INTRODUCED AND PUBLICLY READ FIRST TIME: February 11, 2019

PUBLICLY READ SECOND TIME AND PASSED: February 25, 2019

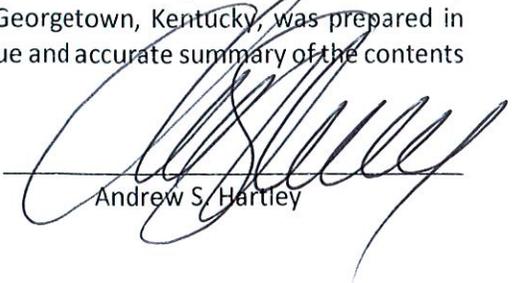
APPROVED: \_\_\_\_\_

  
Tom Prather, Mayor

ATTEST: \_\_\_\_\_

  
Tracee Hoffman, City Clerk

I, Andrew S. Hartley, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My office is located at 100 North Court Street, Georgetown, Kentucky 40324. I further certify the foregoing Summary of Ordinance 19-003, of the City of Georgetown, Kentucky, was prepared in accordance with the requirements of KRS 83A.060(9) and is a true and accurate summary of the contents of said Ordinance.

  
Andrew S. Hartley

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 19-003

AN ORDINANCE REPEALING AND REPLACING A SECTION OF THE GEORGETOWN CODE OF ORDINANCES CHAPTER 15, ARTICLE IV REGARDING ENCROACHMENTS INTO PUBLIC & PRIVATE EASEMENTS AND RIGHTS OF WAY.

SPONSOR: Council Members Marvin Thompson and Todd Stone

NOW THEREFORE, be it ordained by the City of Georgetown, Kentucky:

**SECTION ONE**

**Chapter 15, Article IV of the Georgetown Code of Ordinances is repealed and replaced to read as follows:**

1. Definitions:

The following definitions shall apply to this Ordinance:

- a. Private Easement – an easement reserved by a Public or Private Utility for the provision of utilities; such an easement requires that a property owner contact the holder of the easement to take an action impacting said easement.
- b. Public Easement – an easement reserved by a governmental entity or for the benefit of the general public, such as that involved for drainage, stormwater, detention, open space, sanitation, etc.
- c. Public Utility – person, firms, and corporations furnishing or supplying, in any manner, gas, electricity, heat (by means other than electricity), water, sewer collection, and sewage disposal service, or any of them, to the public or any portion thereof, in exchange for compensation.
- d. Emergency – any situation in which placement or maintenance of facilities is needed to be undertaken immediately because of an imminent danger to human life or health or of significant damage to property, including but not limited to, unanticipated leaks interruptions or reductions in existing services, or other situations defined as being emergency or dangerous conditions pursuant to federal, state, or local law. Installation of facilities that only serve to expand or upgrade existing service or provide new service shall not be considered an emergency.

- e. Encroachment – any disturbance of City Rights-of-Way or Public Easements other than work undertaken by or at the direction of the City of Georgetown Engineering or Public Works departments for maintaining a roadway, drainage improvements, signage, and other appurtenances thereto for the safety of the general public.
- f. Excavate/Excavation – to dig into or in any way remove or physically cut, disturb or penetrate any part of a right-of-way.
- g. Right of Way – the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, utility strip, grass area, or easement held by the government for the purpose of public travel and shall include rights-of-way as shall be now held or hereafter held by the government. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.
- h. Street – the area of a roadway spanning from the outside edge of the curb to the outside edge of the opposite curb.
- i. Contractor - a person or company that undertakes a contract to provide materials or labor to perform a service or do a job; for purposes of this Ordinance, a homeowner who is independently executing the relevant project shall be considered a contractor.
- j. Fence – a property barrier to show one’s boundaries, consisting of wood slats and/or metal, and posts.

## 2. Incorporation of Relevant Authorities:

The City of Georgetown’s Subdivision and Development Regulations is incorporated by reference, as though set forth fully herein. A copy of the Subdivision and Development Regulations is available on the Georgetown-Scott County Planning Commission’s website. The City of Georgetown’s Stormwater Best Management Practices Manual is incorporated by reference, as though set forth fully herein. The most current version of the Manual on Uniform Traffic Control Devices (MUTCD) and Kentucky Department of Transportation’s Standard Specifications are also incorporated by reference, as though set forth fully herein.

## 3. Permit/Fee:

- a. The City Engineer shall create a permit application consistent with the requirements of this Ordinance and shall have the authority to make reasonable

revisions thereto. The City Engineer shall have the authority to require additional documentation to accompany said permit application.

