

## ORDINANCE 2026 – 01

### AN ORDINANCE TO AMEND TITLE 5, CHAPTER 14 OF THE DELAWARE COUNTY CODE REGULATING ACTIVITIES WITHIN PUBLIC RIGHTS OF WAY (RIGHT OF WAY USE PERMIT)

WHEREAS, Delaware County, Indiana has over 850 miles of roads (County Highways) that are maintained and regulated by the Board of Commissioners; and

WHEREAS, the County Highways have rights of way that exist off the paved or gravel section of road as defined in I. C. 8-20-1-15 which are important for maintaining a proper roadway and drainage of same and are within the regulatory control of the Board of Commissioners; and

WHEREAS, pursuant to I. C. 36-1-3-2, Delaware County shall exercise its authority to regulate the use, conduct and construction within the roadways and rights of way of the County.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA that:

#### **Section 1. There shall be an amendment to Title 5, Chapter 14 of the Delaware County Code as follows:**

##### **5-14-1. Regulating Activities Within Public Rights of Way (Right of Way Use Permit).**

Pursuant to powers granted to the Board of County Commissioners, no person shall undertake any of the activities referred to in Item III of this ordinance within a public right-of-way or work which may impact on the road or road surface of any County Highway without first obtaining a "right-of-way use permit" from the office of the County Engineer.

##### **5-14-2. Definitions:**

The following terms shall be defined as follows for the purpose of these subsections.

Performance and/or Maintenance Bond is the posting of required surety to guarantee prompt and satisfactory replacement, repair and maintenance of facilities damaged or disrupted by the permittee's operations.

County Engineer is the County Engineer or their designee.

Department is the Highway Engineering Department of Delaware County, Indiana.

Inspector is the authorized representative of the County Engineer assigned to make detailed inspections of permittees performance.

Oversize shall mean any commercial vehicle which is transporting or hauling any item which requires an "oversize" permit on any Indiana highway or interstate.

Overweight shall mean any commercial vehicle which is transporting or hauling any item which requires an "overweight" permit on any Indiana highway or interstate.

Maintenance period shall mean the period of time that the contractor shall be required to maintain the work that is performed in the roadway or right of way but shall not exceed two (2) years from the date of completion of the work.

Permit is a form of written authorization to a permit action to be done within the right-of-way as per outlined specifications.

Person is the term person shall include and be applied to public utilities, associations, clubs, societies, firms, partnership and bodies politic and corporate as well individuals.

Right-of-way boundaries as are established by a recorded plat, duly adopted thoroughfare plan or usage for the purpose of providing public transportation or utility services or pursuant to I. C. 8-20-1-15 or I. C. 8-20-15-

15.5 as established.

Road Cut shall mean any work which shall impact the roadbed and/or road surface.

Utility work is defined as work in the road or right of way that is to be performed to maintain, repair, install and upkeep essential public infrastructure, including but not limited to water, sewer, power, natural gas, storm water and telecom/fiberoptic services.

5-14-3. Activities Requiring Permit.

