

# Montgomery County Board of Commissioners

## Ordinance 2021- 31

### An Ordinance Amending the County's Right-of-Way Policies

WHEREAS, the Board of Commissioners periodically reviews County policies in order to manage risk related to providing government services, provide for ease of administration in policies, and make technical corrections; and

WHEREAS, the County Highway Director and County Engineer have recommended that the Board provide for a permit procedure and relocation procedure which govern the County's rights-of-way; and

WHEREAS, based upon these recommendations, the Board now finds that Section 90.01 of the County Code should be amended in order to provide for these regulations; and

WHEREAS, the Board finds that the proposed amendment to Section 90.01 furthers the County's interests, is in the best interests of the citizens of Montgomery County, and should be approved.

NOW, THEREFORE, IT IS ORDAINED by the Montgomery County Board of Commissioners that section 90.01 in the County Code should be amended to read as follows:

**“§90.01       COUNTY ROADS AND RIGHTS-OF-WAY**

~~(A) The purpose of this section is to establish procedures for obtaining permission to use any part of the right-of-way of the roads of the County for laying pipe or cable or to cross any of the roads with pipe or cable. (1982 Code §5-84-1).~~

~~(B) (1) Any person or corporation wishing to use any part of the right-of-way or cross any roads to lay pipe or cable shall obtain permission in writing from the County Highway Department using the form as set out by the County. (1982 Code §5-81-2)~~

**(A) DEFINITIONS.**

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) **EXCAVATION AND CONSTRUCTION.** Installation, repair, and replacement of driveways, curbs, and sidewalks; the installation, repair, and replacement of all public utilities and other utilities, and other projects involving construction activities over, upon, or beneath county roads, alleys and public ways in the unincorporated area of Montgomery County.

(2) **MINOR REPAIRS.** Work personally performed by property owners to existing sidewalks or driveways located on public streets abutting their property. Minor repairs may include crack repair, removal and replacement of existing driveways to the same line and grade, or resurfacing. Minor repairs exclude any street curb cut work.

(3) **PUBLIC ROADS.** All public roads, streets, alleys, public ways and public rights-of-way in the unincorporated area of Montgomery County, Indiana.

(4) **ROUTINE MAINTENANCE.** Periodic repair or replacement of utilities or physical components within or adjacent to the public road, Routine maintenance excludes any street curb cut work.

(5) **ROAD CURB CUT WORK.** Work done to or through the actual street surface or curb and gutter section.

**(B) PERMITS.**

(1) *Permit required.* All excavation, construction, and road curb cut work on public roads in the unincorporated areas of the County shall require a permit issued by the County Highway Department upon application of the property owner, licensed contractor or utility performing the work.

(2) *Procedure.* Any person required to obtain a permit must apply for such a permit at the County Highway Department and pay the applicable permit fee.

(3) *Emergencies.* In an emergency involving a risk to public health or safety, construction or excavation may be commenced without a permit provided the person or entity performing the work has made a reasonable effort to inform the County Highway Department and any utility whose facilities might be involved, and shall make written application for a permit at the beginning of the next business day.

(4) *Work commenced without a permit.* Work commenced without a permit, or adherence to this section's emergency provisions, ~~will may~~ result in the imposition of fines for each day the work is undertaken or a public road is left in disrepair as a result of work done without a permit.

(5) *Fees.* All ~~applicants for~~ permits, except those for minor repairs, routine maintenance, entities exempted by a written municipal agreement, ~~for residential driveways,~~ and initial installation of public improvements within new subdivisions, shall pay a permit fee. ~~The fees are:~~

~~(a) for a non-residential driveway cut on a paved road is \$100, and the permit holder must provide a performance bond, in a form acceptable to Montgomery County in the amount of \$2,500;~~

~~(b) for the placement, relocation or removal of utility poles and overhead lines is \$100 per 1,000 lineal feet, and the permit holder must provide a performance bond, in a form acceptable to Montgomery County, in the amount of \$5,000;~~

~~(c) for subdivision entrance permits:~~

~~(i) for 20 or fewer lots, the fee is \$100;~~

~~(ii) for 21 to 40 lots, the fee is \$200;~~

~~(iii) for 41 or more lots, the fee is \$300.~~

~~Fees must be submitted with the application for the permit.~~

~~, as authorized by the Board of Commissioners by ordinance. A base permit fee shall be required for any excavation or construction necessary for a single connection, a single driveway and adjoining sidewalk, or a cut for installing facilities, not exceeding 100 linear feet on public streets. The permit fees for excavation and construction of projects exceeding 100 linear feet will consist of the base permit fee plus an additional fee for each linear foot of excavation and construction in excess of 100 linear feet.~~

