

**COMMONWEALTH OF KENTUCKY  
COUNTY OF PENDLETON  
THE PENDLETON COUNTY FISCAL COURT**

**ORDINANCE NO. 623**

**An ordinance of and by the Pendleton County Fiscal Court laying out regulations, guidelines and penalties for dealing with Right-of-Way Encroachment and Construction Permit policy.**

**Whereas**, over the past many years, the Pendleton County Fiscal Court has used the blanket easement policy for permitting encroachments to county right-of-way, and

**Whereas**, the Fiscal Court has used the county administrative code to outline the guidelines for encroaching on a county road, and

**Whereas**, the continuity and information of such policies and guidelines are lacking and difficult for the public to find and disseminate.

**Now therefore**, be it ordained by the Pendleton County Fiscal Court that the following regulation, guidelines and penalties for dealing with a County Right-of-Way Encroachment and Construction permit policy be adopted as follows:

**Section 1. PERMIT REQUIRED.**

Any firm, individual or governmental agency, municipal or public utility company (hereinafter referred to as "permittee", which desires access to a road in the county road maintenance system or desires to perform any type of work upon the right-of-way of the road, must obtain an encroachment permit from the Planning Department Director with inspection performed by the County Road Supervisor, or their designee. Contractors performing the work must have in his or her possession at all times a copy of the permit (Appendix A), approval form (Appendix B), and detailed drawings of work to be done. Even in the event of an emergency, repairs may be performed but an encroachment permit must be completed in no less than 3 working days. Permit application shall include reason for emergency and that repairs have been completed or an explanation the project is ongoing. Final cleanup explanation shall be included in application.

**Section 2. APPLICATION AND FEE.**

Such encroachment permit shall be granted pursuant to an application form (Appendix A), approval form (Appendix B), encroachment construction standards (Appendix C) and culvert information and fees as adopted in conjunction with this ordinance. All aforementioned

Appendix may be amended from time to time through a resolution by the Pendleton County Fiscal Court as they see a need arise. All fees shall be laid out in Appendix A and D.

### **Section 3. CONFORMANCE WITH AGENCIES HAVING JURISDICTION; APPROVAL REQUIRED.**

No permit shall constitute a license to perform any work that is inconsistent with, or that does not meet the requirements of local, state, federal, and/or any other agency having jurisdiction over the permitted work location. It is the responsibility of the applicant to obtain approval from all agencies having jurisdiction before beginning work. Anyone encroaching on county right-of-way shall have all necessary insurance to protect the county and workers employed by the permittee. The permittee is responsible for all work and workers performing work on the county right-of-way.

### **Section 4. TRANSFERRAL OF PERMITTED RIGHT; PROPERTY OWNERS FRONTAGE RIGHTS.**

No permitted right shall be transferred to another except by written consent of the Planning Department Director and the County Road Supervisor or their designee, and the use of the permit applied for may not be changed from one type of business to another without the written consent of the Planning Department Director and the County Road Supervisor or their designee. No right or privilege belonging to any abutting property owners, shall be affected, interfered with or abridged, because of the requirements of this subchapter or by any permit issued hereunder. The Planning Department Director and the County Road Supervisor or their designee, are not responsible for any damage claim which may arise between the applicant and any other property owner concerning the property or its occupancy or use. In all cases which involve joint driveways or other infringement upon abutting county properties, written consent from all affected property owners shall be obtained by the permittee.

### **Section 5. PERFORMANCE BOND**

The Planning Department Director may, as a condition precedent to granting a permit under this ordinance, require said permittee to post a performance bond or equivalent in an amount specified by the County Judge/Executive, Road Supervisor and applicable Magistrate sufficient to defray the cost of performing the repair and restoration work that will arise out of the work to be done pursuant to that permit.

## **Section 6. REPAIR AND RESTORATION.**

Every cut, excavation, or alteration made pursuant to this ordinance shall be fully repaired and restored by the permittee or the person or entity on whose behalf the permittee is acting, according to generally accepted engineering standards. Such repair or restoration shall be inspected by the County Road Supervisor or their agent. The permittee shall notify the County Road Supervisor or their agent of the progress of such repair or restoration and shall comply with the reasonable directions of the County Road Supervisor or their agent concerning the time and manner of such inspection. The County Road Supervisor may promulgate regulations, subject to the approval of the Fiscal Court, setting forth the standards and requirements for acceptable repair and restoration. A copy of such regulations is set forth in Appendix C of this ordinance. Appendix C may be amended from time to time through an approved resolution by the fiscal court.

## **Section 7. APPLICATION PROCEDURE; DENIAL OF PERMIT.**

(A) An application and permit form as provided by the Planning Department Director will be used to process applications and approve permits for excavating, unless work is incidental to an entrance application. The Planning Department Director and the County Road Supervisor or their designee, shall decide whether the activity is incidental to an entrance. All applications for a permit on the right-of-way of a county road constructed must be submitted to the Planning Department Director and the County Road Supervisor, or their designee, for concurrence and approval.

(B) The permit may not be issued if:

- (1) The filling or excavating will adversely affect natural drainage.
- (2) The filling will expose unsightly views.
- (3) The filling will create erosion or stability problems.
- (4) The filling or excavation will require greater maintenance efforts.
- (5) The landscaping will require greater maintenance efforts.
- (6) The excavating, filling or landscaping will interfere with or otherwise create problems for other permitted activities on the right-of-way such as utility installations.
- (7) Any encroachment permit for a driveway shall meet "line of sight" standards.

## **Section 8. REQUIREMENTS APPLICABLE TO EXCAVATING, FILLING AND LANDSCAPING PERMITS**

(A) There are several requirements which apply only to excavating, filling and landscaping permits.

