

CHAPTER 755

USE OF, AND WORK WITHIN, A COUNTY RIGHT-OF-WAY

The purpose of this chapter is to provide minimum standards for the protection of life, health, environment, public safety and general welfare and for the use of and work within a county right-of-way, and its provisions shall be interpreted in a manner which serves this objective.

755-1 Right-of-Way Work Permit

(A) Requirement. Unless expressly excepted by this Chapter, a Right-of-Way Work Permit shall be obtained for each of the following types of activities conducted within the County highway right-of-way:

- (1) constructing, installing, placing, relocating, maintaining, or improving any driveway, field entrance, logging road or drive, public or private road approach, utility pull-off drive, sidewalk, multi-use trail or similar feature, temporary/construction drive, or modifying a curb;
- (2) grading, trenching, excavating, or construction;
- (3) boring or pushing under the road or cutting the road surface;
- (4) temporarily obstructing or closing a roadway (e.g., moving a house) or storing equipment or materials;
- (5) placing new poles/support structures and/or installing new overhead pole/support structure lines and/or removing existing pole/support structures or overhead pole/support structure lines;
- (6) exceeding the posted weight limit; and
- (7) changing the type of an existing driveway or the primary use of a field entrance or other ingress/egress facility (see subsection (A)(1) above); or increasing the number of parcels, or structures served by a road, drive, driveway, entrance, or other ingress/egress facility.

(B) Exceptions. In emergency situations, the following types of activities are excluded from the permit requirement:

- (1) the repair of utility facilities and of storm water management facilities;
- (2) the removal of storm-damaged trees;

(3) the replacement or removal of a single overhead pole/support structure in an existing location due to damage or when installing new lines to an existing pole/support structure or making a utility connection to an existing pole/support structure line;

(4) the storage of a dumpster or construction equipment or material in the right-of-way for only one day, during daylight hours, in a manner that does not obstruct traffic or sight distances and that is not likely to damage any of the features of the right-of-way (pavement, drainage, culverts, grass, grading, etc.);

(5) the movement of mobile homes or manufactured housing pursuant to an approved oversized load permit issued by the State; and

(6) the placement/replacement of a mailbox support structure.

(C) Regardless of whether a Right-of-Way Work Permit is required, all work within Monroe County highway rights-of-way shall be designed, constructed, performed, and maintained in accordance with the standards, traffic control/safety practices (e.g., flaggers, signage, etc.), notification, and inspection provisions, set forth in the Manual for Construction Within and Adjacent to Monroe County Right-of-Way. The party responsible for the work shall be liable to Monroe County for any damages to the County's highway rights-of-way and resulting from the work. Monroe County shall be notified of all excepted permit requirement work done within the rights-of-way.

755-2 Application.

(A) Right-of-Way Work Permit application forms and instructions shall be available at the Monroe County Highway Department offices. The forms and instructions shall be prepared by the Monroe County Highway Director ("Director") and shall require the submission of all documentation and information necessary to determine whether the work, as proposed, complies with the Manual for Construction Within and Adjacent to Monroe County Right-of-Way, including for example and without limitation, the following types of documentation and information, as deemed appropriate to the project by the Director based on his/her experience and engineering judgment:

(1) A clear and concise site plan and drawing that describes the work to be performed;

(2) A maintenance of traffic plan;

(3) A traffic study or traffic impact analysis if required;

(4) A bond; and

(5) Other necessary documentation and information.

(B) The Director may require the Applicant to submit additional or supplementary documentation and information before, during, or after completion of the work, if such documentation and information is necessary to determine whether the work will be, is being, or was, completed in the manner required by this Chapter. The Director shall determine the number of copies of the Application to be submitted. Applications, including all required supporting documentation and information, shall be submitted to the Director for review and for action. Applications must be completed in full and signed by the property owner or designated representative. A signed letter of consent from the property owner must accompany the permit application if the application is not submitted by the property owner.

755-3 Application Timing and Emergency Repairs.