- A. No person shall undertake any of the following activities within a public right-of-way without first acquiring a right-of-way use permit to do so from the office of the County Engineer.
- B. Installation or repair public utility facilities or private connections to public utility facilities.
- C. Installation of mailboxes, mailbox approaches, sidewalks or any such object of lawful encroachment which would share right-of-way space with governmental transportation needs.
- D. Temporary closure of traffic or parking lanes or pedestrian ways or any such use which would encroach upon and share right-of-way space with governmental transportation needs such as parades, marathons, festivals etc.
- E. Creation of alteration of egress or ingress to private property bordering a right-of-way.
- F. The use of any county highway by a commercial vehicle that is overweight or oversized.
- G. Any work that shall impact or affect the roadbed or road surface (Road Cut) shall require a permit and shall be performed and completed as per the specifications of the Delaware County Engineering Department. In the event that the road cuts shall be determined by the County Engineer and/or Highway Department which impacts a significant portion of the roadway, then the Applicant shall be required to replace more roadway than just the area affected by their construction work as required by the County Engineer and/or County Highway Department.
- H. Exceptions.
  1. Permit is not necessary to maintain existing grass, drives, sidewalks, mailboxes or other permitted encroachments within the right-of-way.
  2. Subdivision under construction whose right-of-way, easements or other public grounds have not yet been accepted are required to meet the Subdivision Regulations but are not required to apply for a right-of-way use permit.
  3. Right-of-way or public grounds dedicated to public agencies other than the Delaware County or to Private agency or individuals, do not fall under County's jurisdiction regarding right-of-way use permits, e.g. State highway right-of-way or other public grounds such as United State Post Office property, etc.
  4. Public road construction and maintenance done under a contract of the County Engineering Department.
- I. An application for a permit must be filed with the Department no less than seven (7) business days in advance of the work to be performed.
- J. The County Engineer shall review the application and issue a written approval or denial of the permit. If any changes are requested by the County Engineer, then the permit shall be held in abeyance until such time as the permit is either denied or approved.
- K. In the event that any additional analysis, engineering review or costs incurred for the review of the permit application outside of the work on the County Engineer shall be paid by the Applicant.

5-14-4. Unlawful Activities Within the Right-of-Way.

- A. Conduct any work, construction, obstruction of traffic or other work without first having a permit approved by the County Engineer.
- B. It shall be unlawful for a person to drive a vehicle over or park a vehicle upon any curb, sidewalk or grassy area, not otherwise designated as an access point, within the right-of-way.
- C. Unless a license to encroach has been issued by the Board of County Commissioners it shall be unlawful for any person to:
  - 1. Construct a parking area within a right-of-way.
  - 2. Plant a tree or shrub within a right-of-way.
  - 3. Construct a fence within a right-of-way.
  - 4. Place or have placed any advertising material within a right-of-way.
- D. It shall be unlawful for any vendor of materials or goods intended from private use to place such materials or goods within a right-of-way unless a permit to do so has been issued by the County Engineer.

5-14-5. Requirements.

- A. Performance and Maintenance Bond, certificate of insurance and indemnification agreement is required when right-of-way activity involves altering or removing and replacing public owned facilities (road cuts, excavations, etc.) Insurance and indemnification agreement is required when right-of-way activity involves special use of public-owned facilities (parades, demonstrations, block parties, etc.)
- B. The applicant, if a contractor doing business as such, shall file a bond in the penal sum of not less than five thousand dollars (\$5,000.00) or as determined by the County Engineer, conditioned on the performance of the work and the maintenance of said work for a period of two (2) years from the completion of such work, all in accordance with the terms.
- C. In the event that the contractor is performing utility work then a bond in a sum of no less than twenty-five thousand dollars (\$25,000.00) or more as determined by the County.
- D. If appropriate, and the applicant is the owner of land contiguous to the right-of-way sought for a permit, the surety guarantee shall be filed in the penal sum of five hundred dollars (\$500.00).
- E. Any overweight or oversize transportation shall require a permit and shall post a bond in the sum of Five Thousand dollars (\$5,000.00) to use the county highways.
- F. If appropriate, the applicant shall further furnish to the County at the time of making application proof of the fact that they are covered by liability insurance in an amount not less than One Million dollars (\$1,000,000.00) for property damage and One Million dollars (\$1,000,000.00) for injury to any one person, and Two Million dollars (\$2,000,000.00) for an aggregate. Said applicant shall prove to the satisfaction of the County the payment of a premium for said insurance so that the County will be protected for a period of one (1) year from the date of the commencement of the work.
- G. The applicant agrees to indemnify, defend, exculpate and hold harmless Delaware County, its officials and employees from any liability due to loss, damage, injuries or other casualties of whatsoever kind, or by whosoever caused, to the personal property of anyone on or off the right-of-way arising out of, or resulting from the issuance of this permit or the activity connected herewith, or from the installation, existence, use, maintenance, conditions, repairs alteration, or removal of any equipment or material, whether due in whole or in part to the negligent acts or omissions of (1) the County, its officials, agents, or employees, or (2) the applicant, his agents or employees, or other persons engaged in the performance of the work, or (3) the joint negligence of any of them, including any claims arising out of the workman's compensation act or any other law, ordinance, order, or decree for a period of two (2) years. The applicant also agrees to pay all reasonable expenses and attorney fees incurred by or imposed on the County in connection herewith in the event that the applicant shall default under the provisions of this paragraph.
- H. A public utility or government operated utility shall be responsible for the design of the utility facility and/or

