

ORDINANCE NO. 2022-47

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS, AMENDING CHAPTER 12.09 OF THE CODE OF ORDINANCES ENTITLED “LICENSE ALLOWING ABUTTING LANDOWNERS TO PLACE CERTAIN STRUCTURES AND FACILITIES IN THE PUBLIC RIGHT-OF-WAY OR PUBLIC OR CITY UTILITY EASEMENTS” REGARDING THE PLACEMENT OF FACILITIES IN RIGHTS-OF-WAY OR EASEMENTS WITH A LICENSE TO ENCROACH AND THE TERMS THEREOF; PROVIDING FOR A PENALTY; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, per Section 311.007 of the Texas Transportation Code, “a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality,” including the right to “control, regulate, or remove an encroachment or obstruction on a public street or alley of the municipality;” and

**WHEREAS**, per Section 283.001 of the Texas Local Government Code, “it is also the policy of this state that municipalities . . . retain the authority to manage a public right-of-way within the municipality to ensure the health, safety, and welfare of the public;” and

**WHEREAS**, per Section 1.02 of the City Charter of the City of Georgetown, Texas (the “Charter”), the City Council “may acquire property within or without its corporate limits for any municipal purpose in fee simple, in or any lesser interest . . . and control such property . . . [and] may pass ordinances and enact such regulations as may be expedient”; and

**WHEREAS**, per Section 1.03 of the Charter, the City “shall have exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways . . . that are within the corporate limits of the city, and in, upon, over, and under all public property of the City . . . , [and] the City shall have the power to establish, maintain, improve, alter, abandon, or vacate the same; to regulate the use thereof . . . and to abate and remove in a summary manner any encroachment thereon;” and

**WHEREAS**, per Section 8.02 of the Charter, “the right to control and use of public streets, highways, sidewalks, alleys, parks, public squares, and public places of the City is hereby declared to be inalienable by the City, except by ordinances not in conflict with the provisions of this Charter;” and

**WHEREAS**, the existing Chapter 12.09 of the Code was adopted in 2007 and broadly defines “structures and facilities” to require licenses to encroach even for improvements that present minimal risk to the operation of the City’s utility systems and transportation networks; and

**WHEREAS**, the existing Chapter 12.09 of the Code also sets forth specific language that must be included in any license agreement issued by the City, including terms that are out of date and not consistent with common current practices, and required City Council approval of most licenses to encroach; and

**WHEREAS**, the City Council of the City of Georgetown finds it in the best interest of the community to update the City's license to encroach ordinance in order to streamline development review processes, delegate and clarify approval authority to the City Manager, and update the general terms applicable to any encroachment into City rights-of-way, City easements, or public utility easements within the city limits.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS:**

**SECTION 1.** The meeting at which this ordinance was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**SECTION 2.** The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

**SECTION 3.** Chapter 12.09 of the Code of Ordinances of the City of Georgetown, Texas, is hereby amended to read as set forth in Exhibit A attached hereto and by this reference incorporated herein.

**SECTION 4.** If any section or any portion of any section of this ordinance, or application thereof to any person or circumstance, shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this ordinance; and that each section and each portion thereof not decreed to be invalid shall remain valid and enforceable, and to this end the provisions of this ordinance are hereby declared to be severable.

**SECTION 5.** All ordinances and parts of ordinances that are in conflict with this ordinance are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect. In particular, Sections 3.21 and 16.02 of the Unified Development Code, to the extent they conflict with this ordinance, are hereby superseded and preempted by this ordinance, and any conflict between the two shall be resolved in favor of this ordinance.

**SECTION 6.** The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This ordinance shall become effective and be in full force and effect in accordance with the provisions of the Charter of the City of Georgetown.

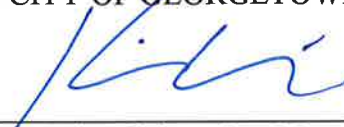
PASSED AND APPROVED on First Reading on the 24<sup>th</sup> day of May, 2022.

PASSED AND APPROVED on Second Reading on the 16<sup>th</sup> day of June, 2022.

ATTEST:

THE CITY OF GEORGETOWN

  
Robyn Densmore, City Secretary

By:   
Joshua Schroeder, Mayor Pro Tem  
Kevin Pitts

APPROVED AS TO FORM:

  
Skye Masson, City Attorney

## EXHIBIT A

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### CHAPTER 12.09. LICENSE ALLOWING CERTAIN STRUCTURES AND FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY OR PUBLIC UTILITY OR CITY EASEMENTS

#### **Sec. 12.09.010. Findings of City Council.**

The City Council hereby finds and determines:

- A. That the safety, health and welfare of the members of the general public will best be served by requiring licensing and inspection of all improvements, structures, facilities, and encroachments located within a City right-of-way, a City easement, or a public utility easement; and
- B. That there are numerous structures and facilities that were heretofore constructed, built or placed within a public right-of-way, City easement, or public utility easement without permission or knowledge on the part of the City, which come to the attention of the City from time to time, and the placement of which should be regulated for the purpose of assuring protection of the public safety by lawful compliance with this Chapter and the Unified Development Code, as well as to regulate the use of the public rights-of-way, City easements, and public utility easements within the city limits.