Right-of-way work permits shall be applied for, and must be obtained, from the Director prior to the commencement of the work covered by the permit. Any work begun or completed without a permit is a violation of this section, unless expressly exempted from the permit requirement or performed in accordance with the after-the-fact permit provisions that are available in certain emergency situations. The above notwithstanding, in the event of an emergency, repairs to utility and storm water facilities may be undertaken without first having obtained a Right-of-Way Work Permit. However, the person or entity making the emergency repairs must: (1) notify the Monroe County Highway Department of the commencement of the work as soon as practicable, via voicemail or email; and (2) apply for a Right-of-Way Work Permit within seventy-two (72) hours of the time the emergency work is begun. For purposes of this Section, the term “emergency” is defined to mean “an unanticipated event (e.g., storm, collision, leak, etc.) resulting in damage to utility facilities to the extent that immediate repairs are necessary to restore utility service, to prevent further damage or loss to the utility’s facilities or resources, or to protect the public safety.” Any work completed as emergency work which does not meet the foregoing definition of emergency is a violation of this Chapter.

755-4 Bond.

Unless exempted or granted a waiver, an applicant for a Right-of-way Work Permit shall provide a permit bond that names “The Board of Commissioners of the County of Monroe, Indiana,” as the beneficiary, and that is in the amount that is designated by the Director, using the guidelines set forth in this section. The bond shall not expire in less than one (1) year from its submission to the Director. A certificate of insurance is not acceptable for bonding purposes. The bond must name the Board of Commissioners exclusively and not be subordinate to any other claims against the bond. The same bond may not be used for more than one (1) project at a time. The bond shall insure that the applicant on the permit will complete all permitted work in accordance with the requirements of this Chapter and any other applicable sections of the Monroe County Code. In the event a permit bond expires or the bond company cancels the permit bond and all work authorized by any permits already issued using the permit bond have not been completed and the Monroe County Commissioners have not released the bond, then said bond shall become immediately due and payable to the Monroe County Commissioners. At the discretion of the Director, a maintenance bond may be required from an applicant as a condition of approval or as a condition of releasing the permit bond. All permits issued for the cutting of a road shall have a three (3) year maintenance bond which cannot be canceled prior to

three (3) years from the completion of the road cut. If the bond company sends notice that the bond is being canceled at any time prior to three (3) years, the total amount of the bond shall become immediately due and payable to the Monroe County Board of Commissioners. If the maintenance bond is not submitted upon completion of the work, the total amount of the permit bond covering the work will become immediately due and payable to the Monroe County Commissioners and no additional permits will be issued to the applicant.

In general, the following are the minimum bond amounts that will be required by the Director:

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|------|---------------------------------------------------------------------------------|--------------------------------------------|
| (1) | Open road cut | \$10,000.00 per location; |
| (2) | Underground construction, grading, trenching or excavation parallel to the road | \$5,000.00 per mile or fraction of a mile; |
| (3) | Directional bore or jacking pipe | \$5,000.00 per push or bore; |
| (4) | Placement/removal of poles/support structures/lines | \$5,000.00 per mile or fraction of a mile; |
| (5) | Tap pit (including a directly associated directional bore or jacking pipe) | \$5,000.00 per tap pit; |
| (6) | Storage of dumpsters, equipment, or materials on the right-of-way | \$2,000.00 per location; |
| (7) | Commercial/Industrial driveway with accel taper and decel lane) | \$15,000.00 per driveway; |
| (8) | Commercial/Industrial driveway | \$5,000.00 per driveway; |
| (9) | Temporary/construction/logging drive | \$5,000.00 per drive; |
| (10) | Public road approach/private road approach | \$15,000.00 per approach; |
| (11) | Utility pull-off drive | \$5,000.00 per drive; |
| (12) | Sidewalk or sidepath construction or repair | Determined by Project Scope; |

- (13) Temporary road closure not involving house or structure moving \$1,000.00 per closure;
- (14) Temporary road closure related to house or structure moving \$30,000.00 per closure;
- (15) Vehicle weight restriction exemption \$30,000.00 per permit; and
- (16) Maintenance bonds 10% of initial permit bond amount.

