

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF PFLUGERVILLE, TEXAS, TITLE XIII "GENERAL OFFENSES," CHAPTER 130, "OFFENSES AGAINST CITY REGULATIONS," TO ADD SECTION 130.12, "OBSTRUCTING STREETS AND SIDEWALKS," AND 130.13, "REPAIR OF DEFECTIVE SIDEWALKS" IN ORDER TO ADMINISTER AND REGULATE THE USE OF PUBLIC RIGHTS-OF-WAY FOR THE PUBLIC INTEREST, HEALTH, SAFETY AND WELFARE; PROVIDING FOR A PENALTY IN AN AMOUNT IN ACCORDANCE WITH CODE OF ORDINANCES, SECTION 10.99 GENERAL PENALTY, FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Pflugerville, Texas is a home-rule City acting under its charter adopted by the electorate pursuant to Article IX, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the state has delegated to each municipality the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety and welfare of the public, subject to state law; and

WHEREAS, pursuant to its home rule charter, the City of Pflugerville has the control and jurisdiction of the public streets and other right-of-way of the City; and,

WHEREAS, municipalities retain the authority to manage the public right-of-way to ensure health, safety, and welfare of the public; and

WHEREAS, the City is repealing Chapter 96 "Streets and Sidewalks" in its entirety and adopting a new Chapter 96 "Right-Of-Way Management," and desires to move certain existing provisions to allow for continued enforcement of regulations to protect the integrity of City right-of-way and safeguard the value of the public infrastructure; and

WHEREAS, the City Council having reviewed the regulations contained herein has determined that the adoption of this ordinance serves the public health, safety and welfare.

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

SECTION I. Incorporation of Recitals

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 11. Adoption

Chapter 130 is amended to add Section 130.12 “Obstructing Streets and Sidewalks,” and Section 130.13 “Repair of Defective Sidewalks” as set forth in **Exhibit “A,”** which is attached hereto and incorporated herein by reference for all purposes.

SECTION III. Conflicts and Savings

That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and that the Code of Ordinances of the City of Pflugerville, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION IV. Severability

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

SECTION V. Penalty

A violation of this Ordinance shall be a Class C Misdemeanor with a fine amount not to exceed \$500.00, as provided in Section 10.99 of the City of Pflugerville Code of Ordinances.

SECTION VI. Effective Date

This Ordinance will become effective on its adoption and passage by the City Council in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this _____ day of _____, 2020.

CITY OF PFLUGERVILLE, TEXAS

By: _____
Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

APPROVED AS TO FORM:

Charles E. Zech, City Attorney
DENTON, NAVARRO, ROCHA, BERNAL & ZECH, P.C.

EXHIBIT A

The City of Pflugerville, Texas Code of Ordinances, Title XIII “General Offenses,” Chapter 130 “Offenses against City Regulations,” is hereby amended to add the following language:

§130.12 OBSTRUCTING STREETS AND SIDEWALKS.

(A) A person commits an offense if, without legal privilege or authority, he/she intentionally, knowingly, or recklessly:

(1) Obstructs or injures, or causes to be obstructed or injured in any manner whatsoever, any public sidewalk, median, curb, shoulder, improved shoulder, street, highway, roadway or public right-of-way in the city; provided, however, that the parking of motor vehicles in compliance with the ordinances of the City of Pflugerville shall not be construed to be an obstruction; or

(2) Disobeys a reasonable request or order to move the cause of an obstruction issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(a) To prevent obstruction of any area mentioned in subsection (1); or

(b) To maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(B) For purposes of this section, “obstruct” means to render impassable or to render passage unreasonably inconvenient or hazardous and “obstruction” means the causative effect of such rendering.

(C) Any person convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor and be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense. Each day of violation shall be cumulative and the foregoing penalty shall not be exclusive of any other rights and remedies which the city may have.

(Ord. 24-69-4-21, passed 4-21-69; Ord. 1274-16-07-26, passed 7-26-16) Penalty, see [§ 10.99](#))

§130.13 REPAIR OF DEFECTIVE SIDEWALKS.

When a sidewalk, driveway, curb, gutter or appurtenance becomes defective, unsafe or hazardous, it shall be the duty of the owner of the abutting property to reconstruct or repair same and the expense of such work shall be borne by the abutting property owner. When a sidewalk, driveway, curb, gutter, or appurtenance is found to be defective, unsafe or hazardous, the City Engineer, or his/her designee, shall notify the owner of the abutting property to reconstruct or repair same. A permit may be required to make the repairs pursuant to Chapter 96 Right-of-Way Management of the Code of Ordinances. Any owner who fails to reconstruct or repair such defective, unsafe or hazardous condition within 30 days from the date of the written notice from the City Engineer, or his/her designee, to do so shall be guilty of a misdemeanor.

(Ord. 24-69-4-21, passed 4-21-69)