~~(6) *Duration of the permits.* All permits shall expire within 1 year of the date of issuance. Once work is commenced, it must be completed withing 30 days. If a longer period of time is needed, the permit holder may request that the Highway Director extend the work period for up to an additional 30 days. 30 days of the commencement of the work authorized by the permit, unless a longer period of time, not exceeding 60 days, has been requested at the time of the~~



~~permit issuance. The County highway Director may extend a permit beyond its original term for up to 60 days, if applicant can demonstrate the need for additional time to complete the work.~~

### **(C) OTHER REQUIREMENTS.**

(1) *Bond requirement.* A bond will be provided to the County to assure the proper repair of the public road before commencement of the work or immediately thereafter in the case of an emergency. The amount of the bond will be determined by the County Highway Director based upon the work to be performed and the cost of remediation if the applicant fails to perform.

(2) *Public safety precautions.* “Road Closed” and/or “Work Ahead” signs must properly mark the work site. Barricades and flaggers (if necessary) must separate exposed work from vehicle and pedestrian traffic. No trenches are to be left open overnight. *All traffic control measures must comply with the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Transportation.*

(3) *Responsibility for maintenance.* It shall be the responsibility of the person or entity issued a permit to make sure that the public roads in or on which they perform work are properly repaired at the completion of the work and that particular places where the work was done are kept in good condition for a period of three years after the completion of the work. If the permit holder fails to perform proper repairs or maintenance for the three-year period, the County may perform any repair or maintenance work and bill the permit holder.

(4) *Additional rules and regulations.* The County Highway Department may adopt excavation specifications standards and rules for the making of cuts, for related matters involving excavations and restoration of pavements or surfacing.

*(5) Flowable Fill. Flowable fill is required for excavation at depths of six feet or more.*

### **(D) Relocation of public utilities.**

1. *Purpose.* The County is authorized by Indiana law to manage and regulate the rights-of-way of its public roads. The purpose of this section is to establish a procedure for road improvement projects that involve the relocation of utility facilities by providing for the exchange of information and the implementation of their respective responsibilities among the County, utilities, and the contractors.

#### *2. Applicability.*

- a. This section applies to improvement projects by Montgomery County for which is paid solely from local funds.
- b. This section does apply to public highways improvements projects conducted by the Indiana Department of Transportation (“INDOT”) or its designee or for improvement projects for which Montgomery County received federal funding. In these events, the INDOT regulations in 105 IAC 13 shall be used

between the parties.

3. *Definitions.*

a. "Compensable work" means facility relocation for which Montgomery County will reimburse the utility under Indiana law.

b. "Contractor" means the person or entity that enters into a contract with Montgomery County for an improvement project.

c. "Day" means any calendar day of the year. If more than one (1) day, the term includes any consecutive day or days of any year or years.

d. "Facility" 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 the like service, directly or indirectly, to the public. The term includes, but is not limited to, cable television systems.

e. "Facility relocation" means any activity involving a facility that is needed for an improvement project including, but not limited to, abandoning, altering, deactivating. Installing, maintaining, modifying, moving, removing and/or supporting.

f. "Highway" means any roadway under the jurisdiction of Montgomery County or where an improvement project is planned.

g. "Improvement project" means the construction, reconstruction, rehabilitation, and process incidental to building, fabricating, or bettering any of the following:

(i) Projects within the unincorporated areas of Montgomery County that the County is required by statute to build and maintain.

(ii) A local project administered by Montgomery County including but not limited to road projects and road-related projects.

The term does not include routine maintenance.

h. "Major project" means an improvement project that due to scope or complexity, involves a long-term design process of more than twelve (12) months or is otherwise designated by Montgomery County as a major project.

i. "Minor project" means an improvement project that due to scope or complexity, involves a short-term design process of less than twelve (12) months or is otherwise designated by Montgomery County as a minor project.

j. "Project plan" means the plans for the improvement project suitable for the design of facility relocation that Montgomery County sends to the utility.



k. "Utility" means the owner of a facility.

l. "Work plan" means a plan of the utility to carry out facility relocation to accommodate an improvement project.

*4. Identification and Notification.*

a. Montgomery County shall send by U.S. certified mail to the identified utility an initial notice of the proposed improvement project. A notice shall include the following:

- i. The name or route number, or both, of the highway.
- ii. The geographical limits of the improvement project.
- iii. A general description of the work to be done.
- iv. The anticipated date an approved work plan will be needed.
- v. The anticipated ready for contract date of the improvement project.
- vi. The name of the designer and other contact information, if available.
- vii. Montgomery County's determination of whether the project is major or minor.

