

ORDINANCE 2023- 03

AN ORDINANCE AMENDING THE WHITLEY COUNTY CODE OF ORDINANCES PERTAINING TO STANDARDS AND CONDITIONS OF THE ISSUANCE OF WHITLEY COUNTY HIGHWAY ROAD AND RIGHT-OF-WAY WORK PERMITS AND SERVICE CHARGES

WHEREAS, the Board of Commissioners of Whitley County, Indiana may, pursuant to I.C. 36-1-3 et. seq. (Home Rule) enact ordinances for the effective governance of the County and its Offices and Departments;

WHEREAS, Whitley County (the "County") is responsible for maintaining the county roads and rights-of-way within its jurisdiction;

WHEREAS, the County receives requests to install utilities, including but not limited to underground cables, conduits, above ground structures, and associated equipment, in the county roads and rights-of-way and this installation requires earth work including, but not limited to, excavating, grading and boring within the roads and rights-of-way within the County;

WHEREAS, the ability of the County to continue to provide access to its public rights-of-way requires implementation of effective and efficient management of County rights-of-way;

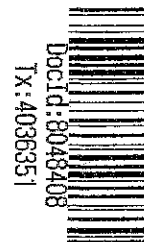
WHEREAS, the County may operate and maintain its streets, highways, and other public property in Whitley County for the safety of the traveling public, and the Whitley County Board of Commissioners (the "Board") may manage the public rights-of-way or require by ordinance, fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation and/or encroachments of a county public right-of-way;

WHEREAS, the County is authorized to recover fair and reasonable compensation for its direct, actual, and reasonably incurred costs in managing the public right-of-way, including but not limited to, the costs of (1) registering occupants, (2) verifying public right-of-way occupation, (3) inspecting job sites and restoration projects, (4) restoring work inadequately performed after providing notice and the opportunity to correct work, (5) administering and ensuring adequate restoration of County public right-of-way as near as reasonable possible to the right-of-way's original condition, and (6) management costs associated with the implementation of this Ordinance. The County also considers degradation costs caused by cuts and intrusions in the right-of-way, obstructions in the right-of-way when installing or repairing its facilities in the right-of-way; and,

WHEREAS, in contemplation of the management costs set forth above, the Board of Commissioners desire to amend its provisions for the occupation of County rights-of-way and to adopt amended user fees and requirements for the use of the same from those directly benefiting therefrom and reducing financial burdens upon County taxpayers.

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED, AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF WHITLEY COUNTY, AS FOLLOWS:

I. PROVISIONS



1. The provisions of this ordinance shall govern the construction, relocation, alteration, or change in the character or use of improvements to the right-of-way of the Whitley County Highway system and the maintenance of such improvements.
2. Improvements, for the purpose of this ordinance, include, but are not limited to:
 - a. Entrances, driveways or drive approaches,
 - b. Mailbox approaches,
 - c. Culvert, tile, or roadside ditch modifications necessitated for other improvements,
 - d. Sidewalks, pathways, trails or multi-use paths, and
 - e. Public service utility infrastructure.
- b. Improvements, for the purpose of this ordinance, shall not include:
 - a. Those made under contract with or by order of the Board of Commissioners or other governmental agency through its proper officials
 - b. Surfacing or resurfacing of paved improvement, provided that it does not change drainage flows and does not expand the width of the existing improvement
- c. It shall be unlawful for any person, firm, or corporation to construct improvements in the right-of-way of the Whitley County Highway systems without first obtaining a permit.

II. AUTHORITY

1. In all instances where it is necessary to install an underground utility line across a paved road, the applicant shall bore under the existing pavement.
2. The Whitley County Highway Director/Superintendent or Whitley County Engineer shall have the authority to approve, and issue permits for all improvements under this ordinance except for the following improvements, which shall be approved by the Board of Commissioners.
 - a. Open-trench road cuts
 - b. Other requests as determined by the Whitley County Highway Director/Superintendent or Whitley County Engineer /Superintendent or County Engineer
3. The Whitley County Highway Director/Superintendent or Whitley County Engineer shall have the authority to:
 - a. Execute permits
 - b. Perform inspections
 - c. Administer the terms of permits
 - d. Issue Stop Work Orders for any violations of this ordinance
 - e. Approve the completion and acceptability of work under a permit
4. The Whitley County Highway Director/Superintendent or Whitley County Engineer may delegate their authority under this section to other Whitley County Highway/Engineering employees as advisable to meet the intent of this ordinance.

