

**ORDINANCE 2025-13**  
**AMENDING CHAPTER 115**  
**ORDINANCE ESTABLISHING RIGHT OF WAY USE PROVISIONS**

**BE IT ORDAINED** by the Common Council of the City of Portland, Indiana as follows:

95.03 RIGHT-OF-WAY USE PERMIT.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOND.** The posting of required surety to guarantee prompt and satisfactory replacement and repair of facilities damaged or disrupted by the permitted operations.

**BOARD.** The Board of Public Works and Safety of Portland, Indiana.

**INSPECTOR.** The authorized representative of the Board assigned to make detailed inspections of permitted performance.

**PERMIT.** A form of written authorized to permit action to be done within the right-of-way as per outlined specifications.

**PERSON.** Shall include any natural person and any entity recognized by the law.

**RIGHT-OF-WAY.** The boundaries established by a recorded plat, a duly adopted thoroughfare plan or usage for the purpose of providing public transportation or utility services.

**CITY.** The City of Portland, Indiana.

**UTILITY FACILITIES.** Either above-ground or below-ground utility facilities including, without limitation, telephone, electronic, electric, cable, fiber optic, gas, water, sewer, heating and cooling facilities.

**ABOVE-GROUND UTILITY FACILITIES.** Includes, without limitation, telephone, wireless communication, electronic, electric, cable, fiber optic, gas, water, sewer, heating and cooling facilities existing at, or above ground level.

**BELOW-GROUND UTILITY FACILITIES.** Includes, without limitation, telephone, electronic, electric, cable, fiber optic, gas, water, sewer, heating and cooling facilities existing below ground level.

(B) Activities requiring a right-of-way use permit.

(1) Except as provided in division (D) below, 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 city:

(a) Any construction, altering or removing of any surface or subsurface material, digging or excavating in a town right-of-way;

(b) Installation or repair of above-ground utility facilities, below-ground utility facilities, private connections to public utility facilities, or facilities of any other entity having the right to use the public right-of-way; and

(c) Installation of mailbox approaches, sidewalks or any such object of lawful encroachment, which would share right-of-way space with governmental transportation needs, or to construct a temporary fence or barrier which may be required for environmental or construction purposes.

- (2) *Exceptions.* The following activities do not require a right-of-way use permit:
- (a) Maintenance of grass, drives or sidewalks within the right-of-way;
  - (b) Any work or activities conducted in a right-of-way or public grounds performed directly by the city or State of Indiana;
  - (c) Public road construction and maintenance done under a contract with the city; and

(C) Unlawful activities within the right-of-way. Unless a special permit to encroach is issued by the Board, it shall be unlawful for any person to:

- (1) Construct a parking area within a right-of-way;
- (2) Construct a fence within a right-of-way other than a temporary fence required for environmental or construction purposes;
- (3) Place any advertising material within a right-of-way; and
- (4) Perform any work not listed under division (B) of this section within a right-of-way without a permit.

(D) Permit application. A person desiring to undertake any of the activities set out in division (B) of this section shall sign and file an application with the Clerk-Treasurer of the city, and secure a right-of-way use permit before starting any work or activity inside the right-of-way, all as set in the following sections. The Board is the permit issuing authorities for all activities other than set forth in division (B) of this section. The Board shall exercise its discretion in the issuance or denial of a permit and may impose such reasonable conditions as it sees fit prior to the issuance of a permit. At a minimum, the Board shall require all asphalt cuts in any city street or alley to be repaired and all asphalt replaced. The Board may, in its sole discretion, require that the permittee repave the entire block. No work shall be done or activity taken prior to the issuance of the permit except in the event of an emergency requiring immediate remedial action for utility facilities, in which case the utility shall comply with division (G) of this section.

(1) Contents of permit application. The application for a right-of-way use permit shall be submitted to the Board and shall, at a minimum, include the following information and documents:

- (a) The name, address and phone number of the person or entity for whom the work is to be done or the activity is to be conducted, and the name, title and phone number of the person responsible for the work or activity;
- (b) The name and address of the contractor responsible for the work or activity;
- (c) The reason for, estimated cost of and an exact description of the work to be done or activity to be taken;
- (d) The precise location of the work or activity site and the location and dimensions of any excavation;
- (e) Whether all or a portion of a street will be closed and for how long;
- (f) The expected beginning and ending dates of the project, including all repairs to the affected areas;
- (g) The method of traffic control to be used by the applicant at the site; and
- (h) Any other pertinent information requested by the Board.

(2) Insurance requirements. There shall be furnished to the Clerk-Treasurer at the time of making application written proof that the applicant or the contractor for the applicant is covered by public liability insurance in an amount not less than \$300,000 for property damage and \$1,000,000 for injury to any one person, and \$2,000,000 for any one occurrence. The applicant

shall prove to the satisfaction of the Board the payment of a premium for the insurance so that the town will be protected for a period of one year from the date of the commencement of the work.

(3) Bond requirements. The applicant or contractor for the applicant, shall file a bond in an amount not less than \$5,000 or 10% of the estimated cost of the project, whichever is greater, as determined by the Board, conditioned on the performance of the work and the maintenance of the work for a period of two years from the completion of such work, all in accordance with the terms of this section. Upon review of the application, the Board may exempt individual property owners above stated bond requirement.

