

ORDINANCE NO. BG2012 - 29

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 21 (STREETS AND SIDEWALKS) OF THE CITY OF BOWLING GREEN CODE OF ORDINANCES TO MAKE CHANGES RELATED TO RIGHT-OF-WAY OBSTRUCTIONS, STORMWATER AND STREET CUTS

WHEREAS, the Public Works Department recommends amending Chapter 21 (Streets and Sidewalks) of the Code of Ordinances to address obstructions on rights-of-way, updates to the storm water manual and revisions to street cut requirements; and,

WHEREAS, it is in the best interests of the City to adopt the recommended changes to Chapter 21.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 21 (Streets and Sidewalks) is hereby amended as follows:

21-1 GENERAL PROVISIONS.

21-1.01 Unlawful to Place or Erect Obstructions on City Property, ~~With Exception of Approved Subdivision Signs and Temporary Real Estate Signs.~~

a. It shall be a civil violation as set out in Chapter 27 of this Code for any person to place or cause to be erected or placed on any City street, alley, sidewalk, right-of-way or any other real property owned or occupied by the City any building, sign, fence, brick mailbox, or column. Other obstructions, including but not limited to large rocks or boulders, posts, stakes, and landscape that are deemed a safety hazard to the public shall also be prohibited, with the exception of public utility infrastructure obstruction or encroachment of any nature including, without limitation, large rocks or boulders, junk, fences, posts, stakes, etc.

b. Any structure that exists within right-of-way as of September 1, 2012 may remain, however may not be enlarged, moved or structurally altered in a way that increases its nonconformity.

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The City Engineer or designee shall have the authority to remove the structures should they be deemed an immediate safety concern or impede any public improvement project necessary to maintain functionality of the city's streets and infrastructure. Voluntary demolition of a nonconforming structure nullifies its nonconforming rights. If involuntarily destroyed or removed, the nonconforming structure shall retain its nonconforming rights for a period of one year. Failure to re-establish the structure within one year nullifies the nonconforming rights.

c. No structure, fence or vegetation shall be permitted to obscure the vision of the traveling public at any street, alley or driveway intersection.

bd. Notwithstanding the provisions hereinabove, signs designating entrances to subdivisions may be constructed upon City rights-of-way, provided that prior to the construction thereof: (1) a building permit is obtained from the Department of ~~Housing~~ Neighborhood and Community Services Development, Building and Inspection Division, and (2) plans and specifications for the construction of the sign are approved in writing by the ~~Engineering~~ Planning and Design Division of the Department of Public Works.

ee. Notwithstanding the provisions hereinabove, temporary real estate signs advertising the sale or lease of real estate shall be allowed in City rights-of-way under the following conditions:

1. Only one sign shall be allowed per parcel of real estate, except for corner lots where two signs shall be allowed with one sign allowed per street. Each sign shall advertise only the parcel of real estate that it adjoins.

2. The authorized sign shall be located on the street frontage adjoining the parcel of real estate that is for sale.

3. If the authorized sign is located in a non-paved area, the lawn / grass shall be maintained in compliance with applicable City ordinances.

4. The authorized sign shall be temporary in nature and may be located in City

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rights-of-way only while the real estate is for sale or lease. The sign shall be removed within ten (10) days after the closing of the sale or lease.

5. The authorized sign shall comply with all other traffic laws, rules and regulations and shall not obstruct the sight triangle or line of sight for the traveling public.

6. The authorized sign shall be located a minimum of ten (10) feet from the edge of the pavement. The authorized sign shall be no more than sixteen (16) square feet in sign face area.

7. Any authorized sign located more than twenty (20) feet from the edge of the pavement may be increased in size not to exceed thirty-two (32) square feet in sign face area.

8. Any person installing a temporary real estate sign pursuant to these provisions shall be responsible for locating underground utilities and the City shall assume no responsibility or liability for damages or injuries caused by the sign or its installation.

21-1.02 Duty to Remove Obstructions; Authorization of Temporary Obstructions.

As set out in Chapter 27 of this Code, every person owning or acting as agent for or occupying any building or lot in the City shall keep, or cause the sidewalk and right-of-way adjacent to such building or lot to be kept, open and free from ~~ice, snow and all other~~ obstructions, barriers and impediments ~~of every description~~ as described hereinabove; provided however, the City Manager may permit temporary obstruction to persons in receiving, selling or removing fuel, lumber, boxes or merchandise and all articles of trade, if such obstruction be removed within twenty-four (24) hours. The City Engineer or designee shall have the authority to remove obstructions within a notified period of time, and if an emergency exists, may order immediate removal of an obstruction without prior notice.

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21-1.07 No Construction Debris on Street.