(B) One or more of the following items must result before a permit may be issued:

- (1) Excavating will improve sight distance.
- (2) Excavating will enlarge the clear zone.
- (3) Excavating will provide a more pleasing view for other road users.
- (4) Excavating will provide for easier mowing.
- (5) Excavating will improve slope stability problems.
- (6) Filling will allow the elimination of guardrail and enlarge the clear zone.
- (7) Filling will improve stability problems.
- (8) Filling will provide for easier mowing.
- (9) Filling will provide for more pleasing view to road users.
- (10) Landscaping will improve drainage conditions.
- (11) Landscaping will provide a more pleasing view to the road users.

## **Section 9. DISPOSAL OF EXCAVATION MATERIAL.**

Any material removed from county right-of-way shall be disposed of by the applicant as directed by the County Road Supervisor, or their designee. If the material is needed on the county maintained highway within a reasonable hauling distance, it shall be used to improve the county maintained highway. If the material is not needed by the County Road Supervisor or his or her designee, the County Road Supervisor may allow the applicant to dispose of it on other property that without creating monetary gain for the applicant.

## **Section 10. SPECIALTY SAFETY REQUIREMENTS.**

Specific care shall be taken by the permittee to provide adequate signage and safety precautions in accordance with *Manual of Uniform Traffic Control Devices*, current issue.

*In accordance with KRS 67.077(4), a copy of the Manual of Uniform Traffic Control Devices is available for public inspection during regular business hours at the office of the Planning Department Director.*

## **Section 11. MAINTENANCE OF UTILITIES ON BRIDGES.**

The applicant shall maintain the utility in good condition at their own expense and shall paint or repaint exposed metal parts of all lines where paint is used for the purpose of protection. This function should be performed when conditions dictate or at the direction of the County Road Supervisor, or their designee.

## **Section 12. MAINTENANCE OF ENTRANCES.**

(A) *Newly constructed private and commercial entrances.* Future maintenance of the entrances shall not be the responsibility of the County Road Supervisor except that the County Road Supervisor will maintain the entrances from the edge of the pavement of the roadway to the normal width of the roadway shoulder only. Maintenance of the remainder of the entrance on the county's right-of-way will be provided by the property owner. If the County Road Supervisor, or his or her designee, requires the replacement of a drainage structure to correct a drainage problem along the roadway, the cost of the replacement may be borne by the County Road Department provided the entrance was originally constructed and maintained to county standards.

(B) Old or existing entrances before October 2001 as stated in the County Administrative Code, Section 6.8 (G).

(1) In specific individual cases where in the judgment of the County Road Supervisor, or their designee, a residential or farm entrance is causing damage to the roadway or danger to the public, the County Road Supervisor, or their designee, may authorize maintenance work including materials to correct the problem.

(2) When a drainage structure has been approved by the Planning Department Director and the County Road Supervisor or their designee and it becomes inadequate to function properly, or when it has been damaged by the Road Department it may be replaced at the expense of the Road Department.

(C) Entrances in violation of rules and regulations.

(1) Entrances constructed in violation of this policy may be immediately removed where drainage is affected.

(D) *Entrances existing prior to road maintenance.* Private and commercial entrances which were constructed prior to the Fiscal Court accepting a road into the county maintained system for another agent or agency shall be considered as properly permitted entrances for all purposes.

(E) Public school entrances, exits and pull-offs.

(1) The County Road Department will maintain, at its expenses, that portion of public school entrances and exits (including all drainage structures) which are located on the county's right-of-way.

(2) Those areas located on the county's right-of-way which have developed, and will develop in the future as pull-offs, and deceleration and acceleration lanes by school buses may also be maintained at the expense of the County Road Department.

(3) All bus turnarounds and pull offs may only be maintained by the County Road Department with proper documentation approved by the County Road Supervisor, the property owner and Director of School Transportation.

(F) *Industrial entrances.* When improvements are necessary for entrances to industrial facilities, the cost for them may in some instances be borne by the Fiscal Court policy on industrial access roads. For these reasons, the County Road Supervisor, or their designee, should contact the Fiscal Court to determine whether the County Road Supervisor, or the permittee, shall bear the resulting costs, whether additional improvements are necessary.

### **Section 13. DRAINAGE REQUIREMENTS.**

(A) Any entrance, whether in a rural or urban area, shall not obstruct or restrict the normal water courses involved, unless suitable provisions are made therefore. The County Road Supervisor shall be satisfied that the type, size and installation of the drainage features proposed in the application are adequate for present and foreseeable future requirements and have a reasonable life span.

(B) Requirements for drainage shall be as follows:

(1) Necessary drainage structures for an entrance shall not be tied onto an existing roadway drainage structure unless the necessary junction boxes, manholes, and catch basins are installed by permittee in accordance with county specifications.

(2) The size, length and type of the entrance pipe shall be as required by the County Road Supervisor, but in no case shall be less than 15 inches in diameter, and not less than 24 feet in length. All cost associated with the purchase and installation of a culvert are listed in a Appendix D adopted by the Pendleton County Fiscal Court in conjunction with this ordinance. Such cost may be adjusted by the Pendleton County Fiscal Court from time to time through an amended resolution.

(3) All entrance pipes, whether of corrugated metal, black plastic (H 20 Rating) or bituminous coated corrugated metal shall meet appropriate department specifications and requirements, hereto attached as appendixes. Pipes shall be of sufficient length to prevent end damage. Sloped box inlet or outlet may be required by the County Road Supervisor.

(4) Valley gutters constructed of concrete or bituminous material, which meet department standards, may be used in lieu of entrance pipe where the pipe cannot be placed.

(5) (a) Where long lengths of pipe are used, catch basins or clean-out boxes shall be installed at approximate intervals of not less than 100 feet based upon pipe diameter of 15 inches.

