

ORDINANCE NO. 1104

AN ORDINANCE ADOPTING AN ADMINISTRATIVE PERMITTING PROCESS FOR AUTHORIZING ENCROACHMENTS IN THE RIGHT-OF-WAY AND CITY EASEMENTS; AUTHORIZING THE CITY ENGINEER TO APPROVE ENCROACHMENT APPLICATIONS; PROVIDING FOR THE APPROVAL FORMS; PROVIDING AN APPLICATION FEE; AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City of Kyle, Texas (“City”) controls the public rights-of-way and holds title to public easements throughout the city for the public benefit;

WHEREAS, the City regularly receives requests for permanent or temporary authorization to encroach on the public right-of-way or easement controlled by the City;

WHEREAS, to provide a more efficient option for the handing of requests to encroach in public right-of-way or easements, the City Council establishes the administrative permitting process described in Attachment A to this Ordinance.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made part hereof for all purposes as findings of fact.

Section 2. Regulations Adopted. The City Council hereby amends Chapter 38, Article II, City of Kyle Code of Ordinances, and adopts Division 2 titled “Administrative Permitting Process” to read as set forth in Attachment A attached hereto and incorporated herein for all purposes.

Section 3. Amendment of Ordinances. Chapter 38, Article II is hereby amended as provided in this Ordinance. All other ordinances or parts thereof in conflict herewith are amended to the extent of such conflict only. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the city, the terms and provisions of this ordinance shall govern.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 5. Effective Date. This ordinance shall take effect immediately upon its approval and passage and publication as required by law.

Section 6. Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

PASSED AND APPROVED on this the 7th day of July, 2020.

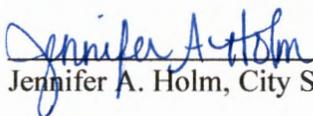
FINALLY PASSED AND APPROVED on this the 4th day of August, 2020.

The City of Kyle, Texas



Travis Mitchell, Mayor

ATTEST:



Jennifer A. Holm, City Secretary

CHAPTER 38 – STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES

ARTICLE II. STREETS AND SIDEWALKS

Division 2. ADMINISTRATIVE PERMITTING PROCESS

Sec. 38-41. - Purpose.

- (a) It is the intent and purpose of this Division to:
 - (1) Establish an efficient process for persons to utilize when seeking authorization to encroach on the public right-of-way and city easements; and
 - (2) Provide regulations by which encroachments on the public right of way and city easements are conducted safely, in a manner that does not interfere with the City or other public utilities use of the easement, and for a limited duration where possible.
- (b) To accomplish the stated purpose, the City Engineer may approve an application to permit encroachments in the easements held by the City and in the right-of-way if the City Engineer determines that the encroachment will not interfere with the use of the easement or the right-of-way.
- (c) No provision in this Division prohibits the City Engineer from presenting an application to permit encroachments in the easements held by the City and in the right of way to the City Council for consideration and final approval.

Sec. 38-42. - Definitions.

Easement means a public utility easement, municipal utility easement, water utility easement, wastewater utility easement, drainage easement, or other easement owned and/or controlled by the City.

Encroachment means a structure that is proposed to be located within a public right-of-way or easement.

Right-of-way means the surface of, and the space above and upon, any and all present and future public thoroughfares, public utility easements, public ways, public grounds, public waterways and, without limitation by the foregoing, any other public property within the corporate limits of the city.

Sec. 38-43. - Permit required.

A person who wishes to locate any structure within right-of-way or an easement shall be required to submit and obtain approval of an application submitted in accordance with this Division and enter into a license agreement or encroachment agreement prior to locating the structure within the easement or right-of-way. This Division applies to encroachments that are not regulated by Chapter 38, Article IV.

Sec. 38-44. - Application contents.