It shall be unlawful to track or leave upon any City street, alley or sidewalk any dirt, mud,

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gravel, rocks or other construction debris so as to obstruct or impede traffic or cause property damage or personal injury. Additionally, any person performing work at a construction site on or near any street, alley or sidewalk shall comply with the standards of the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) Manual.

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21-2 STORM WATER.

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21-2.05 Post Construction Water Quality.

a. Purpose. To fully comply with federally mandated stormwater regulations, the City is required to address runoff from post construction areas. Post construction stormwater management in areas undergoing new development or redevelopment is necessary because runoff from these areas has been shown to significantly affect receiving water bodies. Many studies indicate that prior planning and design for the minimization of pollutants in post construction stormwater discharges is the most cost effective approach to stormwater quality management.

b. Applicability. For construction meeting the criteria herein below, review and approval is required prior to commencement of construction:

1. Disturb more than one (1) acre, and creates greater than ten thousand square feet (10,000ft²) of new impervious surfaces, irrespective of existing impervious surfaces.

2. Hotspot land uses as defined below:

a) Automotive fueling facilities;

b) Automotive maintenance and repair facilities;

c) Restaurants with grease collection and disposal; and,

d) Other land uses as determined to have a high potential of pollutant discharge

into the MS4 as determined by the City Engineer.

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21-4 CUTS AND EXCAVATIONS.

21-4.01 Permit Required; Fee.

No person shall make any cut or excavation in any City street, alley, sidewalk, or right-of-way without first having obtained a written right-of-way excavation permit from the ~~City Engineering~~ Engineering Planning and Design Division. Right-of-way excavation is defined to include any excavation in a street ~~or any penetration greater than one inch~~ or any excavation or removal of any part of a City right-of-way, curb, gutter or sidewalk. Application for such a permit shall be made at least one week in advance of the expected date of commencement of the work, except in cases of emergency. If the application is approved by the ~~Engineering~~ Engineering Planning and Design Division, a permit shall be issued upon evidence of payment of a twenty-five (\$25.00) dollar permit fee to the City of Bowling Green. Each permit issued shall cover only one specified piece of work. Permits fees shall be doubled if work begins prior to issuance of a permit. The construction site and area for all work performed pursuant to the permit shall comply with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) Manual.

21-4.02 Surety Bond Required.

No person shall make any cut or excavation in any City right-of-way, street, alley or sidewalk and no permit shall be issued to any person to do same under this Subchapter until that ~~the~~ person permittee shall have provided a surety bond. This bond is to insure that the repair of any cuts or excavations is made in accordance with the standards adopted by the ~~Engineering~~ Engineering Planning and Design Division.

Bonding may be provided by a cash bond, performance bond, or letter of credit. The minimum bond amount shall be two hundred and fifty dollars (\$250) and a maximum of twenty-five thousand dollars (\$25,000) for a single permit. A performance bond or letter of credit may be utilized

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as a “running bond”. This type of bonding may be used to cover multiple permits up to but not to exceed the amount of surety. This type of bonding must be renewed on an annual basis. The minimum amount for “running bonds” shall be fifty thousand dollars (\$50,000).

The surety posted shall not be returned to the permittee until one year after inspection and approval of the repair of any such cut or excavation has been made by the ~~Engineering~~ Planning and Design Division, unless special construction methods approved by the ~~Engineering~~ Planning and Design Division are utilized.

21-4.03 Insurance Requirements.

Any person or party applying for a right-of-way excavation permit shall provide proof of insurance at time of application. The limits shall be as specified by the ~~Insurance Requirements~~ Risk Transfer Mechanism section in the Risk Management Manual of Purchasing Policies and Procedures.

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21-4.05 ~~Engineering~~ Planning and Design Division to Make Inspections, ~~Supervise~~ Repairs.

a.—The ~~Engineering~~ Planning and Design Division shall be responsible for inspecting all cuts and excavations and repair of such cuts and excavations for compliance with repair standards. The permittee shall notify the Planning and Design Division twenty-four (24) hours in advance of work (e.g. excavation, backfill, etc.)

b.—~~The Engineering Division shall supervise all repairs and determine that all repairs are made in accordance with standards adopted by the Division.~~

21-4.06 Permittee to Notify ~~Engineering~~ Planning and Design Division of Repair Work ~~Supervision~~ Inspection Required.

The permittee shall notify the ~~Engineering~~ Planning and Design Division as to the exact time he will begin to make any cut or excavation and also the exact time that he will begin to repair

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any such cut or excavation with the notice, in each case, being at least one day in advance except in cases of emergency; provided however, in no event shall the permittee actually begin to make any cut or excavation without first receiving the expressed approval of the Engineering Planning and Design Division. The Engineering Planning and Design Division shall then again be responsible for giving immediate notification of its approval for the commencement of any such cut or excavation to the Fire Division, Police Division and Public Works Maintenance Operations Division. A representative of the Engineering Planning and Design Division shall be present during the repair of any such cut or excavation.