(b) Special consideration may be given to placement of clean-out boxes at longer intervals for pipe with larger diameters. Boxes shall also be constructed at all angles in pipe alignment.

(6) When necessary, gratings and catch basins must be employed to intercept and prevent water flowing from the driveway over the sidewalks or roadway.

(7) Utilities are not to be placed in or through existing drainage conduits.

(8) When a fill is to be placed against an existing roadway, the fill shall be constructed to intersect the outside shoulder edge and slope away from the road on a 6:1 slope to the ditch flow line or a depth of three feet. Furthermore, special drainage features as required by the County Road Supervisor, shall be required of the applicant to adequately drain the road bed and shoulders. This refers to french drains or toe drains in the existing fill.

(9) Occasionally, underpavement drainage is provided by sand, crushed stone or other types of drains from the pavement through the shoulder of the road. Requests to join the pavement at these existing drainage points must be accompanied by plans showing the methods proposed to extend these drains so that their original purpose will be continued. This provision is applicable to commercial and private entrances.

#### **Section 14. PERMITTEE'S RESPONSIBILITY FOR INADEQUATE DOWNSTREAM ROADWAY DRAINAGE FACILITIES.**

(A) In the event that any permittee's development is to create sufficient additional surface drainage run-off, so that the existing downstream roadway drainage facilities such as cross-drain pipes or culverts, storm drain systems, entrance pipes, open ditches, paved ditches, special channels, or any other drainage facility within county maintained right-of-way becomes inadequate to accommodate the increased flow, it is then the sole responsibility to the permittee to:

(1) Modify or replace the downstream roadway drainage facility or facilities, in order that the increased flow is adequately accommodated to the satisfaction of the Road Supervisor; or

(2) Provide an on-site retention basin of appropriate capacity and discharge design to enable the existing downstream roadway drainage facilities to continue to function adequately to the satisfaction of the Road Supervisor.

(B) The permittee is required to gather whatever data and submit whatever plans and information as the Planning Department Director and the County Road Supervisor or their designee deems necessary in order to enable him or her to properly evaluate the proposals and ascertain that roadway standards will be met and satisfactory results obtained.

(C) Any alterations and measures determined to be necessary are to be a part of the permittee's access permit, and no permits are to be issued prior to final agreement on all aspect of this work.

(D) It is further specified that the permittee must assume all responsibility for any law suits or damage claims resulting from alterations made in the existing roadway drainage system

### **Section 15. ENTRANCES AND RELATED ROADWAY MODIFICATIONS.**

(A) *Private entrances.* In order to secure original construction to meet the standards of the road department and to assure that proper drainage in the ditch will not be impaired, the road department is authorized to construct at it expense, residential or farm entrances, provided the required drainage pipes or structures are furnished at the expense of the property owner. To secure the required finished grade, the road department is authorized to provide initial surfacing of entrances on the county's right-of-way with stone or gravel except as required by the subdivision regulations, latest edition.

(B) *Commercial entrances.* These shall be constructed at the cost of the applicant, pursuant to plans approved by the County Road Supervisor. The cost of improvements necessary, whether required at the time of approval of the permit or after the facility is in operation, will be borne by the permittee up to three years from the date of completion on the permit.

(C) *Industrial entrances.* The cost for industrial entrances must be borne by the applicant.

### **Section 16. RESPONSIBILITY FOR UTILITY AFTER ENCROACHMENT**

Any utility placed on county right-of-way, after the adoption of this ordinance, shall be the sole responsibility of the installer, utility company and/or the encroacher to move at their cost should the county fiscal court determine that such utility is deemed to be in a location that deters right-of-way improvement, roadway expansion and/or other types of right-of-way construction, now or in the future. The permittee, its successors and assigns, at all times from the date permitted work is commenced until such time as all permitted facilities or other encroachments are removed from the right-of-way and the right-of-way restored, shall defend, protect, indemnify and save harmless the Pendleton County Fiscal Court from any and all liability claims and demands arising out of the work, encroachment, maintenance, or other undertaking by the permittee, its successors and assigns, related or undertaken pursuant to the granted permit, due to any claimed act or omission by the permittee, its servants, agents, employees, or contractors. This provision shall not inure to the benefit of any third party nor operate to enlarge any liability of the Fiscal Court beyond that existing at common law or otherwise if this right to indemnity did not exist.

**Section 17. ADMINISTRATION AND ENFORCEMENT.**

This Right-of-Way Encroachment Policy shall be administered and enforced by the Fiscal Court and/or Planning Department Director and the County Road Supervisor.

**Section 18. VIOLATIONS.**

Any person or entity violating this ordinance shall be punished as provided in Section 19 of this ordinance. Each road, sidewalk, waterline, or sewer line cut, excavated, or altered shall be deemed a separate offense. Further, the County Judge/Executive may, if he deems it necessary, to protect the public ways and public utilities of the county, refuse to grant additional permits under this ordinance to anyone twice convicted of violating it.

**Section 19. PENALTY.**

Any firm, corporation, individual or governmental agency violating the provisions of this ordinance shall be deemed guilty of a misdemeanor and fined not less than \$50 nor more than \$500.

**Section 20. SEVERABILITY**

The provisions of this ordinance are severable. If any sentence, clause or section or part of this ordinance or the application thereof to any particular case is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or repeal any of the remaining provisions, sentences, clauses or sections or part of this ordinance, it being the legislative intent of this body to ordain and enact such provision, section, paragraph, sentence, and part hereof separately and independently of such other provision.

This ordinance shall become effective upon passage and publication.

GIVEN FIRST READING AND ORDERED PUBLISHED BY THE PENDLETON COUNTY  
FISCAL COURT ON THIS THE 11 DAY OF February 2014.

