

CITY OF SOUTHGATE, KENTUCKY

ORDINANCE NO. 15-02

AN ORDINANCE OF THE CITY OF SOUTHGATE, KENTUCKY CREATING CHAPTER 52 OF THE CITY'S CODE OF ORDINANCES RELATING TO THE REPAIR AND/OR REPLACEMENT OF THE CITY STREETS AND SIDEWALKS NECESSITATED BY THE CUTTING, EXCAVATING, OR BORING INTO ANY CITY STREET OR SIDEWALKS BY ANY PROPERTY OWNER AND/OR UTILITY COMPANY, AND ORDERING THAT THE ORDINANCE BE PUBLISHED BY SUMMARY.

WHEREAS, the City of Southgate, Kentucky expends hundreds of thousands of dollars each year for Public Works including road repair or replacement; and

WHEREAS, the intention of the road replacement program is to replace roadways so that they have a lifespan of 20 years and up to 30 years; and

WHEREAS, the cost to replace a segment of street is very expensive; and

WHEREAS, when the City of Southgate, Kentucky replaces a street segment, it contacts utility companies, including the electric companies, phone companies, water district, cable companies and sanitation district, and provides them the opportunity to repair or replace any underground utilities at the same time that the road is reconstructed; and

WHEREAS, if such utility related repairs occur outside of a street replacement project, the lifespan of a road is substantially decreased, requiring its early repair or replacement, particularly if a short patch of road is repaired instead of a completed reconstruction for a road segment, resulting in a cost to the city taxpayers of hundreds of thousands of dollars; and

WHEREAS, Sanitation District #1 has promulgated new guidelines which require property owners to be responsible for the repair and/or maintenance of their sewer laterals from the foundations of their house to the main sewer line, including the portion of laterals under the city streets; and

WHEREAS, the City has a substantial interest in ensuring that any necessary utility repairs occur during the City's road replacement program, instead of outside that cycle, and, if such utility repairs occur outside the City's road replacement program, that the property owner and/or utility company pay such costs as may reasonably be required to maintain the expected lifespan of the street.

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

SECTION 1

There is hereby added a new Section to the Southgate, Kentucky Code of Ordinances, Chapter 52, and 52.01, "Definitions," to read in full as follows:

52.01—Definitions

The following definitions shall apply to Chapter 52:

1. **Participate** — Participate shall refer to a utility company and/or property owner which assesses and repairs or replaces, as appropriate, in a manner that is consistent with good engineering practice, to be determined in the sole discretion of the Director or Public Works, who may rely on an opinion issued by a licensed Kentucky engineer, regarding underground lines, pipes, conduit, wires, cables or other objects, as part of the city's Street Replacement and Repair Program, at the time when the street, curb, or sidewalk, is excavated or opened by the city as part of the city's Street Replacement and Repair Program. Declining to assess and repair, or replace underground lines, pipes, wires, or other objects, due to budget constraints or costs, shall not constitute good engineering practice under this Chapter.

2. **Person in Control** — Person in Control, when referring to a utility company and/or property owner, shall include (i) any persons who performs the work involving the disruption, excavation, boring or cutting into the surface, sub-grade, or other portion of any city street, curb or sidewalk; (ii) any person employed by the utility company who has the right or ability to supervise, control or direct any person described in paragraph (i), and shall include, without limitation, the Chief Executive Officer, Executive Director, Deputy Executive Director, Chief Operating Officer, President Executive Vice President, or Vice President, of the utility company which has any operational control of any person described in paragraph (i).

3. **Reconstruction** — Reconstruction shall mean the full and complete construction, including complete excavation and replacement of sub-grade, base, under-drains, drainage blankets, surface curbs, and other street components, consistent with the specifications set forth by the City of Southgate, Kentucky as determined by the City Engineer.

4. **Restoration** — Restoration shall mean returning a portion of street or street segment, to its condition, and that condition existed prior to any work being performed consistent with the specifications set forth by the City of Southgate, Kentucky Engineer.

5. **Street Replacement and Repair Program** — Street Replacement and Repair Program shall refer to the City of Southgate, Kentucky's planned systemic street replacement and repair program, which includes the overlay and/or reconstruction of city streets and curbs, and is funded through the Municipal Road Aid program the city's road tax funds and/or other city funds.