- b. Any person, firm, corporation, or association planning to excavate, tear up, repair, obstruct or lay materials on any street, sidewalk, public easement or other public right-of-way in the city for any purpose, including but not confined to the laying of water, gas or sewer lines or connections, shall first apply to the City Engineer for an encroachment permit and shall state the nature, extent, and time period for completion of the proposed work. The base fee associated with the encroachment permit shall fall under one of the following categories:
  - i. Basic Encroachment Fee – a twenty-five-dollar (\$25) base fee will be assessed for permits acquired for the purpose of encroachments other than those that extend into the street; this shall include, but is not limited to, sidewalk repairs, fence construction, and construction in an easement.
  - ii. Street Encroachment Fee – a one hundred-dollar (\$100) base fee will be assessed for permits acquired by public utility companies, subcontractors working at the direction of public utility companies, or home/property owners repairing utilities that extend into the City's street.
- c. The base permit fee shall be escalated at a rate of fifty cents (\$.50) per linear foot for each linear foot of disturbance beyond twenty-five linear feet of disturbance.
- d. All basic encroachment permits shall expire thirty (30) days after permit issuance. All street encroachment permits shall expire sixty (60) days after issuance. The City Engineer may, in his or her sole discretion, extend this period for good cause. Extensions for both basic encroachment permits and street encroachment permits shall be thirty (30) days. At the conclusion of the extension period, the permittee shall apply for a new permit in order to complete the encroachment work in compliance with this Ordinance.
- e. All City, County, State and Federal governmental agencies and instrumentalities shall be entitled to waiver of the permit application fee; these agencies and instrumentalities, and their contractors, however, shall remain responsible for compliance with all other provisions in this Chapter, including the bond requirement.
- f. If the encroachment work is being performed by someone other than the property owner, the application for the encroachment permit shall be submitted by the contractor.
- g. The application for an encroachment permit shall be submitted at least three (3) business days in advance of the target date for start of construction, with the exception of street cut work, which shall be submitted ten (10) business days in advance of the target date for start of construction, subject to the exceptions found below in subsection 8.
- h. The City Engineer, in his or her absolute discretion, shall retain the authority to approve or reject encroachment permit applications.

#### 4. Non-Dedicated Streets:

The provisions of this Ordinance shall apply to all public streets within the City of Georgetown, including streets that have been platted for dedication to the City but not yet accepted by the City as City streets.

#### 5. Construction and Maintenance Surety Bond:

- a. This bond shall cover the period of repair/restoration and one year of workmanship surety.
- b. No person, firm, corporation or association shall make any cut or excavation in any City street, public easement or other public right-of-way, other than a sidewalk in a residential area, until said party provides a surety bond, in a sum equal to the estimated cost of restoring the disturbed area to a condition in compliance with the standards provided below in subsection 10.
- c. Bonding may be provided in the form of a cash bond, performance bond, cashier's check, or letter of credit. The minimum bond amount shall be five hundred dollars (\$500) for a single permit; said amount shall be set by the City Engineer at the time of permit issuance. The City Engineer shall set this amount equal to the estimated cost of restoring the disturbed area based upon the square footage of the disturbed area. The City Engineer shall develop and maintain a set of unit prices for determining restoration costs. Said unit prices shall be available to the general public upon request.
- d. In the case of a public utility company that holds a contractor's bond, this section may also be satisfied by naming the City of Georgetown as an additional party to that bond.
- e. The bond shall be returned to the permittee one year after final inspection and approval of the restoration, per subsections 10 and 11.
- f. No bond shall be required for encroachments made as part of a project for repairing or replacing a sidewalk on a residentially zoned property; these permittees shall, however, comply with all other provisions of this Chapter.
- g. The City Engineer may, in his or her discretion, waive the requirement for a bond where the risk of damage to public infrastructure is insignificant.
- h. Persons, firms, corporations or associations regularly making cuts or excavations in City streets, sidewalks, public easements or other public rights-of-way may elect to deposit a running bond with the City; said bond shall be set at a minimum of fifty thousand dollars (\$50,000) and shall serve to cover projects spanning over the course of one (1) year from the time of deposit. The amount of the running bond shall be determined by the City Engineer, using good faith, professional discretion.