APPROVED BY THE PENDLETON COUNTY FISCAL COURT AND ORDERED  
RECORDED ON THIS 25 DAY OF February 2014.

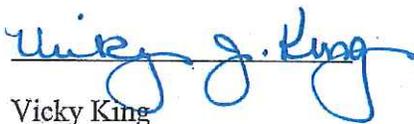
ATTEST:



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Henry W. Bertram

Pendleton County Judge/Executive



Vicky King

Pendleton County Clerk

First reading: February 11, 2014

Second reading: February 25, 2014

Passage: February 25, 2014

Publication: March 4, 2014

## NOTICE OF APPROVED ORDINANCE

The Pendleton County Fiscal Court has approve the following Ordinance entitled as follows:

### PENDLETON COUNTY FISCAL COURT ORDINANCE NO. 623

**An ordinance of and by the Pendleton County Fiscal Court laying out regulations, guidelines and penalties for dealing with Right-of-Way Encroachment and Construction Permit policy.**

This Ordinance provides for, among other things, the process by which individuals, governmental agencies and utilities may obtain access to county roads and to perform work upon the right-of-way of any county road. The Ordinance provides for the process of obtaining permits for said work and the associated fees. The Ordinance sets forth requirements which must be met for excavation, safety and drainage. The Ordinance also addresses restrictions for entrances and related roadway modifications. The Ordinance also provides for the method of enforcement and penalties for violations of its provisions.

A full copy of the approved Ordinance is available for inspection at the office of the Pendleton County Judge/Executive, Courthouse, Falmouth, Kentucky. The Ordinance was considered for passage at the meeting of the Pendleton County Fiscal Court at 7:00 pm on Tuesday February 25, 2014 in the Fiscal Court Meeting Room of the Pendleton County Courthouse at Falmouth, Kentucky. The Ordinance was unanimously approve at this meeting.

HENRY W. BERTRAM  
PENDLETON COUNTY JUDGE/EXECUTIVE

**Approval Date 2-25-2014**  
**Affective Date 3-4-2014**

## **APPENDIX C: ENCROACHMENT CONSTRUCTION STANDARDS**

### Section

1. Application and permits
2. Deposit or security for payment
3. Interference with vehicular traffic
4. Culverting, trenching, backfilling, tunneling
5. Restoration of macadam roads, class 1
6. Base for asphalt roads, class 2
7. Asphalt, class 3
8. Concrete pavement, class 4
9. Cement walks, class 5
10. Sod areas, class 6
11. Responsibility for settlement in restored areas
12. Responsibility for dust, dirt, and appearance
13. Responsibility for Inspections
14. New roads
15. Fees(as outline in Appendix A, D
16. Application Form Appendix A
17. Encroachment Approval Letter Appendix B
18. Encroachment Construction Standards (Kentucky Department of Transportation's Permits Manual) Appendix C
19. Culvert Information and Fees Appendix D
20. Sample Plan/Drawings for Culvert Installations Only

The following rules and regulations have been prepared by the County Fiscal Court for the County of Pendleton, Kentucky, in accordance with County Ordinance No. 623. In case of any dispute as to the interpretation of any or all of these rules and regulations, the decision of the County Fiscal Court shall be final. In performing work under these specifications the permittee is fully responsible that his operations conform to all applicable County, State, and Federal (OSHA) statutes, rules, and regulations. Wherever these rules and regulations refer to "Inspector" it shall be construed as the County Road Supervisor or his agent.

### **§ 1. APPLICATION AND PERMITS.**

(A) Road opening/encroachment permits shall be issued by the Planning Department Director with approval and review by the County Road Supervisor in pursuance of a written application (Appendix A) filed in the office of the Planning Department Director. Application forms shall be provided by the Planning Department Director.

(B) The application shall give the location, dimensions and plans of the proposed opening/encroachment, the purpose for which the opening/encroachment is to be made, the kind of pavement or surface to be opened/encroached, and the date the opening/encroachment will be made. The period of time allowed for completing an opening/encroachment will be governed by the size and nature of the opening/encroachment.

(C) If the work has been started but not completed within the time allowed, the permit may be canceled. If canceled, cancellation charge plus all accrued restoration charges shall be paid by the permittee. Before the work can proceed, a new permit must be secured under the same procedure as required in starting a new job.

(D) All applications for mains, conduits, manholes, and other major sub-surface structures shall be accompanied by a plan and typical cross section showing, as nearly as possible from records available, the location of the existing underground structures and the location of the proposed structure. Two prints of plans shall be submitted. The issuance of a permit will be based on the approved plans. No work which deviates from an approved plan shall be performed unless and until an approval of the change of plan has been secured from the County Road Supervisor. Culvert plans, which, under normal conditions, will supply adequate information on which to base approval, will be found in § 20 along with Appendix D. Shop drawings of anticipated work are required for more elaborate construction. Wherever possible, the county will require boring or jacking of hard pavements. Permission to cut hard pavements will be granted only in cases of real *necessity*. For emergency purposes the agency or party making an emergency opening shall call the County Dispatch Department, and inform them of all pertinent particulars such as name of party responsible for cut, where the cut will be, and the rest of the essential information requested above. When they apply for the regular permit after the emergency operation is completed, a CONFIRMATORY shall be written in large letter on the application so in effectiveness the County will know the job has been completed.

## **§ 2. DEPOSIT OR SECURITY FOR PAYMENT (BOND, CASH OR CHECK).**

(A) Restoration of pavement or payment of the cost thereof must be assured in one of the following ways;

(1) The applicant has made a cash deposit, check or bond equal to the estimated charge for restoration at current rates and such check or cash shall be deposited in the county road fund checking account.