Montgomery County shall inform the utility of the latest anticipated dates with each notice.

b. Within thirty (30) days after receiving the initial notice, the utility shall respond in writing to Montgomery County with a:

- i. description of the type and location of its facilities within the geographical limits of the proposed improvement project; or
- ii. statement that the utility has no facilities within the geographical limits of the improvement project.
- iii. Montgomery County will list the utilities and identify the locations of all facilities identified on one (1) or more plan sheets

*5. Verification of Existing Facilities.*

a. Montgomery County shall send by certified mail to each utility a copy of the plan sheets that shows all existing facilities known to Montgomery County that are within the right-of-way of the improvement project or the geographical limits of the improvement project.

b. Each utility shall do the following within thirty (30) days of receiving the plan sheets:

- i. Review the accuracy of the plan as to the location of its existing facilities.
- ii. Declare in writing to Montgomery County whether the information is accurate or inaccurate.
- iii. Detail in writing to Montgomery County any inaccuracies in the information.

Failure to reply within the allotted time shall be deemed verification that the information is accurate.

*6. Work Plan Development.*

a. In conjunction with the mailing the plans sheet(s), Montgomery County will send by mail preliminary project plans to the involved utilities. After receiving the preliminary project plans, each utility shall do the following:

- i. Review the preliminary project plans.
- ii. Declare in writing to Montgomery County whether there are or are not conflicts between its facilities and the improvement project.
- iii. Detail in writing to Montgomery County any conflicts between its facilities and the proposed improvement project within:
  - (A) thirty (30) days for minor projects; or
  - (B) sixty (60) days for major projects.

b. Failure to reply within the allotted time shall be deemed an indication of no conflicts. In the event of conflicts, the utility may recommend design changes for the improvement project to minimize utility costs or delays. Montgomery County will review the recommended changes and implement the changes where appropriate.

c. After completion of the preliminary project plan development, Montgomery County will proceed with the development of final project plans for the improvement project. The County shall send by mail to the utility a copy of the preliminary final project plans for the improvement project, generally before those plans are complete, but which shall have sufficient detail to allow the preparation of the utility work plan. The utility shall use the preliminary final project plans to develop and provide to the County its work plan. A work plan shall be submitted:

- i. whether or not any facility relocations are required; and
- ii. within:
  - (A) sixty (60) days after receiving the preliminary final project plans for a minor project; and
  - (B) one hundred twenty (120) days after receiving the preliminary final project plans for a major project.

If a utility or the County determines there is a potential for conflict between work plans, the County will schedule a meeting. The County and the affected utilities will attend to coordinate the work. An additional thirty (30) days will be allowed to furnish the work plan if coordination is required with another utility or utilities. Additional time may be allowed by the department for unusually complex or extensive facility relocations, but not more than one hundred eighty (180) days.

d. The work plan shall include the following:

- i. A narrative description of the facility relocation that will be required.
- ii. A statement whether the facility relocation is or is not dependent on work:
  - (A) to be done by:
    - (1) another utility; or
    - (2) the County or contractor; or



- (B) on the acquisition of additional right-of-way;  
with a description of that work.
- iii. A statement whether the utility is or is not willing to allow the contractor to do the required work as part of the highway contract.
  - iv. The:
    - 1. earliest date when the utility could begin to implement the work plan; and
    - 2. number of days to complete the required work.
  - v. The expected lead time in days to:
    - 1. obtain any required permits;
    - 2. obtain materials;
    - 3. schedule work crews; and
    - 4. obtain the necessary additional right-of-way.
  - vi. A drawing of sufficient detail and scale to show the proposed location of the facility relocation.
- e. For work that the utility believes it is entitled to be compensated by the County, the work plan shall also include a cost estimate for the facility relocation including appropriate credits for betterments and documentation of easements and compensable land rights.
- f. Montgomery County shall review the work plan to ensure that it:
- i. is compatible with:
    - 1. County permit requirements;
    - 2. the project plans;
    - 3. the construction schedule; and
    - 4. other utility relocation work plans; and
  - ii. has a reasonable:
    - 1. relocation scheme; and
    - 2. cost for compensable work.
- g. If the work plan submitted by the utility is not compatible or reasonable, the County shall notify the utility by mail as soon as practicable. The utility shall submit a revised work plan within thirty (30) days of receipt of the notification by the County. The County shall review the revised work plan, and, if the work plan is still not compatible or reasonable, the County will prepare an alternative work plan for submission to the utility. Within thirty (30) days of receipt by the utility of the alternative work plan, the utility may accept the alternative work plan or request, in writing, specific changes. The County shall review any requested changes to the alternative work plan. The County shall adopt a final work plan that considers the interests of the utility, contractor, and public, to ensure safety and reliability of the utility facilities and the highway and avoid the imposition of unnecessary and unreasonable costs. The final work plan adopted by the County will be the approved work plan; and
- h. A highway utility agreement, if required, shall be executed at this time.
- i. The County shall notify the utility by mail as soon as practicable when the final work plan is approved.