#### 6. Insurance:

- a. Street encroachment permittees shall furnish, at the time of application, and shall maintain throughout the life of the permit, public liability and property damage insurance in an amount no less than one million dollars (\$1,000,000), so as to protect permittee and any subcontractor from claims for personal injury or property damage which may arise from operations under the permit, whether said operations be conducted by permittee or by any subcontractor or by anyone directly or indirectly employed by permittee or its subcontractor(s). Permittee shall name the City of Georgetown as an additional insured throughout the duration of the work performed and shall furnish a Certificate of Insurance memorializing this addition.
- b. Individual property owners seeking a permit for any encroachment work shall furnish at the time of application, and shall maintain throughout the life of the permit, liability insurance in an amount no less than one million dollars (\$1,000,000) OR shall hire a licensed contractor who meets the requirements of this section. A rider to a homeowner's insurance policy, naming the City of Georgetown as an additional insured, will satisfy the requirements of this section as well.

7. Indemnity:

- a. All permittees shall defend, indemnify, and hold harmless the City, its officials, boards, members, agents and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, including reasonable attorney's fees, arising from liability or claims of liability for bodily injury or death to persons or property damage in which the claims arises out of the installation, construction, repair, maintenance or operation of its facilities, and in the event of a final judgement being obtained against the government either independently or jointly with the permittee, the permittee shall pay such judgment with all costs and hold the City harmless thereon.
- b. The City shall notify the permittee in writing within a reasonable time of receiving notice of any issue it determines may require indemnification, and the permittee shall defend the City at the cost of the permittee.

8. Emergency Repairs:

- a. For purposes of this section only, the word "repair" shall refer only to the emergency conditions, while the word "restoration" shall refer to the street or other surface.
- b. This section shall be limited to those repairs necessary to remedy the emergency and shall not include repairs to restore the surface; surface repairs following the remedy of the emergency shall require strict adherence to the standard encroachment permit procedure.

- c. In the event that emergency repairs are required on a City street, alley, public easement or public right-of-way, the ten (10) day request period shall be waived; notice of the need to make emergency repairs shall be given to the City Engineer as soon as reasonably possible, but never more than twenty-four (24) hours after the commencement of said repairs, and the repairer shall apply for an encroachment permit for the restoration work within forty-eight (48) hours of the completion of said repairs.
- d. Emergency repairs of a City street, sidewalk, public easement or other public right-of-way shall remain in strict compliance with the safety, warranty, insurance and restoration provisions in this Chapter.

9. Traffic Control:

- a. Any person, firm, corporation or association that has engaged in any cutting, tearing up, repairing, obstructing, laying materials or other disturbance of any street shall provide traffic control services, in accordance with the most current version of the Manual on Uniform Traffic Control Devices (MUTCD), for the duration of such project if such excavations occur in the street or anywhere that equipment is operating, or occupying space, on the paved surface of a street.
- b. The City Engineer may, in his or her discretion, require a contractor to submit a traffic control plan in cases involving such size and scope that would merit City Engineer approval of traffic control measures. Factors impacting this decision include, but are not limited to, size of the project and traffic volume in the impacted area.
- c. The City Engineer shall have the discretion to require and authorize street closure where necessary to maximize traffic efficiency and ensure public safety.

10. Restoration of Surface:

- a. Any person, firm, corporation or association that has engaged in any cutting, tearing up, repairing, obstructing, laying materials or other disturbance of any street, sidewalk, public easement or other public right-of-way shall refill the excavation such that the street, sidewalk, public easement or other public right-of-way is restored to its pre-disturbance condition. Any disturbance of a street shall be cut and repaved the full width of the street, from curb to curb. The time allotted for such restoration shall depend upon the type of permit:
  - i. Basic Encroachment – full restoration within ten (10) days of the disturbance.
  - ii. Street Encroachment – temporary surface within ten (10) days of the disturbance and full restoration prior to expiration of the permit period or extension thereto.
  - iii. Temporary winter month surface restoration is acceptable with a written schedule submitted to the City Engineer with a date or schedule for final surface restoration.

- b. The pre-disturbance condition includes both the quality of the surface and the materials used to create the surface. Restoration shall be completed in compliance with the Kentucky Department of Transportation's Standard Specifications and the Subdivision and Development Regulations for the City of Georgetown and shall match the pre-disturbance condition of the street. This standard shall be deemed satisfied or unsatisfied in the sole discretion of the City Engineer.
- c. In the event that the restoration by said person, firm, corporation or association does not pass inspection of the City Engineer, the permittee shall have fourteen (14) days to remedy the non-compliance. Should the permittee fail to remedy within that period, the City Engineer may restore the surface to its pre-disturbance condition, using means within his or her discretion. This cost of the restoration, and a 25% overhead fee therefor, shall be billed to the permittee. Should the permittee fail to pay, the City shall be paid out of the bond required under subsection 5. If any part of the bond remains after the work is completed, it shall be returned, after the expiration of the maintenance period, to the person, firm, corporation or association having furnished said deposit. Should the actual cost of restoration exceed the bond amount, the balance will be billed to the permittee.