#### **Sec. 12.09.020. Definitions.**

Terms not defined herein shall have the same meaning as set forth in Section 16.02 of the City's Unified Development Code, as may be amended from time to time. As used in this Chapter the following terms shall have the following meanings:

"Licensed Area" means that portion of an easement, public street, roadway, sidewalk, or right-of-way that a person desires to place a structure or facility on, over, under, or within the surface or subsurface thereof.

"Licensee" means any person whose original or renewal application for license has been approved by the City, and shall mean any person who is the holder of a revocable license provided for in this Chapter or any agent, servant or employee of such person.

"Structure" or "Facility" shall mean any improvement constructed or erected on the ground or attached to something located on the ground, including by way of illustration and not limitation, the following: buildings, piers, poles, pools, fence posts, walls, patios, decks, basements, signs, awnings, furniture, trees (excluding ornamental trees), etc. For purposes of this Chapter, a "structure or facility" shall not include fences (without posts), landscaping (other than trees), ornamental trees, irrigation systems, sidewalks, and paved surfaces, and any such improvements may encroach within a City right-of-way, City easement, or public utility easement without a license but at the owner's own risk.

**Sec. 12.09.030. License required; application; approval.**

- A. Any person who owns or leases land which abuts a City right-of-way, City easement, or public utility easement within the city limits and which abutting land has been improved with any structure or facility, all or a part of which is on, over, under, or within the City right-of-way, City easement, or public utility easement within the city limits, shall obtain a revocable license with regard to the occupancy or maintenance of the aforesaid structures or facilities within any part of the said City right-of-way, City easement, or public utility easement within the city limits.
- B. Any person who desires to use or occupy any portion of a City right-of-way, City easement, or public utility easement within the city limits by constructing any structure or facility in, over, under, or within such area shall obtain a revocable license therefor.
- C. Any person who seeks a revocable license to encroach into a City right-of-way, City easement, or public utility easement shall apply for a License to Encroach in accordance with the provisions of the Unified Development Code.
- D. In its review of any request for a license to encroach, Staff may determine further studies will be required. Such studies may include, but are not limited to, an Engineering Study, which may be required at the determination of the Development Engineer. Only the elements of an engineering study that are necessary to answer specific questions that arise during the review process will be required for submittal.
- E. In all instances the review and approval of a request for a revocable license shall be governed by the criteria set forth in the Unified Development Code and the general conditions set forth in this Chapter. In addition, the City Manager or her designee, in his or her sole and absolute authority, may determine additional requirements are required to mitigate the impact of the encroachment, including but not limited to improving the right-of-way to accommodate the encroachment, replacing or using specified materials, providing a longer warranty period, making a payment to the City equal to the anticipated restoration remedy, or a reasonable combination thereof.
- F. The City Manager or designee is responsible for final action on Licenses to Encroach into a City easement or into public utility easements within the city limits. For requests to encroach into a public street, roadway, sidewalk, or right-of-way, final approval shall be obtained from the City Council. A revocable license to encroach shall be deemed granted upon recordation in the Official Public Records of Williamson County, Texas, of a License Agreement in conformance with the terms set forth in this Chapter.

**Sec. 12.09.040. Encroachment into State right-of-way prohibited.**

A revocable license shall not be granted by the City for encroachments into the right-of-way of any State highway.

**Sec. 12.09.050. General conditions—Applicable to all licenses.**

Any revocable license granted pursuant to this Chapter shall require a license agreement in a form acceptable to the City Attorney, signed by an authorized official of the City, and recorded in the Official Public Records of Williamson County, Texas. Upon application for and acceptance of a revocable license, the applicant and all persons in privity with the applicant, expressly covenant and agree to comply with the terms and provisions of this Chapter and the following conditions:

- A. If an inspection reveals that any part of the structure or facility or other aspect of the licensed area does not comply with applicable terms and provisions of the City Code of Ordinances, the owner of the structure or facility shall be notified and required to make such repairs as are necessary in order to comply with the applicable terms and provisions of the City Code of Ordinances. If any Licensee refuses to allow a City employee to come upon or enter the licensed area for the purpose of making an inspection, he may be prosecuted under the terms of this Chapter, and the City may revoke the revocable license for the licensed area, and such action shall be final.
- B. The City shall have the right at any time upon 30 days' written notice to the Licensee, its representatives, successors or assigns, to take possession of and use all or any part of the Licensed Area in the event that such use be reasonably desired or needed by the City for any public purpose, and in such event, the City shall have the right to cancel the revocable license as to that portion of the Licensed Area.
- C. The Licensee shall have the right at any time upon written notice to the City to relinquish the use and possession of all or any part of the Licensed Area as it may so determine and to cancel said revocable license as to that part so relinquished.
- D. Upon the lawful termination of a revocable license issued hereunder, in whatsoever manner such termination may be made, Licensee, assigns, successors and representatives, bind and obligate themselves to restore the Licensed Area to the original condition as it existed prior to any construction, or to fulfill any other reasonable conditions for the restoration of the licensed area which may be acceptable to the City, and should the Licensee, assigns, successors, or representatives fail or refuse to do so within 30 days after such termination, then the City may do or have done the work necessary for such purpose at the sole cost, risk, liability, and expense of Licensee, or Licensee's assigns, successors and representatives.
- E. The Licensee, or its successors, assigns, or representatives, by the acceptance of such revocable license, agree, obligate, and bind herself or itself to maintain the encroaching structure or facility and the License Area in good condition, reasonable wear and tear excepted, and to repair or replace any structure or facility in violation of this Section within 30 days of City's notice to the Licensee or the responsible party thereof.
- F. After the completion of any construction within a Licensed Area under the terms of a revocable license granted hereunder, should the City desire to lay or construct its utility lines, including sewer lines, water lines, or any other pipes, or conduits under, across, along, or within its right-of-way or easement, any and all additional cost for the laying