(2) The applicant has opened a running account by making an initial deposit suitable to the County Judge/Executive, to be replenished by the applicant voluntarily or upon request by the County Judge/Executive. No permit shall be issued under this provision unless there is an unencumbered amount in the applicant's account sufficient to cover the estimated restoration charge on permit applied for.

(3) The applicant may be the county department whose functions require the installation and/or maintenance of underground structures.

(4) The applicant is a corporation whose franchise empowers it to make its own paving restoration, but which permits will be issued only when the restoration work keeps fully apace with the openings/encroachments being made. Such corporations shall pay promptly all bills for inspection at current rates.

(B) If at any time during the course of the work it appears that the cash deposit or bond is inadequate to cover the cost of restoration, an additional sum shall be deposited by the permittee in an amount equal to the difference between the deposit and the revised estimate of charge.

## **§ 3. INTERFERENCE WITH VEHICULAR TRAFFIC.**

- (A) The permittee shall carry on the work authorized by the permit in such manner as to cause a minimum of interference with traffic. He shall provide adequate warning, signs and devices to warn and guide traffic, and shall place the signs and warning devices in a position of maximum effectiveness.
- (B) If the Road Supervisor deems it necessary to have flagmen because of the hazardous conditions created by the opening/encroachment, the permittee shall furnish these flagmen at his own expense.
- (C) In case of an emergency occurring in any thoroughfare, the permittee must notify the County Dispatch immediately and must be available for a returned phone call. In all emergency cases, the permittee shall have the necessary equipment in place in order to reopen a road within 15 minutes to emergency vehicles.
- (D) In accordance with KRS 67.077(4), a copy of the Manual of Uniform Traffic Control Devices is available for public inspection during regular business hours at the county Clerk's Office and the office of the Planning Department Director.

#### **§ 4. CULVERTING, TRENCHING, BACKFILLING, TUNNELING.**

Anyone or any contractor anticipating in carrying out or performing construction on county right-of-way must contact "Call Before You Dig" (BUD) (811). KENTUCKY STATE LAW

All OSHA regulations and standards shall be met when installing culverts, trenching, backfilling and/or tunneling.

##### *(A) Culverting*

1. Any person wishing to abut a private drive to a county road must first contact the Pendleton County Planning Administrator and complete an encroachment application (Appendix A).
2. Pendleton County Planning Administrator, in conjunction with the Pendleton County Road Department Supervisor must review the entrances of a private drive for line of sites (six second rule applies); need of culvert and need for ditching and meet the requirements laid out in the approval form (Appendix B).
3. After review of the drive, the Planning Administrator and the County Road Department Supervisor will set standards needed to locate and qualify such drive as described in Appendix B.
4. In order for a private drive to receive approval all specifications as established by the Road Supervisor must be met.
5. The process for applying for a private drive connection to a county road is as follows:
  - a. Contact the Pendleton County Planning Administrator to complete an application for encroachment.
  - b. Mark proposed driveway location for inspection of sight distance and drainage and contact the Pendleton County Planning Administrator to schedule an inspection.

- c. If a culvert is needed as determined by the County Planning Administrator or the County Road Department Supervisor, it may either be installed by the County Road Department at the expense of the property owner or contractor, or, installed by the property owner or private contractor, at the expense of the property owner, and under supervision of the Pendleton County Road Department Supervisor.
  - d. The Pendleton County Road Department must receive payment prior to any culvert/gravel installation, if the County Road Department is performing the work to be done.
  - e. If a culvert is placed by a private party, the property owner or contractor shall provide financial security to the county in the form of a check, cash or bond for the amount of the culvert installation as determined by the Road Supervisor. The bond will be held until the Pendleton County Road Department has inspected and approved the culvert/entrance and at such time the bond will be returned to property owner or contractor. Should a check or cash be used, the check/cash will be deposited by the fiscal court and after the Pendleton County Road Department has inspected and approved the culvert/entrance, a check in the amount deposited will issued to the property owner or contractor. The property owner/contractor has three (3) inspections by the inspector to have the culvert installation approved, if conditions are not met within the aforementioned timeframe, the Road Department shall use the bond or check/cash to install the culvert for the property owner.
  - f. All costs are set by the Fiscal Court/County Road Supervisor and are subject to change from time to time through action taken by the Fiscal Court.
6. If at any time the Planning Administrator/Road Supervisor determines that a culvert of any type is needed at an intersection of a private drive and a county road established after October 2001, as defined in the County Administrative Code, and the owner fails to remit total cost of installation to the county, the county may take the following action:
- a. Ninety (90) days after the installation of the aforementioned culvert and after notifying the owner by certified mail of his obligation to pay for the installation of said culvert, the County Attorney may through the powers of this ordinance, place a statement of lien on the premises where the culvert was installed equal to the cost of installation.
  - b. The County Attorney may file with the County Clerk the aforementioned statement of lien to constitute an encumbrance on the title to the land. This statement shall contain a legal description of the premises, the expenses and costs incurred, the date the culvert was installed, and a notice that the County claims a lien for this amount. Notice of the lien claim shall also be mailed by certified mail to the Owner or Owners of the property concerning which the culvert was installed. The lien shall accrue interest at a rate which will be calculated by adding one (1%) percent to the interest rate the county receives on its checking accounts, adjusted on the annual anniversary of the filing of the lien. It may be enforced at any time thereafter as in the nature of a mortgage.
7. Anyone installing a culvert that abuts a county road after the adoption of the Administrative Code Ordinance in October 2001, shall be totally responsible for the cost of the culvert and the installation of same. Such culvert shall be the responsibility of the property owner to maintain and where necessary

replace, when it does not carry out its intended purpose.

