

**CITY OF MIDDLETOWN
ORDINANCE NO. 07-09-20-A
AN ORDINANCE REVISING CHAPTER 91
OF THE CODE OF ORDINANCES RELATING TO STREETS AND SIDEWALKS**

WHEREAS, the City of Middletown chapter of ordinances relating to streets and sidewalks has not been updated for many years and the city finds the entire chapter of ordinances should be modernized to meet current needs,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MIDDLETOWN, KENTUCKY:

SECTION 1:

The City of Middletown does hereby repeal and replace Section 91.001, 91.002, 91.003 and 91.004 of its Codified Ordinance Sections. Section 91.001, 91.002, 91.003 and 91.004 are hereby repealed and new Sections 91.001 through 91.005 are adopted to read as follows:

91.001 PERMIT REQUIRED FOR WORK OR CONNECTION TO RIGHT-OF-WAY

- (1) No person, company, or entity (including utilities), shall, without first obtaining an Encroachment Permit from the City of Middletown:
 - (a) Begin to construct, reconstruct, repair, cut, excavate, connect onto, or alter, any City of Middletown public right-of-way, or structure located therein.
 - (b) Exception for emergency work by Utility. In an emergency, any public utility is allowed to work in the City of Middletown right-of-way, as long as the Encroachment Permit Application required herein is filed within 48 hours of the commencement of work.

91.002 APPLICATION AND CASH DEPOSIT

- (1) The city shall provide forms identifying the information required for application for an Encroachment Permit (along with an application fee) and such other information deemed necessary in the administration of this ordinance, providing, however, that a utility company may devise its own form, if the form contains all of the information called for in the city form. The Application may be mailed or delivered to the city, or sent by facsimile/e-mail and shall contain at a minimum:
 - (a) Name, address and telephone number of the entity for whose benefit the work is proposed.
 - (b) Name, address and telephone number of the person who is doing the actual work.

- (c) Description of the proposed work, including construction detail, location, and when the work will begin and when it is projected to be completed.

91.003 STANDARDS FOR ISSUANCE

1. Standards for issuance opening or connection permit:
 - (a) The opening and restoration of a pavement, or other surface shall be performed under the direction and to the satisfaction of the authorized city official and in accordance with the rules, regulations and specifications of the city, including the City of Middletown Public Works and Assets Policy.
 - (b) The city shall require any person or entity requesting an Encroachment Permit, to post a performance bond prior to initiating any work in the city, by cash or certified check. The amount of the bond shall be that amount that the city determines would be sufficient to fully repair any damages to the right-of-way cause by the proposed encroachment, if the applicant fails in its responsibility to fully restore the right-of-way as set out herein and in the City of Middletown Public Works and Assets Policy. Upon successful completion of the project, the Permittee shall request an inspection by the city and the bond shall be released if the city is satisfied that the restoration is complete.
 - (c) All work must be conducted in compliance with the City of Middletown Public Works and Assets Policy and shall not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking space and the means of egress to and from the property affected and adjacent properties. Excavations or openings shall be fully barricaded at all times to prevent injury to persons or animals. Excavation or openings obstructing any street, sidewalk or alley way shall be adequately lighted at night to prevent injuries.
 - (d) If the applicant or application proposes a new vehicular connection (or proposes an alteration of an existing vehicular connection), onto Middletown right-of-way, added scrutiny and findings must be part of the City's encroachment permit determination, including the following objective, measurable criteria:
 - (i) Whether the parcel(s) benefited by the connection has other, reasonable vehicular access through other access points and the extent to which the applicant would be adversely affected by denial of the Encroachment Permit.
 - (ii) Whether, after review of the following criteria, city services or safety will be adversely affected by approval of the new or altered connection.
 - (iii) Whether the connection would allow an area with higher traffic generation, or intensity of use, or which has a higher zoning classification, to connect through areas of lesser intensity traffic generation, or intensity of use, or lesser zoning classification.

- (iv) Whether the connection is through roadways which have many residential driveways cuts and the City finds that the connection would create an unreasonable amount of conflicting traffic interactions between through traffic and vehicles exiting and entering residential driveways.
- (v) Whether the roadway connection is onto a roadway with inadequate pavement width; inadequate right of way for future improvements; no or few sidewalks; heavy on-street parking usage; deteriorating or failing pavement or road base; insufficient or damaged roadside drainage facilities.
- (vi) Whether the applicant is proposing adequate mitigation of any impacts.
- (vii) The City may require the Applicant to study the traffic implication of the new or altered connection on the surrounding City intersections and roadways, as part of its application for a new or altered connection, as well as the feasibility of any possible mitigation of such impact. Any such traffic studies shall be at the sole cost of the Applicant. The scope (or necessity) of any traffic study shall be established by the City at the time the application is filed.
- (viii) In the case of an applicant requesting that the City take over control over roadways that have been completed as part of a new development, or for some other reason, the applicant must also show that there are no obstructions in the right of way, ADA requirements for the roads and sidewalks have been met, that the condition of the roads, sidewalks and drainage is acceptable to the City and that there is no legal impediment to the transfer.
- (ix) The City may waive any of the application and approval standards, if, in the City's sole determination, the vehicular connection constitutes a minor and inconsequential connection to the City's public roadway system.

91.004 APPEAL

The city may deny an application for an Encroachment Permit. Said denial shall be in writing and must specify the reasons for denial. Applicant shall have a right to appeal the decision to the city commission, which appeal must be in writing and must be received within 10 days of the denial. Said appeal will be docketed for review and decision at the next regularly scheduled city commission meeting, provided it is received at the city office at least 7 days prior to the meeting. If not so timely received, it shall be docketed for the following regular meeting. Applicant will be allowed a reasonable time to present any relevant evidence that supports Applicant's appeal. The decision of the city commission on the appeal must be in writing, with findings supporting said approval or denial.

SECTION 2:

This ordinance shall take effect upon enactment and publication according to law.

First Reading: 7-9-20
Second Reading: 8-13-20
Passed and Approved: 8-13-20


Mayor

ATTEST:

Clerk

In Favor: 4
Opposed: 0