(4) Indemnity agreement. The applicant shall furnish a written agreement to indemnify and hold harmless the city, its officials, agents and employees from any liability due to loss, damage, injuries or other casualties of any kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way arising out of, or resulting from the issuance of the permit or the work or 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:

(a) The city, its officials, agents or employees;

(b) The applicant, his or her agents, contractors or employees, or other persons engaged in the performance of the work or activity; or

(c) The joint negligence of any of the above, including any claims arising out of the Workman's Compensation Act or any other law, ordinance, order or decree, for a period of the applicable statute of limitations. The indemnity shall also provide that the applicant shall pay for all costs associated with the removal and/or moving of the public utility facility or other object located within the right-of-way or reimburse the city for all expenses it incurs in the event that the city removes and/or moves the public utility facility or object on behalf of the applicant. The indemnity shall also provide that the applicant shall pay all reasonable expenses and attorney fees incurred by or imposed by the city in connection herewith in the event that the applicant shall default under the provisions of the indemnity agreement.

(5) Installation and design of the facility. The applicant shall be responsible for the installation and design of the facility to be installed within the right-of-way. The Board will only be responsible for the review and approval of the proposal with respect to the locations of the facilities to be installed and the manner of installation. Approval of the permit does not relieve the applicant of responsibility for the design. The city does not alter current regulations or authority for installing utility facilities nor for determining financial responsibility for replacing or adjusting utility facilities. The city limits itself to matters which preserve the safe operation, maintenance and integrity of the town's rights-of-way.

(E) Permit fees. A permit fee shall be paid at the time of filing the application as set out below.

(1) Above-ground utility facilities. The permit fees for conducting any work or other activities on above-ground utility facilities shall be \$500.00 and must be paid at the time of filing. Failure to comply with this requirement shall be punished by a fine not to exceed \$750.00.

(2) Below-ground utility facilities. The permit fees for conducting any work or other activities on below-ground utility facilities shall be \$500.00 and must be paid at the time of filing. Failure to comply with this requirement shall be punished by a fine not to exceed \$3,000.00.

(3) All other work or activities. The permit fees for conducting any other work or activity requiring a right-of-way permit shall be \$25 and must be paid at the time of filing. Failure to comply with this requirement shall be punished by a fine not to exceed \$250.00.

(4) Bond In Lieu of Permit Fee. The applicant or contractor may, in the Board's discretion, waive the payment the above-described permit fees if the applicant or contractor agrees to post a surety bond in an amount not less than \$10,000.00 in favor of the City to ensure compliance with this Ordinance. Said bond shall be in full force and effect prior to the commencement of any work in the City's right of way and remain in effect for the duration of any project. The utility or contractor shall provide a copy of said bond to the City prior to the commencement of any right of way work. In the event that a bond is posted pursuant to this paragraph, the bond set out in paragraph (D)(3), above, shall be waived.

(5) Violations. Any violation of the terms of this section or the specifications and instructions adopted by the Board pursuant to this section shall be assumed to require additional inspection and an additional inspection fee shall be assessed for each such infraction. The city may enforce this ordinance by injunction, fine or any other legal remedy. Each day of a violation constitutes a separate offense.

(F) Board to establish rules and regulations. The Board is hereby authorized to establish such specifications and procedural instructions for work and activity within the right-of-way as may be necessary to accomplish the purposes of this section. The specifications and procedural instructions shall be kept on file in the office of the City Hall and may be amended from time to time by the Board.

(G) Emergencies. In the event of an emergency, work on a utility facility within the public right-of-way may commence without submitting an application for a right-of-way use permit. In such event, the person responsible for completing the work or activity shall:

(1) Notify the city of the emergency and provide a brief description of the work or activity to be done as soon as practicable after learning of the emergency. Such emergency notification under this division (G)(1) must be sufficient to notify the city at the earliest time possible following the discovery of the emergency and may be either written or oral;

(2) Submit an application, bond and indemnity agreement for a right-of-way use permit within 24 hours of starting its work or the next working day to the Clerk-Treasurer, whichever is sooner;

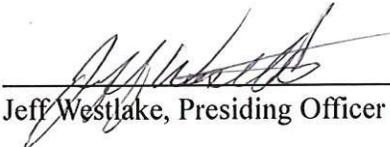
(3) Attach to the application a full and complete written explanation concerning the emergency and its cause; and

(4) In the event that the Board shall determine that in its judgment an emergency did not exist, it shall forward a copy of the application and all attachments to the City Attorney as a violation of this section.

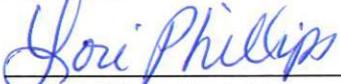
(H) Relocation. The city shall require relocation of public utility facilities, private connections to public utility facilities or facilities of any entity having the right to use the public right-of-way when the city is installing utility facilities in the right-of-way. The costs for the relocation of the utility facilities shall be paid by those entities or persons that have installed the same in the city's right-of-way.

(1) Written notice required. Unless specifically stated otherwise, all notifications required under this Section shall be in writing. Any notification other than an initial emergency notification, which is not made in writing will be deemed to have never occurred.

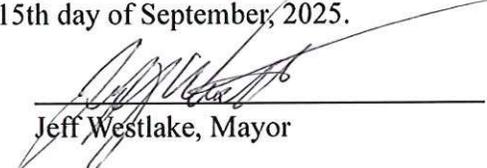
**PASSED AND ADOPTED** by the Common Council of the city of Portland, Indiana on this 15th day of September, 2025.

  
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Jeff Westlake, Presiding Officer

ATTEST:

  
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Lori Phillips, Clerk-Treasurer

Submitted to and approved by me on this 15th day of September, 2025.

  
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Jeff Westlake, Mayor