

1999-016

AN ORDINANCE REGULATING ACTIVITIES
WITHIN PUBLIC RIGHTS OF WAY
UNDER THE JURISDICTION OF
THE DELAWARE COUNTY COMMISSIONERS
(RIGHT OF WAY USE PERMIT)

Whereas; the Delaware County Commissioners have a duty to protect the safety and welfare of persons using public right-of-way for transportation purposes and,

Whereas; other facilities owned privately or by public or government operated utilities are permitted to occupy space within the same right-of-way and,

Whereas; the need to protect the safety and welfare of the public should not be compromised more than necessary by such other permitted uses.

Therefore be it ordained that;

I. 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 with in a public right-of-way without first obtaining a "right-of-way use permit" from the office of the County Engineer.

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

A. Bond – The posting of required surety to guarantee prompt and satisfactory replacement and repair of facilities damaged or disrupted by the permittees operations.

B. County Engineer – The County Engineer or any designee.

C. Department – The Highway Engineering Department of Delaware County, Indiana.

D. Inspector – The authorized representative of the County Engineer assigned to make detailed inspections of permittees performance.

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

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

G. Right-of-way – The boundaries established by a recorded plat, duly adopted thoroughfare plan or usage for the purpose of providing public transportation or utility services.

III. 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.

A. Installation or repair public utility facilities or private connections to public utility facilities.

B. Installation of mailboxès, mailbox approaches, sidewalks or any such object of lawful encroachment which would share right-of-way space with governmental transportation needs.

C. 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.

D. Creation or alteration of egress or ingress to private property bordering a right-of-way.

E. 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.

IV. Unlawful Activities within the right-of way.

A. It shall be unlawful for a person to drive a vehicle over or park a vehicle upon any curb, sidewalk or grassed area, not otherwise designated as an access point, within the right-of-way.

B. 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.

C. 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.

V. 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.)

A. The applicant, if a contractor doing business as such or a utility, shall file a bond in the penal sum of not less than \$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 2 years from the completion of such work, all in accordance with the terms of this ordinance. 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 \$500.00.

B. If appropriate, the applicant shall further furnish to the County at the time of making application proof of the fact that he is covered by liability insurance in an amount not less than \$300,000.00 for property damage and \$300,000.00 for injury to any one person, and \$1,000,000.00 for any one occurrence. 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 year from the date of the commencement of the work.

C. 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 therewith, 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.

D. A public utility of government operated utility shall be responsible for the design of the utility facility to be installed within the right-of-way. The County will be responsible only for the review and approval of the utilities 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. The County limits itself to matters which preserve the safe operation, maintenance and integrity of the County right-of-way.

VI. Permit Fee

A. The permit fee for utilities, contractor doing utility work or commercial drive installation shall be paid at the time of ~~fining~~ and shall include \$40.00 for plan review and \$20.00 per working day for the number of days estimated to complete the permitted activity. The said fee is intended to reimburse the County its cost of plan review, daily inspections and record keeping. If the permitted activity cannot be completed within the estimated time then additional daily permit must be purchased prior to the time needed. Unused daily permit fee will be refunded or credited to the applicant.

B. The permit fee for items under III B of this ordinance shall be \$10.00 for plan review and \$10.00 for a final inspection. The fee for an existing mailbox inspection shall be \$10.00.

C. The permit fee for a residential application of an item under III D shall be \$10.00 for plan review and \$10.00 for inspection. Permits for items under III B are included, where appropriate, in the aforementioned fee.

D. The permit fee for items under III C of these ordinances shall be \$10.00 per day of activity.

E. Any violation of the terms of this ordinance or the specifications adopted by the Board of County Commissioners pursuant to this ordinance shall be assumed to require additional inspection and one additional daily permit fee will be assessed for each such infraction.

F. 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.

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

VII. Specifications and Procedural Instructions shall be kept on file in the office of the County Engineer and may be amended from time to time with approval of the Board of County Commissioners.

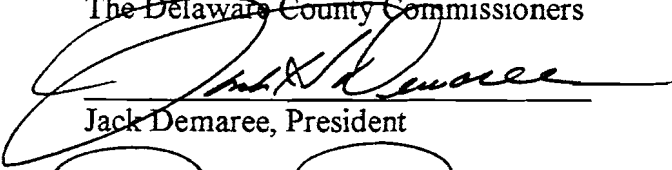
VIII. Penalties.


A. Maximum Fine. Every person convicted of a violation of any provision of this ordinance shall be punished by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

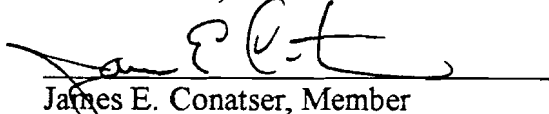
B. Each day any portion of the ordinance is violated shall constitute a separate offense.

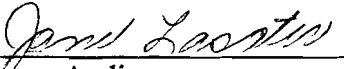
IX. This ordinance shall be in full effect from and after it's passage by the Delaware County Commissioners on this 12. day of July, 1999.

The Delaware County Commissioners


Jack Demaree, President


Ron Bonham, Vice-President


James E. Conatser, Member

Attested: 
Jane Lasater, Auditor