*(B) Trenching/Open Cutting.*

(1) Whenever culverts, sewers, manholes, valve chambers, catch basin connections, water mains, gas pipe or electric conduits, or house connections thereto, or any type of subsurface facilities are exposed in excavating, the permittee shall, at his own expense, protect them from damage.

(2) The permittee shall use all necessary precautions to protect persons and/or property from injury and/or damage. Barricades, sufficient warning lights and/or signage shall be placed along the opening. Flagmen shall be provided by the permittee, if considered necessary by the Road Supervisor.

(3) The length, width, and location of the trench, also the manner in which the work is done, shall be under the control of the Road Supervisor. Every precaution shall be taken to safeguard the work, and to inconvenience the public as little as possible.

(4) The permittee shall carefully remove the paving and base course materials and store them in piles separated from the excavated earth. Excavated material shall be placed so as not to obstruct gutters or drains and in such manner as will cause minimum inconvenience to the public. If necessary, temporary covers for gutters shall be installed to insure adequate drainage. In special cases, it may be necessary to haul part or all of the excavated material from the street/road.

(5) Openings shall be properly cribbed and braced where necessary, to prevent caving, slipping, or cracking of sides. Sheeting and bracing used to support the sides of the opening shall be carefully removed as the backfilling of the trench progresses, but if considered by the Inspector necessary for the protection of the banks, the sheeting and bracing shall be cut off two feet below the surface of the subgrade and left in place. If pavement along the sides of the openings is, or becomes undermined and unsupported, the permittee shall, at his own cost and expense, break down and remove such undermined pavement and the foundation thereof, and shall also remove all loose earth and replace with earth properly compacted in the manner provided under backfilling in division (C) below.

*(C) Backfilling.*

(1) The Inspector shall select alternate methods "a", "b" or "c" when approving backfilling.

(2) The inspector shall determine the depth of any utility to be placed on the county right-of-way. All utilities placed on county right-of-way must be able to be located with an applicable location device.

(3) After the pipe or conduit has been placed, approved backfill material, free from rock, shall be placed in four-inch layers thoroughly tamped by mechanical means to a plane at least six inches above the top of the structure. Backfill above the six-inch plane on the structure shall be deposited uniformly and brought up gradually in layers not exceeding six-inches thick.

(a) *Alternate backfill method "a"*. The backfill above six inches above the top of the structure shall consist of a well graded bank run gravel or sand and containing not over 20% silt. The bank run gravel shall be brought to a plane parallel to and uniform 24 inches below the finished pavement and thoroughly compacted by mechanical means.

(b) *Alternate backfill method "b"*. The backfill above six inches above the top of the structure shall consist of the original excavated earth backfill in horizontal layers not exceeding six inches in depth before compaction. Each layer shall be thoroughly compacted by approved power tamping equipment

and methods. In single isolated cuts hand tamping may be substituted for power tamping but backfill material shall be placed in horizontal layers not exceeding four inches in depth before compaction

(c) *Alternate backfill method "c"*. The backfill shall be "flowable fill" from utility outer surface up to within 2 inches of the surface of the roadway and finished with a product as determined by the inspector (i.e.) coldpatch, dense grade, finish stone, blacktop, concrete, etc.

(d) *Alternate backfill method "d"*. Backfilling of an encroachment parallel to the county right-of-way shall be filled with original excavated soil and compacted through mechanical means.

(F) *Tunneling*.

(1) Tunneling is often necessary where pipe or conduit passes under curb, or other underground facilities. The permittee shall not do any tunneling except by permission of the Inspector. Where tunneling has been resorted to, the permittee shall bed the pipe or conduit as specified in Backfilling in division (C) above. The remainder of the space from top of this fill to the roof of the tunnel shall be completely filled "flowable fill". The complete backfilling of the tunnel shall be performed to pass the approval of the Inspector.

(G) *Boring*.

Boring on county right-of-ways shall meet the standards as defined in the Kentucky Department of Transportation's Permit Manual referenced in Section 18 hereto attached or where potable water lines are installed, must be incased with steel unless preapproved by the County Road Supervisor. No boring shall leave a void in the earthen material of more than 10%. Voids beyond 10% must be filled with "flowable fill".

In the installation of small service pipes, it is suggested that the pipe be jacked through or that a hole of sufficient size be bored. In such cases, inspection may be required by the Inspector.

## **§ 5. RESTORATION OF MACADAM ROADS, CLASS 1.**

(A) Restoration of openings in first class macadam roadways, whether water bound, oiled or bituminous, and whether composed of gravel or broken stone, shall be made as specified by the Inspector. Usually this method will be: "flowable fill" from utility outer surface up to within 2 inches of the surface of the roadway and be finished with a product as determined by the inspector (i.e.) coldpatch, dense grade, finish stone, blacktop, concrete, etc.

## **§ 6. BASE FOR ASPHALT ROADS; CLASS 2.**

See: Section 5 (A)

### **§ 7. ASPHALT, CLASS 3.**

In replacement of the various types of asphaltic street/road pavements, the restoration shall be made with an asphaltic mixture which shall be equal to, Class I Bituminous Concrete, Type A. Machine paved or the use of a hand vibration machine at a depth of 2-1/4 inches thick on an approved base.

### **§ 8. CONCRETE PAVEMENT, CLASS 4.**

(A) Extreme care shall be taken in opening concrete pavements to prevent damage to the adjoining pavement. Unless specific approval is obtained from the Inspector, pavement shall be opened with the use of paving breakers or by pneumatic drilling outlining the cut, followed by the use of paving breakers.