- (a) The following information shall be provided in the request on the application form provided by the City Engineer:

- (1) The name, addresses, and telephone numbers of the owner of the structure, property, or equipment proposed for encroachment or person(s) responsible for the activity proposed for encroachment. For an encroachment into an easement, the owner of the property upon which the easement is located must apply for the permit and be a party to any agreements required by this Division.
- (2) The names, titles and telephone numbers of the following:
 - a. The person designated as the principal contact for the submittal, if different from the owner;
 - b. A description of the location of the proposed encroachment;
 - c. Engineering plans, drawings and/or maps, as required by the City Engineer, with summarized specifications showing the encroachment;
 - d. Applicants' acknowledgment that upon approval of a request authorizing encroachment in the right-of-way, the applicant will sign a license agreement in the form required by the City;
 - e. Applicants' acknowledgment that upon approval of a request authorizing encroachment in an easement held by the City, the applicant will sign an encroachment agreement in the form required by the City;
 - f. Any reports or studies required by the City Engineer including additional construction plans or reports to address stormwater flows and drainage; and
 - g. Any other information requested by the City Engineer or designee.

(b) An application for approval to encroach in an easement held by the City or to encroach on the public right-of-way shall be accompanied by a fee as follows:

Designated parking space - 6 month term

The fee for the first space requested for encroachment is \$250.00.

The fee for the second space requested for encroachment is \$300.00.

The fee for the third space requested for encroachment is \$350.00.

The fee for every additional space is the fee for the immediately preceding fee amount plus \$50.00.

Other areas requested for encroachment – 6 month term

The fee for an area approximately 9' x 18.5' or approximately 166 square feet is \$250.00.

The fee for every additional area is the fee for the immediately preceding fee amount plus \$50.00.

Sec. 38-45. – Action on application.

(a) The City Engineer shall review the application and shall approve or deny the application. The application shall be denied if:

- (1) The application is incomplete;
- (2) The application fee is not included;
- (3) The encroachment will interfere with the City's or another entities' use of the easement, will create a safety hazard, will interfere with the City's plans for the easement or right-of-way, will cause damage to property other than the applicant's property, is contrary to good engineering practices; or if the application is for an encroachment or obstruction that is subject to the permitting process set forth in Chapter 38, Article IV.

(b) An applicant who receives a permit for an encroachment in a public right-of-way shall enter into a license agreement in the form required by the City and approved by the City Attorney and the City Engineer. An applicant who receives a permit for an encroachment in an easement shall enter into an encroachment agreement in the form required by the City and approved by the City Attorney and the City Engineer. The City Engineer may impose additional reasonable conditions within the license agreement or encroachment agreement, as applicable, including but not limited to a bond to guarantee the repair of costs of damage to adjacent property that may occur due to the location of the encroachment in the easement or right-of-way. The City Manager is authorized to execute license agreements and encroachment agreements for encroachments permitted by the City Engineer under this Division.

Sec. 38-45a. – Appeal of City Engineer's Decision.

An applicant aggrieved by the City Engineer's decision regarding an application submitted under this Division may appeal the City Engineer's decision to the City Council by submitting a written request for appeal within ten (10) days after the date of the City Engineer's decision. The appeal shall be placed on the agenda for the next available City Council meeting for which agenda-posting deadlines can be met.

Sec. 38-45b. – Damage to applicant's improvements.

The City will not be responsible for any damage to the applicants' improvements in the easement or right-of-way, and the applicant must remove the improvements upon City request, at the applicant's sole cost and expense.

Sec. 38-45c. -- Maintenance considerations.

The applicant shall be required to maintain the encroachments placed in the right-of-way or easement.

Sec. 38-45d. - Penalty for violation of this article.

A person who violates or fails to comply with any requirement or provision of this Division, or who places an encroachment or structure in an easement or right-of-way without first obtaining approval and entering into an agreement required by this Division or another applicable City ordinance shall be deemed guilty of an offense and may be assessed a fine not to exceed \$2,000.00. Such penalty shall be in addition to all the other remedies provided in this City Code of Ordinances. Each day the violation exists constitutes a separate offense.