#### 11. Inspections:

Permittee's restoration of the surface shall undergo inspection by the City Engineer and shall meet the requirements of the City of Georgetown's Subdivision and Development Regulations and Kentucky Department of Transportation's Standard Specifications, in addition to any and all other local, state, or federal requirements that may apply. The City of Georgetown reserves the right to conduct inspections throughout the period under which the subject work is under warranty, per subsection 14. In applying for and receiving an encroachment permit under this ordinance, permittees shall be deemed to have granted the City and its agents the right to enter upon and inspect the subject property at reasonable hours.

#### 12. Safety and Accessibility Requirements:

- a. It shall be the duty of the permittee to provide safety precautions for all cuts and excavations. These precautions shall include, but are not limited to, signs, markings, barricades, fencing, advertisements and other measures.
- b. When the work-zone is open during night time or other hours yielding insufficient sunlight for the reasonable person to navigate the work-zone, the construction work-zone shall be lighted with no fewer than two (2) illuminated red lamps, which shall be securely and conspicuously posted near each end of the excavation or obstruction area. In the event that the space exceeds fifty (50) feet in length, permittee shall employ at least one (1) additional lamp for each added fifty (50) feet of excavation or obstruction.

- c. All work-zone signage shall comply with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD).
- d. It shall be the permittee's responsibility to remain in compliance with all federal, state and local laws and regulations relevant throughout the duration of the construction, including, but not limited to, the requirements imposed by the Americans with Disabilities Act (ADA) and the Occupational Safety and Health Administration (OSHA).
- e. At all times relevant, the permittee shall act as a reasonably prudent contractor in the same industry, under the same or similar circumstances, and in the same time period and location.
- f. The City Engineer may, in his or her discretion, require additional safety or accessibility requirements on an individual project basis.

13. Mandatory Site Displays:

- a. Any person engaged in activities authorized under an encroachment permit shall, at all times while such work is in progress, keep at the job location the original permit, or a copy thereof. The permittee shall, on demand, exhibit the permit to any City official who requests said permit.
- b. At all times while the work is in progress, the person, firm, corporation, or association shall also maintain at the job location a sign, barricade, or other device bearing the name of the person, firm, corporation, or association.

14. Warranty:

- a. It shall be the duty of the permittee to make workmanlike repairs to ensure minimal future adverse impact to motorists.
- b. The permittee shall warrant the excavation repair or cutting for a period of one (1) year from the date of completion of the repair or cutting. In the event that the repair or cut is inadequate, under the City's good-faith inspection, the permittee shall be required to make the necessary corrections and bear the cost thereof.
- c. The City, in its sole discretion, may designate a private firm or one of its qualified employees to perform the inspection noted in (b).

15. Enforcement and Penalties:

- a. Violation of any section of this Ordinance shall constitute a civil offense which shall be enforced according to the procedures set forth in the Georgetown Code Enforcement Board Ordinance by the Code Enforcement Board, hearing officers, code enforcement officers, citation officers and other persons duly authorized to investigate and enforce the violations through investigation, inspection and issuance of citations.

- b. The penalty for violations of this Ordinance shall be as set forth in Section 15 of the Georgetown Code Enforcement Board Ordinance. All violations of this section shall be considered Class 2 Violations.
- c. Penalties for a violation of any section of this Ordinance will be waived only if the same or similar violation has not occurred 1) on the property and 2) by the same permittee within the same calendar year and the violation is remedied within the time period specified by the Code Enforcement Officer.

**SECTION TWO**

If any portion of this Ordinance is for any reason held invalid or unlawful, such portion shall be deemed a separate provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION THREE**

All prior ordinances and parts of ordinances in conflict with this Ordinance are repealed.

**SECTION FOUR**

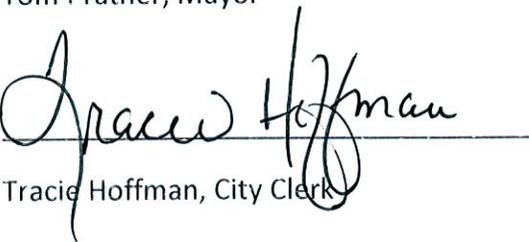
This Ordinance shall become effective upon passage and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME:      February 11, 2019

PUBLICLY READ SECOND TIME AND PASSED:      February 25, 2019

APPROVED: 

Tom Prather, Mayor

ATTEST: 

Tracie Hoffman, City Clerk