III. DEFINITIONS- The following definitions shall apply only in this ordinance:

1. Commercial Drive- any driveway serving a property zoned commercial, serving a business or place otherwise open to the public or providing access to an occupied utility facility.
2. County Regulated Drain- an open drain, a tiled drain, or a combination of the two as defined in IC 36-9-27-2.
3. Emergency- a situation where there is an immediate need to perform repair work on existing infrastructure that has been damaged or interrupted and where the failure to perform such work would result in imminent danger to life or property or cause environmental change.
4. Field Entrance- any access entrance off a Whitley County Road to a parcel to access an open field, woods, or the like for the purpose of agricultural activities
5. Pavement- any hard surface treatment on the road such as chip and seal, asphalt, or concrete
6. Residential Driveway- a driveway serving a private property zoned residential and serving one or more single-family dwelling
7. Right-of-Way- the land under the driving surface and beyond the edges of the driving surface that the public has the right to use, and the Board of Commissioners has the right to control
8. Road- the driving surface and will be refers to any type of surface such as asphalt, concrete, or gravel
9. Temporary Entrance- any access entrance off a Whitley County Road to allow access to any parcel for less than three hundred and sixty-five (356) days
10. Utility - shall include all privately, municipally, publicly, or cooperatively owned systems for supplying communications, power, light, heat, electricity, gas, water, pipeline, sewer, sewage disposal, drain, or like service, directly or indirectly, to the public.

IV. PERMIT FEES: Permit fees should be made payable to the Whitley County Highway Department and shall be amended as follows:

1. Driveway Permit Application- \$50.00
2. Temporary Entrance Permit Application- \$250.00 for each location
3. Right-of-Way Permit Application Fee: A non-refundable \$40.00 processing fee shall be submitted with each separate permit application
 - a. Road Excavation/Cuts:
 1. Gravel- \$250.00 per single cut
 2. Pavement- \$500.00 per single cut
 - b. Plowing/Knifing in Cable or Pipe- \$1.00 per linear foot with a \$100.00 minimum fee
 - c. Directional Boring- \$1.00 per linear foot with a \$100.00 minimum fee
 - d. Trenching/Excavating Adjacent to Road- \$1.00 per linear foot with a \$100.00 minimum fee
 - e. Boring or Pushing under Road- \$150 per bore, per location
 - f. Pole Lines- \$1,000 per mile, or minimum of \$75 per pole

- g. Setting individual and below ground structures (other than poles) including pedestals, splicer boxes, junction box, and transformers- \$200.00 per structure

V. DRIVEWAY WORK

1. The installation of a new access to any property from a Whitley County maintained road requires a driveway permit to be submitted for approval prior to driveway work being completed and meet the following applicable specifications:
 - a. Where practical driveway must be sloped to allow surface water to drain away from the road
 - b. A culvert pipe may be necessary under the driveway in the side ditch and must meet specified size requirements
 - c. Side ditches are necessary for the maintenance of the county roads, and they must be constructed by the owner to allow unrestricted flow of water in the right-of-way
 - d. Landscaping shall not be in the right-of-way
 - e. Mailbox installations shall comply with Whitley County Ordinance 2005-15
 - f. To the extent feasible within the frontage limits, any driveway should be located at a point of optimum sight distance along the highway. For an at-grade intersection to operate properly, adequate sight distance as defined by the Whitley County Highway Specifications should be available. The designer should provide sufficient intersection and stopping sight distance for a driver to perceive potential conflicts and to perform the actions needed to negotiate the intersection safely.
 - g. Driveways that do not meet sight distance specifications will be considered an "unapproved location"

VI. EMERGENCY WORK

1. Emergency work may be made without a permit. Subsequent to the emergency work and within one working day, the Whitley County Highway Director/Superintendent or Whitley County Engineer shall be notified. If required, as determined by the Whitley County Highway Director/Superintendent or Whitley County Engineer, a formal permit must be thereafter obtained.

VII. COUNTY REGULATED DRAINS

1. If the work impinges on a County Regulated Drain, a separate permit must be submitted to the Whitley County Drainage Board. All drains can be accessed on Beacon Whitley County.