(B) The thickness of new concrete pavement shall be two inches greater than the original pavement where the opening was made, but in any case the thickness shall be not less than eight inches. The edge of the pavement under the old concrete pavement shall be undermined in a manner that will support existing concrete. The opening shall be squared by straight lines, enclosing the opening placed not less than two inches nor more than 12 inches at any point from the original edges. This squaring shall be done by sawing, use of pneumatic chisels, or manually. Squaring shall not be vertical, but the edges shall be flared in toward the center of the opening, while the bottom of the existing concrete pavement shall be straightened out into the new pavement and the deficiency supplied by a strip of new 42 lb. 1004 mesh lapping back on the old reinforcement. The concrete shall be 4000 psi mix air entrained concrete.

(C) Prior to the placing of any concrete the sides of the existing pavement shall be thoroughly washed with clean water. The subgrade shall be dampened. Longitudinal openings exceeding 20 feet in length shall be restored with concrete having a slump of five inches or less.

(D) This concrete shall be vibrated with an internal type vibrator, giving particular attention to the pavement edges. Restoration of small longitudinal openings in concrete pavements shall be made with concrete having the maximum slump of three inch. This concrete shall be thoroughly tamped. Finish shall match the surrounding pavement.

(E) The area shall not be totally blocked against traffic and suitable trench covering shall be on site should an emergency occur. Such covering shall be placed for the period of time the Inspector deems necessary to prevent damage to the restored pavement. Sufficient warning lights and or signage may be displayed to prevent accidents to pedestrians and/or traffic. If, in the opinion of the Inspector, it is inadvisable to block the street/road area against traffic for the time required to use an approved brand of quick setting cement, or a lower water cement ration, or an approved accelerator. Similar steps may be required by the Inspector if the base is poured when the temperature is below 40° F.

### **§ 9. CEMENT WALKS, CLASS 5.**

(A) In the restoration of cement walks, in addition to the question of serviceability and durability of restoration, the matter of appearance will be considered in determining the area to be restored, regardless of the size of the opening. The restoration of complete blocks will be required, if in the opinion of the Inspector, circumstances justify such restoration.

(B) When restoring, cement walks shall be nearly squared cut by a series of straight lines at least four inches back from the lines of the opening. The new work shall be joined up to the old cement work in a neat and workmanlike manner. Cement walks will be one course except when two courses are necessary to match adjoining area. Expansion joints shall be restored where required regardless of whether they existed in the original pavement. (Usually 30" apart.) During all walkway construction, an alternative walkway shall be provided.

## **§ 10. SOD AREAS, CLASS 6.**

(A) When an opening has been made in sodded areas, not only the actual area disturbed shall be restored, but any adjacent sod area which may have been damaged or destroyed in connection with the permittee's work shall also be renewed. If the existing sod can be removed without damage, it may be relaid, but all damaged sod shall be replaced with new sod.

(B) Restoration of sod by the permittee will not be considered complete until all restored sod has knitted with subgrade, and all maintenance necessary (such as watering, etc.) shall be the responsibility of the permittee and shall be considered a part of the restoration.

## **§ 11. RESPONSIBILITY FOR SETTLEMENT IN RESTORED AREAS.**

(A) The permittee in accepting and acting under a street/road opening permit thereby agrees to assume full responsibility for injury and/or damage to persons and/or property incurred because of any settlement of a restored area, and further agrees to pay all costs involved in reconditioning such areas.

(B) If any settlement in a restored area occurs within a period of one year from date of completion of the permanent restoration, it shall be considered as conclusive evidence of defective backfilling. Any expense incurred by the Fiscal Court in correcting such settlement shall be paid by the permittee.

## **§ 12. RESPONSIBILITY FOR DUST, DIRT, MUD AND APPEARANCE.**

The permittee shall do everything possible to keep down dust, dirt, mud and the appearance of the area surrounding the street/road opening in good order. After the close of each working day, the permittee shall see that the surrounding area around the opening is swept up, and as clean as possible. At no time will it be permissible to leave piles of excavated dirt in the street or sidewalk. If necessary, the area will be washed with water. The permittee shall do whatever the Inspector deems necessary to clean up the area.

## **§ 13. RESPONSIBILITY FOR INSPECTION**

The County Road Supervisor shall be responsible for the inspections of all encroachments on county right-of-ways unless he or she feels such encroachment requires a more knowledgeable and experienced inspection due to safety concerns or for other such reasons. Should the road supervisor determine that a more knowledgeable inspection be performed, it shall be the responsibility of the permittee to contract and fully pay for a third party inspector for such encroachment. Any third party inspector shall meet the approval of the County Road Supervisor and Fiscal Court.

If inspection services are needed, selection of such will be based on qualifications for a consultant that is either licensed and pre-qualified to do work for the CABINET or a licensed Professional Engineer registered in the Commonwealth of Kentucky that demonstrates sufficient experience and knowledge in the type of work and shall also receive the approval of the CABINET's District 6 Chief District Engineer in Covington. Such inspector shall provide a written daily report to the county road supervisor.

## **§ 14. NEW ROADS**

All new roads must meet the Fiscal Court guidelines as laid out in the Pendleton County Sub-Division Regulations unless the fiscal court determines that alternative development requirements for a new road are in the best interest of county finances.

## **§ 15. FEES**

All encroachment fees shall be stated within Appendix A or Appendix D hereto attached and may be amended from time to time by the Pendleton County Fiscal Court through an approved resolution. Non-profit, governmental entities shall be excluded from all fees associated with an encroachment on county right-of-way but must complete an application as provided in this ordinance and appendixes.