21-4.07 Time Limit for Temporary and Permanent Repairs.

Each permit issued by the Engineering Planning and Design Division under this Subchapter shall specifically state the exact time limit in hours after the making of any such cut or excavation by which the permittee shall be mandatorily required to either complete all permanent required repairs or at least make such temporary covering or repairs as may be approved by the Engineering Planning and Design Division. In any event, all cuts and excavations shall be completely and permanently repaired to the satisfaction of the Engineering Planning and Design Division within ~~forty-eight (48) hours~~ ten (10) calendar days after the work requiring the cut or excavation is completed by the permittee, except for winter provisions when hot-mix asphalt is unavailable. The specified time limit shall also include all clean-up which is required by the Engineering Planning and Design Division. The permit shall expire after three months.

21-4.08 Repairs Made by City; Reimbursement Authorized; Fee Schedule; Use of Bond to Cover Costs.

a. If a permittee should fail to properly repair any cut or excavation in compliance with the standards and requirements of the Engineering Planning and Design Division, the Engineering Planning and Design Division shall then instruct the Public Works Maintenance Operations Division to

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make all necessary repairs, in which event the City shall be reimbursed for all repairs by the permittee based upon time and materials costs plus twenty-five (25%) percent for overhead expenses.

b. Any work required and fees covered under this Subchapter shall be billed to the permittee. If the permittee refuses to pay the bill within thirty (30) days, the City shall use the proceeds from the cash bond required hereinabove to cover the bill.

21-4.09 Public Works ~~Maintenance~~ Operations Division Authorized to Contract With Permittee to Make Repairs; Reimbursement.

The Public Works ~~Maintenance~~ Operations Division may contract with permittee to make repairs of any cuts or excavations. The City shall be reimbursed for the repairs based on the fee schedule contained in this Subchapter.

21-4.10 ~~Lights and Guardrails Required~~ Safety Precautions.

It shall be the duty of the permittee making any cut or excavation in any City street, alley or sidewalk to ~~properly guard, light and illuminate such cuts and excavations until all repairs are completed and approved by the Engineering Division. Except in the case of emergency, no permittee shall permit any bulldozer, backhoes or any other equipment to be left upon any City street, alley or sidewalk except when in use~~ provide safety precautions related to their construction. These precautions shall include, but are not limited to: signs, markings, barricades, fencing, and other measures.

a. Permittee shall provide barricades or construction fencing sufficient to enclose the work-zone for safety.

b. Construction work-zone shall be barricaded and lighted when the work zone is open during night time for safety of the motorists and pedestrians.

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 comply with all laws and regulations

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including, but not limited to Occupational Safety and Health Administration (OSHA).

21-4.11 Applicability to All Public Utilities and Agencies of All Governments.

a. All of the provisions of this Subchapter shall apply to all public utilities and to all agencies and instrumentalities of all City, County, State and Federal Governments, since the dangers of blocked streets or improperly repaired cuts or excavations are the same, whether caused by private or public concerns.

b. However, no agency or instrumentality of any City, County, State or Federal Government shall be required to pay the permit fee ~~or post the cost bond~~ as required hereinabove.

21-4.12 Warranty of Repair and Cutting of Recently Paved Roads.

The permittee shall make proper repairs to ensure minimal future impact to motorists.

a. The permittee shall warranty the excavation repair for a period of five (5) years from the completion of the permanent repair. Should the repair fail, the permittee shall make necessary corrections.

b. Excavation repair failure shall be deemed as trench variation or cracking in or immediately adjacent to the repaired area. Trench variation of one half inch (1/2") or greater along a ten foot (10') straightedge shall constitute failure. Additionally, cracking within one foot (1') outside of the repair shall constitute failure. If the repair is deemed to have failed within five (5) years from completion, the permittee shall make necessary repair under the warranty provision.

c. Should a permittee cut a recently paved street, the permittee shall be required to repave the entire paved section. The use of seamless, thermal bonded asphalt repair, such as infrared repair, may be used in lieu of repaving an entire section. The entire section shall be deemed as the section from the cut to the nearest intersection or one hundred feet (100') on both sides of the cut, whichever is less. A recently paved section shall be deemed as paved within two (2) years prior to the excavation.

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2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on July 17, 2012, and given final reading on August 7, 2012, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: August 7, 2012

APPROVED: Bruce Wilkin
Mayor, Chairman of Board of Commissioners

ATTEST: Kate Shallen
City Clerk

SPONSORED BY: Kevin D. DeFebbo, City Manager, 07/10/2012, 8:15 a.m.