work to be installed within the right-of-way. The County will be responsible only for the review and approval of the utility's proposal with respect to the locations of the utility facilities to be installed and the manner of installation as related to the County Standards and Specifications. Approval of the permit does not relieve the utility of responsibility for the design. The County does not alter current regulations or authority for installing utilities nor for determining financial responsibility for replacing or adjusting utilities.

#### 5-14-6. Permit Fee.

A permit shall be required for work in the roadway and/or right of way. The following schedule shall be established for all permits:

Type Work to be done	Description of Work	Amount of Permit Fee	Additional costs
Residential	Driveway/Mailbox installation	\$50.00	NONE
Commercial	Driveway/Mailbox installation	\$200.00	Any outside engineering costs required shall be billed to the applicant
Right of Way/Roadway	Construction work in the right of way or roadway including road or lane closures and road cuts	\$100.00	Any outside engineering costs required shall be billed to the applicant
	Additional Daily Inspection fee	\$50 per day for each day of work until completion	Any outside engineering costs required shall be billed to the applicant
Drainage	Any drainage related activities including culverts, drainage pipes or other work that may affect surface or subsurface water	Cost of the permit fee as per Delaware County Storm Water ordinance	Any outside engineering costs required shall be billed to the applicant
Overweight and Oversize of vehicles and/or equipment	Use of county roads	\$100.00	Any outside engineering costs required shall be billed to the applicant

Any violation of the terms of this ordinance or the specifications adopted by the County Engineer and/or County Highway Department shall be assumed to require additional inspection and one additional daily permit fee will be assessed for each such infraction.

The requirements for daily permit fees shall end on the day a final inspection by the Engineer verifies that all requirements of this ordinance have been met and, if appropriate, a two-year maintenance bond is in place.

A permit to install facilities in the right-of-way is deemed also a permit to operate and maintain the facilities.

In the event that any action is required to address any maintenance issues during the maintenance period, the contractor shall be responsible for any additional work necessary to maintain the work. If a contractor is required to perform maintenance work, then the contractor shall also be required to secure a daily inspection permit and pay the fee for the time period required to perform the maintenance.

#### 5-14-7. Specifications and Procedure Instructions.

Specifications and Procedural Instructions shall be kept on file in the office of the County Engineer and/or County Highway Department and may be amended from time to time.

5-14-8. Penalties.

Maximum Fine. Every violation of this provision shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00).

In addition to any financial penalty, the County may also enforce these provisions with an injunction to ensure compliance. In the event that the County is required to seek and obtain an injunction, then the County shall receive all of its incurred costs, including attorney fees from the opposing party.

The County reserves the right to also take action to condemn or attach the bond of the contractor for violations of this ordinance and/or the specifications required for the work to be performed.

Each day or any portion of a day this ordinance is violated, then said each day or partial day shall constitute a separate offense.

**SECTION 2.** This ordinance shall be published by the Auditor of the County and shall be effective ten (10) days after publication.

Introduced this \_\_\_\_ day of \_\_\_\_\_, 2026. Adopted this \_\_\_\_ day of \_\_\_\_\_, 2026.

DELAWARE COUNTY BOARD OF COMMISSIONERS

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SHERRY RIGGIN, PRESIDENT

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STEPHEN D. BRAND, VICE PRESIDENT

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SHANNON HENRY, MEMBER

ATTEST:

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EDWARD CARROLL  
AUDITOR,  
DELAWARE COUNTY, INDIANA