VIII. INSTALLATION OF TILE AND FILLING IN ROADSIDE DITCH

1. The installation of tile and filling in of a roadside ditch is prohibited. A formal written request may be submitted to the Highway Director/Superintendent and/or County Engineer for consideration and may be approved under special circumstances. Any roadside ditch that is filled in without written consent shall be excavated and re-contoured by the Whitley County Highway Department at the expense of the parcel owner.

IX. STANDARDS OF PERFORMANCE

1. All installations covered by this ordinance shall be performed in accordance with the standard practices and regulations currently in use and recognized and will be designed and followed to minimize inconvenience and danger to the public at large.
2. Whenever an open cut is permitted, the applicant shall, upon the completion of the installation, backfill the trench with material as specified by the Highway Director/Superintendent or County Engineer. The road surface shall then be promptly replaced with like materials in a condition that is at least equal to or better than when cut. The surface that has been disturbed must maintain a smooth and uniform condition for a period of 1 year after work is completed. When any installation is commenced, the work shall be carried on expeditiously and without any unnecessary delay.
3. It shall be the duty of the permit holder to erect proper warning signs and/or barricades and to provide flagmen or other appropriate warning devices proportionate to the risks involved throughout the process of the work in accordance with the Indiana Manual of Uniform Traffic Control Devices.
4. All holders of the permits shall indemnify and save Whitley County and/or any of its designees harmless from any and all claims and causes of action, if any, which may be asserted or filed against the County and/or any of its designees by any persons, firms, corporations, if any, who have been injured or damaged or claim to have been injured or damaged, on account of any installations made pursuant to this ordinance or on account of any work done in the making of such installation.

X. PENALTIES FOR VIOLATION

1. Any person or entity performing any above or underground occupation of a Whitley County right-of-way without first procuring a permit required under this Ordinance, or in any other way violating any provision of this Ordinance shall commit a class A infraction. Each subsection violated and each day for which the violation remains shall be a separate violation. Additionally, the permittee, owner or contractor shall be responsible for the costs of restitution for any damages to any county right-of-way or Improvement thereon. The applicable fine and restitution cost shall be entered against a person who violates this chapter per violation for each day of the violation.
2. Whenever any individual or corporation fails to obtain a Driveway Permit or Temporary Entrance Permit, a fine of \$100 shall apply. For failure to obtain a Right-Of-Way Permit, a fine of \$1,000 shall apply. This fee is due and payable by permittee upon notification by the Highway Department. Failure to pay the fee within 14 days of notification will result in the withholding of all future permits to the individual or corporation and immediate submittal of the violation to the Whitley County Attorney for collection. At the discretion of the Highway Director/Superintendent or County Engineer, this fee may be waived for an initial violation of this chapter provided the violator immediately corrects the violation.
3. Appeal of the levy of this fee may be made to the Whitley County Commissioners. The fee amount due will not be required to be paid until the Whitley County Commissioners have acted upon the appeal.
4. In addition to the remedies set out in this section, any contractor, company, or individual who violates any provision in this chapter may be ineligible to obtain a permit under this chapter unless, or until all fines, damages, judgments, or restitution costs are paid in full by the violator.

5. For any violation of this Ordinance or for any Fine, Fee, or cost of restitution as provided for in this Ordinance, Whitley County may file an action for injunctive relief and for the imposition or collection of such fine, fee, or cost of restitution in the Whitley County Circuit or Superior Courts. The person, company, corporation for contractor found to be in violation shall also be ordered to pay the costs of such action including reasonable attorney fees of Whitley County.

XI. EXCEPTION FOR WORK BY COUNTY

1. Any work sponsored by Whitley County, or performed by Whitley County or an agent of Whitley County, shall be exempt from (a) the payment of fees listed in this ordinance, and (b) needing the approval of the commissioners to perform an open-trench road cut.

XII. EFFECTIVE DATE: This ordinance shall be in full force and effect on passing by the Whitley County Board of Commissioners.

XIII. All as Passes and Ordained this 17 day of January, 2023.

THE BOARD OF COMMISSIONERS OF
THE COUNTY OF WHITLEY:

Chad Banks

Chad Banks

Theresa Baysinger

Theresa Baysinger

Robert Schuman

Robert Schuman

ATTEST:

Tiffany Deakins
Tiffany Deakins, Auditor