6. **Street Segment** — Street Segment means in the case of any Reconstruction, the area of the street required to be reconstructed as determined by the City of Southgate, Kentucky's Engineer.

7. **Utility Company** — The term utility company means an entity which provides an essential commodity or service, including, without limitation, water sewage, electricity, gas or natural gas, transportation, cable, data or communication to the public. The term utility company

shall include but not limited to Cincinnati Bell, Time Warner Cable, Duke Energy, Sanitation District #1 of Northern Kentucky, and the Northern Kentucky Water District.

8. Property Owner — is the person and/or persons who appear as grantees on the last deed of conveyance recorded with the Campbell County Clerk's Office.

SECTION II

Section 52.02 shall read as follows:

52.02 — RECONSTRUCTION OF STREET SEGMENT IN CERTAIN CASES; WAIVERS, AND RESTORATION TO BE COMPLETED PROMPTLY AND EXPEDITIOUSLY.

- (A) Any utility company and/or property owner which disrupts, excavates, bores or cuts into the surface, sub-grade, or other portion of any city street or curb which has been replaced or repaired under the Street Replacement and Repair Program within the fifteen (15) years immediately preceding the date the utility company and/or property owner applies for its permit under Section 52.03, shall conduct a complete Reconstruction, as that term is defined in Section 52.01 of the Street Segment, as that term is defined in Section 52.01, and any permit granted under this action shall require such Reconstruction of the Street Segment, unless a waiver is granted as provided in paragraph (C) of this Section. Such Reconstruction shall occur and be completed within 365 days of the disruption, excavation, boring or cutting into the surface. Notwithstanding, the foregoing, this paragraph shall not apply if (i) the utility company Participated, as that term is defined in Section 52.01, in the repair or replacement of the portion of the street which is proposed to be disrupted, excavated, bored or cut by the utility company, when the city reconstructed or repaired that portion of the street, and (ii) the disruption, excavation, boring or cutting into the surface, sub-grade, or other portion of any city street or curb is necessitated by good engineering practice, as determined in sole discretion of the Director of Public Works, who may rely on an opinion issued by a licensed Kentucky engineer.
- (B) Waivers to Paragraph (A) or any of its requirements, or waivers with conditions, may be granted by the the City Public Works Director,, who shall consider the following in determining whether to grant such waiver: (i) the amount of time that will lapse prior the next repair or replacement of the Street Segment in question by the city under the Street Replacement and Repair Program; (ii) whether the city engineer believes or has issues an opinion regarding whether the waiver will not cause the shortening of the lifespan of the Street Segment in question or otherwise cause harm to the city; (iii) whether unique topography or engineering factors justify the granting of the waiver; (iv) the furtherance of the goals of this Chapter are met through the granting of the waiver, including whether the repair or replacement of the street was foreseeable by the utility company during the last road reconstruction or repair by the city under the Street Replacement and Repair Program; and (v) the hardship to applicant in light of the goals of this Chapter. No waiver may be granted until the city engineer is consulted and renders an opinion. Requests for waivers shall be in writing and delivered to the City Clerk and shall be submitted, except

in cases of emergency, prior to the disruption, excavation, or cutting into the surface, sub-grade, or other portion of any city street, curb or sidewalk. The City Clerk shall immediately cause the request to be forwarded to the Public Works Director for consideration. Any appeals of the Public Works Director's determinations or decision shall be made to the Mayor, by delivering a notice of appeal to the City Clerk, in writing, within seven calendar days of the Public Works Director's decision; the Mayor shall hold a hearing on the appeal within thirty days of the city's receipt of the Appeal and issue a decision thereon with seven days of the hearing. Further appeal may be had to the Circuit Court, by filing a notice of appeal and complaint within fourteen days after the Mayor's determination, which shall be limited to a review of the record before the Mayor and a determination as to whether the Mayor abused his discretion and acted arbitrary and capricious. No disruptions, cuts, bores shall be undertaken by applicant without the City's written consent while any appeal is pending, including Circuit Court action.