§ 16. APPENDIX "A" APPLICATION FORM

PENDLETON COUNTY

RIGHT-OF-WAY ENCROACHMENT APPLICATION

233 MAIN STREET  
 FALMOUTH, KENTUCKY 4010

Brian Thompson  
 Planning & Zoning Director  
 859-654-1108  
 pendzoning@gmail.com

Tim Antrobus  
 Road Supervisor  
 859-654-4371  
 1pcord1@zoomtown.com

APPENDIX A

(01-20-2014)

Date of Application \_\_\_\_\_ PERMIT NUMBER \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Address of Encroachment \_\_\_\_\_

G.P.S. Location \_\_\_\_\_ Type of Encroachment Road  Other

Type of Encroachment \_\_\_\_\_ Class of road, *Circle one* 1 2 3 4 *Circle one* Class 5 or Class 6  
 As described in Appendix C  
 Road, Sidewalk, Sod

Contractors Name \_\_\_\_\_ Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

Pendleton County Tax Administrator Approval signature \_\_\_\_\_

Emergency/Field Contact Person \_\_\_\_\_ Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

Reason for Encroachment: \_\_\_\_\_

Completion: Bond  Check  Cash

Road Bonds (cash or check) are required for every agency/owner Right of Way Encroachment Permit

Plans and pictures need to be submitted with Application to the Planning Director, 233 Main Street, Falmouth, Kentucky 41040  
 Fees listed below or in Appendix D will need to be paid before permit will be granted.

It is the responsibility of the applicant to be acquainted with the rules as relating to this encroachment. Explained in Appendix C  
 This permit is given in as far as Pendleton County has the authority to give it. It will be the permittees responsibility to contact  
 and to receive written permission from all other parties involved.

Forwarded to Road Department Date: \_\_\_\_\_ Inspected by: \_\_\_\_\_

- \_\_\_ 1. Road cut across a paved county road  
 Pipes 14" or less \$500 Pipes over 14" \$1,000
- \_\_\_ 2. Road bores across a paved county road  
 Pipes 14" or less \$500 Pipes over 14" \$1,000
- \_\_\_ 3. Road cuts across Macadam Roads \$200
- \_\_\_ 4. Right-of way encroachments along the run or the road within the  
 asphalt surface. First 100' \$1,000 + \$2 per each additional foot
- \_\_\_ 5. Right-of-way encroachment permits along the run of the road outside  
 of the asphalt but within the County right-of-way. \$400
- \_\_\_ 6. Right-of-way access permits including driveways and other similar  
 encroachments (see Appendix D)
- \_\_\_ 7. An encroachment permit will be needed for private service line.  
 Fee at no cost

Installer: \_\_\_\_\_  
 Inspector Note: \_\_\_\_\_

Approximate Encroachment start and finish date: Start: \_\_\_\_\_ Finish: \_\_\_\_\_

§ 17. APPENDIX "B" APPROVAL FORM

Appendix B

**PENDLETON COUNTY RIGHT-OF-WAY  
ENCROACHMENT APPROVAL**

**"SAFTEY FIRST"**

Encroachment Permit Number \_\_\_\_\_ issued \_\_\_\_\_, has been approved by the Pendleton County Road Supervisor.

All work must comply with submitted drawings as stated in your *Right-of-Way Application* and *Encroachment Inspection Approval Form* and approved by the Pendleton County Road Supervisor.

\_\_\_\_\_  
Tim Antrobus  
Pendleton County Road Supervisor

\_\_\_\_\_  
Date

**§ 18. APPENDIX “C” ENCROUCHMENT CONSTRUCTION STANDARDS**

All encroachments on county roads shall be preformed and constructed per the Kentucky Department of Transportation Permits Manual, Federal DOT Requirements or any other party having jurisdiction, except for road access culvert installations. Such culvert installation shall use diagrams as provided in Appendix D. The permittee shall meet requirement under County Ordinance 623 other than construction standards spelled out in the Kentucky Department of Transportation Permits Manual.

The “Permits Manual” can be found on the following website:

<http://transportation.ky.gov/Permits/Documents/2013-PermitsManual.pdf>

**§ 19. APPENDIX “D” CULVERT FEES**

1. Installation of a 24' X 15" culvert will cost the property owner or person requesting the installation the amount of \$500.00 including the culvert, gravel and placement. Each additional foot shall be \$15.00.
2. Installation of a 24' X 18" culvert will cost the property owner or person requesting the installation the amount of \$550.00 including the culvert, gravel and placement. Each additional foot shall be \$17.00.
3. A surface catch culvert 24' X 12" will cost the property owner or the person requesting the installation the amount of \$1200.00 including the culvert, gravel and placement. Each additional foot shall be \$50.00.
4. Bands & Bolts may be required for culverts wider than twenty-four feet (24'). Bands & Bolts shall be \$15.00 per connection.
5. Culvert inspections for private installations shall be as follows:  
First Inspection:           \$25.00  
Second Inspection:       \$50.00  
Third Inspection:         \$50.00

**Culvert Specifications**

**Construction of Driveway Entrance**

- Confirmation number from *Call Before You Dig (B.U.D. Phone: 811)*
- Confirmation Number \_\_\_\_\_ (STATE LAW)
- Materials – Culvert must be 16 gauge metal or plastic (black) with equivalent manufactures specifications.
- Backfill – solid material, dirt, gravel, crushed stone
- Top Materials - gravel, concrete, blacktop, crushed stone
- Bed Excavation – water must drain
- Pipe Installation – be center of ditch and have flow, no standing water
- No dents
- Adequate size – will be determined by Pendleton County Road Supervisor  
12” x 24’ minimum
- End treatments – large rock, concrete (no wood)
- Driveway even and level with road
- Ditch and road are in neat condition, grass seed sown
- Water drains into ditch, not onto road. A surface catch culvert may be needed.

§ 20. SAMPLE PLAN/DRAWINGS OF PARALLEL CULVERTS

Below are sample Drawings/Plans that can be used when encroaching a parallel culvert for a driveway onto county right-of-way.