(2) Construction.

- a. Montgomery County shall notify the utility by mail not less than thirty (30) days before the utility is required to begin the implementation of the approved work plan. The utility shall acknowledge the notification by mail within fifteen (15) days.
- b. Montgomery County will include or reference a copy of each approved work plan in the highway contract.
- c. If an approved work plan is dependent on work by the contractor, the contractor shall do the following:
  - i. Provide Montgomery County and the utility a good faith notice not less than fifteen (15) days before the contractor's work is expected to be complete and ready for the utility to implement its work plan.
  - ii. Follow up with a confirmation notice to the County and the utility not less than five (5) days before the contractor's work will be complete so that the utility may implement the work plan.
- d. The utility shall notify Montgomery County and contractor, if identified, as follows:
  - i. At least five (5) days before beginning fieldwork within the right-of-way.
  - ii. When the work is complete.

(3) Work Revision Plans.

- a. If, before the letting date of the improvement project, the project plan is revised so that additional facility relocation work is found necessary,
  - i. Montgomery County shall:
    - 1. furnish to the utility the revised project plan; and
    - 2. identify to the utility the revisions within the project plan; and
  - ii. The utility shall provide to Montgomery County a revised work plan, except that the time allowed for the utility to submit the revised work plan after receiving the revised project plan shall not exceed sixty (60) days.
- b. If, after the letting date of the improvement project, additional facility relocation is found necessary, Montgomery County shall notify the utility to prepare an expedited work plan as soon as practicable for submission to the County.

(4) Responsibilities.

- a. The utility, contractor, and Montgomery County shall perform the duties imposed by the approved work plan and contract within the time frames specified.
- b. Factors that shall excuse a utility from meeting the schedule in its approved work plan include the following:
  - i. The facility relocation was impacted by any of the following:
    - 1. Significantly differing site conditions.
    - 2. Unexpected impacts of other utilities.

3. Other unforeseen circumstances that could not have been reasonably anticipated through due diligence.
4. A force majeure event.
- ii. Occurrence of severe weather or other factors beyond the control of the utility directly affecting the approved work plan.
- iii. The final project plans differ substantially from the plans provided to the utility.
- iv. If a facility is discovered during the process required by IC 8-1-26, has not been previously identified as being within the improvement project limits, and the utility can show the following:
  1. The facility was installed after the date the County identified the affected facilities as described above.
  2. A proper permit was obtained for the installation of the facility from Montgomery County.
- c. If an approved work plan requires adjustment due to the occurrence of one (1) or more factors enumerated in subsection (b), the County and the utility shall proceed as directed in section 8(b) of this rule.

#### **E. SPECIAL REGULATIONS RELATING TO TELECOMMUNICATIONS PROVIDERS**

1. providers may collocate small cell facilities on existing utility poles and wireless support structures;
2. providers may perform routine maintenance on wireless facilities and replace wireless facilities with wireless facilities that are substantially similar to or the same size or smaller than the wireless facilities being replaced; and
3. providers with authority to use public rights-of-way may install, place, maintain or replace micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes.

#### **F. PENALTY.**

Any person or entity violating this article is subject to a fine in the amount of \$500 per day, plus the cost of the required permit.  
(Ord. 2021- 14, passed 4-12-21).”

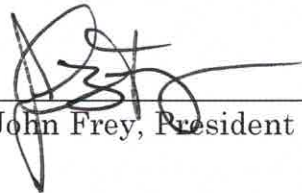
IT IS FURTHER ORDAINED that this amendment will take effect upon adoption.




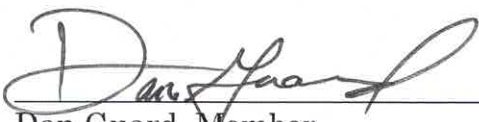
IT IS FURTHER ORDAINED that all other provisions of the County Code which are not expressly amended by this ordinance will remain in full force and effect.

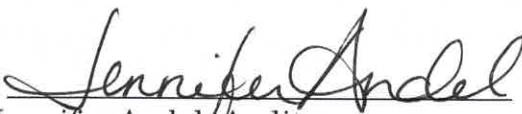
Adopted this 13<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2021.

Montgomery County  
Board of Commissioners:

  
\_\_\_\_\_  
John Frey, President

  
\_\_\_\_\_  
James D. Fulwider, Vice President

  
\_\_\_\_\_  
Dan Guard, Member

Attest:   
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Jennifer Andel, Auditor