- (C) If the Director of Public Works, after consulting with the city engineer, determines that any sidewalks or driveway located in a Street Segment being Reconstructed or Restored by a utility company and/or property owner requires repair as part of the utility company's and/or property owner's project, then the utility company and/or property owner shall perform such work consistent with the specifications as required by the City Engineer.
- (D) All restoration work related to the permit shall be completed in a prompt and expeditious manner to minimize the amount of time any portion of the public right-of-way area is disturbed. If permanent restoration, in accordance with the specifications as defined herein, does not occur immediately upon completion of work, the permit holder shall be required to complete temporary restoration of all disturbed area in accordance with city specifications. All permanent restoration work shall be completed within 30 days from the date of the permit's issuance, or promptly upon completion of the work, whichever is later, during the time period of April 1 through November 30, , permanent restoration shall be completed in a timely manner, subject to appropriate weather conditions. A final inspection of all permanent restoration work is required by the Public Works Director or a designee.
- (E) No Person in Control shall cause, permit, or allow any violation of Paragraphs (A), (C) or (D) of this section. No Person in Control, having received notice by the city of a violation of Paragraph (A), (C) or (D) of this section shall fail to correct said violation within 30 days of notice, or, if Reconstruction is involved, shall fail to cause such Reconstruction to occur within 365 days of that notice. Notice under this Paragraph is valid if sent by ordinary U.S. mail, certified mail, facsimile, or electronic mail.

SECTION III

Section 52.03 shall read as follows:

§52.03 — PERMIT FEE AND PERFORMANCE GUARANTY REQUIRED.

- (A) Permit fee.

- (1) Each application shall be accompanied with payment of a permit application fee of Twenty-Five Dollars (\$25.00). Utility companies and/or property owner shall have the option to pay fees on a semi-annual basis by separate invoice from the city. The fee shall be doubled for any applicant who commences with the opening of the street or right-of-way without first having obtained the required permit. In addition, each application shall require the submission of a performance guaranty, in the form of cash, cashier's check, performance bond, unconditional irrevocable letter of credit, or similar instrument, acceptable to the city, which shall serve as a guarantee that all restoration or reconstruction work will be completed by the permit holder in accordance with the terms and provisions of Section 52.02 and 52.03. The performance guarantee requirement shall not apply to permits encompassing sod-only cuts and other activity in unimproved areas of the public right-of-way.
- (2) The amount of the performance guaranty shall be based upon the size/area of the street opening in cases not subject to reconstruction under this Ordinance, or the size/area of the street segment which must be reconstructed in cases subject to reconstruction under 52.02, in accordance with the following tables:

Restoration work:

100 square feet or less	\$40 per square foot
Greater than 100 square fee	\$30 per square foot

(3) If the exact amount of disturbed area is not available or unknown upon submission of the street opening application, the applicant may estimate the approximate size or area of the work area and submit a corresponding performance guaranty.

(B) Single performance guarantee.

(1) As an option to individual guaranties identified above and submitted with applicant, utility companies may submit a single guaranty in the amount of \$5,000 to cover all permit activity during the course of the calendar year consisting of spot or patch repairs and emergency repairs. Any other projects by any utility company shall comply with the square foot rates set forth above. This paragraph shall not apply to projects which require Reconstruction under Section 52.02 of this Chapter.

(2) Upon the completion of permanent restoration of Reconstruction of a street opening, the Public Works Director or a designee shall inspect all finished work to ensure conformance with applicable city specifications. If restoration or Reconstruction work is accepted by the city, the performance guaranty shall be promptly released and returned to the permit holder. If the restoration of Reconstruction work is determined to be non-compliant with city specification, the Public Works Director or a designee shall notify the permit holder, in writing, of the specific deficiency in restoration work. A second inspection shall be performed in 30 days by a city representative to determine if the reported deficiency has been corrected. If a deficiency still

exists, the Public Works Director or designee shall issue a final written notice to the permit holder advising that if restoration or Reconstruction work compliance is not completed within ten days, the city shall order the work completed at the cost of the permit holder through application of the performance guaranty, and the permit holder shall forfeit any and all rights to the performance guaranty or portion of the performance guaranty if an annual guaranty has been posted. Any dispute or disagreement regarding compliance with the terms and provisions of Section 52.02 may be submitted to the City Administrator, in writing, for review and consideration.

SECTION IV

Section 52.04 shall read as follows:

§52.04 — EMERGENCY REPAIRS.

