

WHITLEY COUNTY ORDINANCE NO. 2020-14

AN ORDINANCE ESTABLISHING STANDARDS AND CONDITIONS FOR THE
ISSUANCE OF WHITLEY COUNTY HIGHWAY ROAD AND RIGHT-OF-WAY WORK
PERMITS AND THE ESTABLISHING OF SERVICE CHARGES THEREFORE;

WHEREAS, Indiana Code 36-1-3, et. seq. ("the Indiana Home Rule Act"), permits any county in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its county or internal affairs which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, The Board of Commissioners of the County of Whitley is the county legislative and executive body and is authorized to adopt ordinances and resolutions concerning Whitley County governmental operations; and

WHEREAS, the Indiana Home Rule Act allows Whitley County to impose license fees not greater than that reasonably related to the administrative cost of exercising a regulatory power, and service charges or user fees not greater than that reasonably related to reasonable and just rates and charges for the services provided.

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

SECTION 1. The Board of Commissioners of the County of Whitley hereby adopt the following standards and conditions for the issuance of Whitley County road and right-of-way work permits and the establishing of service charges therefore

I. Definitions:

- A. The term "Road" refers to the driving surface, including but not limited to an asphalt, concrete, or gravel surface
- B. The term "Right-of-Way" refers to 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.
- C. The term "Pavement" refers to any hard surface treatment on the road such as chip and seal, asphalt, or concrete.
- D. The term "County Highway Engineer" refers to the Whitley County Engineer



- E. The term "Work" refers to any activity such as, but not limited to, excavating, cutting, trenching, digging, tearing, boring, installing, filling, drilling, and/or placing.
- F. The term "Regulated Drain" refers to an open drain, a tiled drain, or a combination of the two as defined in IC 36-9-27-2.
- G. The term "Permit Holder" refers to the individual, corporation, utility or other entity that is submitting a Road or Right-of-Way permit application .

II. Application Charges: Prior to the commencement of any Work in the Right-of-Way, a permit application shall be submitted to the County Highway Engineer. A non-refundable \$40.00 processing fee shall be submitted with the permit application(s). Unless the County Highway Engineer determines that the permit application is for an entire project, a separate permit is required for each Road.

III. Permitting Fees:

A. Open Cut on Pavement:

- i. Permit Holder will be charged a fee of \$500.00 per single cut

B. Open Cut on Gravel Road:

- i. Permit Holder will be charged a fee of \$250.00 per single cut

C. Boring:

- i. For all Whitley County roads, the Permit Holder will be charged a fee of \$50.00 per crossing.

D. Driveway Permit:

- i. Permit Holder will be charged a \$50.00 flat fee. Processing fee does not apply to driveway permits.

IV. Application Process: Applicants shall perform and discharge all duties and responsibilities required in the application. The County Highway Engineer shall have the authority to review and issue the permit unless a known circumstance exists raising a question as to whether the permit should be issued, in which event the permit shall be conceded to the Board of Commissioners during a formal meeting. The Board of Commissioners typically meets every first and third Monday of the month.

V. Utility Work:

- A. In all instances where it is necessary to install an underground utility line across a paved road, the Permit Holder shall bore under the existing pavement. If the

Permit Holder requests to cut the pavement and it is determined necessary by the County Highway Engineer, the Whitley County Commissioners may authorize the pavement to be cut.

B. Open cutting of the road without the approval of the Commissioners shall only occur on gravel roads.

VI. Private or Agricultural Work: In all instances where a property owner desires to perform any Work in the Right-of-Way, a permit is required. Right-of-way work includes, but is not limited to the following:

A. Any excavation

B. Any filling, regrading, and/or contouring of the roadside ditch or a drainage swale

C. Any installing, repairing, or replacing of private tiles across or through the Right-of-Way

VII. Installation of Tile and Filling in Roadside Ditch: The installation of tile and filling in of a roadside ditch is prohibited. A formal written request may be submitted to the County Highway Engineer for consideration and may be approved under special circumstances. Any roadside ditch that is filled in without the consent of the County Highway Engineer shall be excavated and re-contoured by the Whitley County Highway Department at the expense of the individual that filled in the roadside ditch without consent.

VIII. Driveway Work: 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 that permit must meet the following applicable specifications:

A. 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. There shall be no landscaping in the Right-of-Way

E. Mailbox installations shall comply with Whitley County Ordinance 2005-15

IX. Emergency Work: Emergency work may be made without a permit anytime human life may be endangered. Subsequent to the emergency work and within one working

day, the County Highway Engineer shall be notified. If required, as determined by the County Highway Engineer, a formal permit must be thereafter obtained.

- X. County Regulated Drains: 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.
- XI. Standards of Performance: 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.

Whenever an open cut is permitted, the Permit Holder shall, upon the completion of the installation, backfill the trench with material as specified by the County Highway Engineer. the road surface shall then be promptly replaced with like materials in a condition that is at least equal to or better than it was prior to the open cut. The surface that has been disturbed must maintain a smooth and uniform condition for a period of 6 months after the Work is completed at the Permit Holder's expense. When any installation is commenced, the work shall be carried on expeditiously and without any unnecessary delay.

It shall be the duty of the Permit Holder to erect proper warning signs and/or barricades and to provide flag-men or other appropriate warning devices proportionate to the risks involved throughout the process of the work and all Permit Holders shall indemnify and hold Whitley County, its agents, employees, elected officials, and assigns, harmless from any and all claims and causes of action, if any, which may be asserted or filed against the County 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.

- XII. Fines: All fines are defined below and apply to a first offense. In the event that the failure to obtain a permit happens on multiple occasions, the Whitley County Board of Commissioners may fine the responsible person(s)/company in an amount they deem suitable.

A. Open Cut on Pavement:

- i. Failure to obtain a permit prior to making an open cut on pavement will incur a fine of at least \$1,000.00 per cut and will not exceed a maximum of \$2,500.00 per cut.

B. Open Cut on Gravel Road:

- i. Failure to obtain a permit prior to making an open cut on a Gravel Road incur a fine at least \$500.00 per cut and will not exceed a maximum of \$1,500.00 per cut.

C. Boring:

- i. Failure to obtain a permit prior to boring will incur a fine of \$250.00 per crossing.

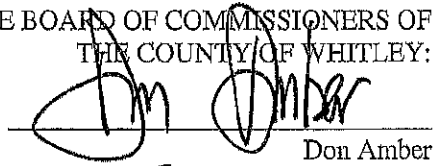
D. Driveway:

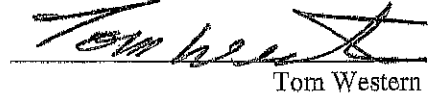
- i. Failure to obtain a permit prior to installing a new access to any property from a Whitley County road will incur a fine of \$100.00

I. Effective Date: This ordinance shall be in full force and effect on passing by the Whitley County Board of Commissioners

II. All as Passes and Ordained this 21 day of December, 2020.

THE BOARD OF COMMISSIONERS OF
THE COUNTY OF WHITLEY:


Don Amber


Tom Western


George Schrupf
COMMISSIONER