or construction of the aforesaid utility lines that may occur by reason of the existence of said encroachment, shall be paid to the City by the said Licensee, his assigns, successors, and representatives.

- G. Solely as between the City and the Licensee, and not for the benefit of any other person, the Licensee, by acceptance of such revocable license, hereby waives any claim he, or any heirs, successors, or assigns might have for damages for loss caused by any improvements which the City, its assigns, grantees, or licensees might install or construct.
- H. The Licensee, or his successors, assigns, or representatives, by the acceptance of such revocable license, agree, obligate, and bind himself or itself to indemnify and does hereby indemnify and hold and save forever harmless solely the City, any of its agencies, and any person, from all liability, cost, or damage on account of Licensee's use, occupancy and maintenance of any part of a public street, roadway, sidewalk, or easement or the City's right-of-way and the structures and facilities therein.
- I. No transfer or assignment of any revocable license granted under the terms and provisions of this Chapter shall be effective unless and until the transferee or assignee has furnished the City its written agreement to assume and perform all of the duties, covenants, and obligations of the revocable license; and, thereupon, each provision of the revocable license shall be binding upon, and inure to the benefit of, the transferee or assignee of the Licensee.
- J. The breach or violation of any one of the terms, provisions, or conditions set forth in this Chapter shall be sufficient to constitute grounds for the cancellation and forfeiture of the revocable license granted under the authority of this Chapter. Any such cancellation and forfeiture may be exercised upon 30 days' written notice by the City to the Licensee, a representative, successor, or assign.
- K. The proposed use of a City right-of-way, City easement, or public utility easement by any person shall not interfere with the City's use thereof.
- L. The proposed construction within a City right-of-way, City easement, or public utility easement shall be in accordance with the City's Construction Standards, Unified Development Code, and any other applicable ordinances and regulations, including the City's Right-of-Way Regulations adopted in accordance with Chapter 12.08 of the Code of Ordinances of the City of Georgetown, Texas.
- M. After the completion of the construction within a Licensed Area, the Licensee shall at his own cost and expense replace any sidewalks and surface of any streets that were damaged or removed in the construction of any structures or facilities in a condition equally as good as they were immediately prior to the time of excavation or construction and shall post any maintenance bonds as required by the City's Right-of-Way Regulations. All damage, if any, to said sidewalks and streets caused by the construction, use, maintenance and operation by Licensee shall be repaired by and at the cost and expense of the Licensee. In the event Licensee fails or refuses to proceed with diligence with the performance of any work in connection with the replacement, rebuilding or resurfacing of streets and sidewalks within 30 days after receiving written

notice from the City, the City may do such work or cause same to be done, all at the sole risk, cost, liability and expense of Licensee.

- N. The Licensee, or his successors, assigns or representatives agree, obligate and bind himself or itself to indemnify and does hereby indemnify and hold and save forever harmless the City, from all liability, cost or damage on account of the construction within a City right-of-way, City easement, or public utility easement, or on account of using, occupying, preparing, maintaining and operating any such improvements therein. This indemnification and hold harmless shall extend to any unlicensed improvements, structures, facilities, or encroachments existing within a City right-of-way, City easement, or public utility easement.

**Sec. 12.09.060. Intent of Chapter.**

- A. It is the intention of the City Council by the enactment of this Chapter to lawfully regulate the surface, subsurface, and aerial use and occupancy of public streets and rights-of-way and to establish an inspection fee, in accordance with the City's general power of control and regulation of public streets and highways as provided by law; however, this Chapter shall not be construed as an assertion by the City of any property rights in derogation of abutting or underlying land owner's fee simple title and rights incident thereto, in those cases where the City does not own the fee simple title.
- B. The City Manager is authorized to promulgate administrative regulations and directives that are not inconsistent with this Chapter and deemed necessary to implement this Chapter. Such regulations and directives shall not conflict with, and do not supersede, this Chapter or any other ordinance, law, or other regulation adopted by the City Council of the City of Georgetown.

**Sec. 12.09.070. Penalty.**

Any person who violates any of the provisions of this Chapter shall be guilty of an offense and upon conviction thereof shall be punished as provided by Section 1.08.010 of this Code. Each and every day that any such violation continues shall constitute a separate offense and shall be punishable as such.