Notwithstanding the provisions of Section 52.02, emergency street openings by utility companies and other persons shall be permitted when emergency repair of a utility system is warranted due to breakages, service disruption, and/or safety considerations. Any person performing an emergency street opening shall notify the city and complete and submit a permit application along with the required fee and performance guaranty no later than the next business day that the city offices are open for business. All other provisions of Section 52.02 shall apply to emergency street opening work and restoration or reconstruction requirements.

SECTION V

Section 52.99 shall read as follows:

(A) Whoever violates any provision of Section 52.02 shall be fined not less than \$25 for the first offence, not less than \$50 for each subsequent event, but no more than \$500 for each offense. Each day's continued violation shall constitute a separate offense.

(B) Any person that violates Section 52.02 (A) or (C) shall be guilty of a Class A misdemeanor, and shall, upon conviction, be fined not less \$250, nor more than \$500, and imprisoned for not less than 7 days not more than 12 months.

(C) Any person that violates Sections 52.02 (D) shall be guilty of a Class A misdemeanor, and shall, upon conviction be fined not more than \$500, or imprisoned not more than 12 months.

(D) Any person, including any Person in Control, who violates Section 52.02 (E) shall be guilty of a Class A misdemeanor, and shall, upon conviction, be fined not less than \$300.00 and not more than \$500.00, and imprisoned for not less than 60 days, nor more than 12 months for each such conviction.

(E) In addition to the remedies set forth in this Section, any person, corporation, or entity, which violates Section 52.02(A), 52.02(C), 52.02(D) OR 52.02(E), shall be liable to the city for full amount of restoration or reconstruction required under those sections, in addition to reasonable engineering fees, attorney fees, costs, and expert fees, for the enforcement of those sections. The amount of liability may be proven by an opinion of a licensed engineer, to a

reasonable degree of engineering certainty, about the costs to conduct such restoration or reconstruction, and without regard to whether or not such restoration or reconstruction was performed or will be performed by the city.

(F) Whoever violates any provision of this chapter, except Section 52.02 , and shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than \$500.

(G) Any violation of this chapter is hereby further classified as a civil offense, pursuant to Chapter 52 and KRS 65.8808, and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with the applicable code sections, and nothing contained herein or in Chapter 52 shall prohibit the enforcement of this chapter by any other means authorized by law.

(H) If a civil citation for a violation of this chapter is not contested by the person charged with the violation, the civil fine to be imposed for each offense shall be \$100 for the first offense, \$90 for the second offense, and \$500 for the third, and thereafter, offense.

(I) If a civil citation is contested and a hearing before the Code Enforcement Board is required, the maximum civil fine which may be imposed at the discretion of the Board shall be from \$20 to \$200 for the first offense, from \$100 to \$750 for the second offense, and from \$200 to \$1,800 for the third, and thereafter, offense. An offense shall be considered a subsequent offense if there is a previous offense within a five year period.

(J) Each section of the Ordinance violated shall be considered a separate fineable offense. If two or more sections of the Ordinance are violated, the fines and penalties shall be cumulative and be enforced under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.

SECTION VI

The provisions of this Ordinance are severable and the invalidity of any provision of this Ordinance shall not affect the validity of any other provision hereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

SECTION VII

This Ordinance shall be in full force and effect when passed and published according to law, and the requirements for Restoration and Reconstruction of a Street Segment as set forth herein shall be applicable to all street repairs necessitated by a utility company's excavation, cutting or boring occurring after the effective date of this Ordinance. For all other street repairs and not requiring Reconstruction, necessitated by a utility company's excavation, cutting or boring, the utility company shall be responsible for complying with the requirements for Restoration as set forth herein for the applicable Street Segment as defined herein.

SECTION VIII

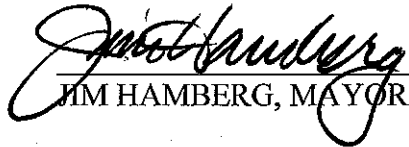
This Ordinance supersedes any and all Ordinances, regulations, policies, or standards or parts thereof which are in conflict with this Ordinance.

SECTION IX

This Ordinance is hereby ordered to be published by summary.

FIRST READING APPROVED: 3/18/15

SECOND READING APPROVED: 4/1/15


JIM HAMBERG, MAYOR

ATTEST:
Brandi Barton
BRANDI BARTON
CITY CLERK

AYES: 6
NAYS: 0
ABSTAIN: 0