Where there is a higher risk to County infrastructure, or the permitted work is much larger or complex than normal permitted work, the Director is hereby authorized to increase the bond requirement after reviewing the application for permit and before approving the permit. Bonds may be waived by the County Commissioners or the County Engineer for construction or utility work in conjunction with a City, County, State, or Federal road or infrastructure project if the applicant is the respective agency and the project is of benefit to the citizens of Monroe County. Even if a bond waiver is granted, a permit shall still be filed and must be approved before the work may commence, and the party responsible for the work shall be liable for any damages to the Monroe County highway rights-of-way and infrastructure resulting from the work.

755-5 Permits.

After the application is approved, the County Highway Department shall issue a permit. The Director shall keep on file all driveway permit applications and a record of all permits granted, subject to record retention requirements. Permits shall be issued in sufficient counterparts to provide one (1) copy for the permanent file at the Highway Department, one (1) copy for the Monroe County Planning Department, one (1) copy for the Monroe County Drainage Board, one (1) copy for the applicant, and one (1) copy for the applicant's agent or contractor, if any. The applicant shall retain a copy of the permit at the site of the work until the construction is completed and approved by the Director. An approved permit will expire one (1) year from the date of application, or ninety (90) days prior to the expiration of the permit bond covering the work applied for, whichever first occurs. A new permit is required for any work not completed prior to permit expiration.

755-6 Notifications and Inspections.

The permit holder shall notify the Highway Department at least two (2) work days, and no more than four (4) work days, in advance of the commencement of any work within the County highway right-of-way, and at least two (2) work days, and no more than four (4) work days, in advance of the completion of any work within the County highway right-of-way. The site of the proposed work shall be inspected prior to the commencement of the work, at least one (1) time during the work, and after the completion of the work. Additional inspections may be

required at the discretion of the Director. By applying for a permit, the permit holder and/or owner of property authorizes the Highway Department to enter the property, including contiguous areas, to inspect work within the right-of-way at any reasonable time.

755-7 Specifications, terms, and conditions applicable to the use of, and to work within or adjacent to, County highway rights-of-way.

(A) All work performed within the County right-of-way shall conform with, and be subject to, the following standards, terms, definitions, and conditions:

(1) Manual for Construction Within and Adjacent to Monroe County Right-of-Way;

(2) The latest version of the Indiana Manual on Uniform Traffic Control Devices or the latest version of the Handbook for Temporary Traffic Control in Construction, Maintenance, and Utility Operations, published by LTAP;

(3) Any construction, alteration, or relocation of a driveway within a County right-of-way shall take into consideration the following:

(a) sight distances on the existing road, including curves and topography;

(b) spacing – distances to roads, drainage features, other driveways and field entrances;

(c) drainage; and

(d) the Monroe County Thoroughfare Plan and other future anticipated improvements to the County road.

(4) Driveways located, or to be located, within the County right-of-way may be permitted as residential driveways if they serve no more than two (2) single-family or duplex residences. Permits for residential driveways serving two (2) single-family or duplex residences may be approved provided the owners of all residences served, or to be served, by the driveway have entered into a recorded agreement that binds themselves and their successors and that provides for the following:

(a) a mutual easement for ingress and egress;

(b) an agreement for the maintenance and repair of the drive; and

(c) a waiver to petition Monroe County, or any successor unit of government, to be responsible for the maintenance of the road or to have the mutual driveway considered a public road necessitating maintenance by any unit of government.

(5) Driveways located, or to be located, within the County right-of-way that serve, or will serve, more than two (2) single-family or duplex residences are subject to the private road approach provisions of this Chapter, and may be approved if:

(a) the Board of Commissioners of Monroe County, Indiana, authorizes the private road approach, finding that it would be in the best interests of the citizens of Monroe County; and

(b) the conditions of paragraph (4) above have been met.

(6) Driveways and road approaches shall be constructed to the dimensions, grades and pavement thicknesses and of the material types, as approved by the Director, based on the design and construction standards contained within the Manual for Construction Within and Adjacent to Monroe County Right-of-Way.

(7) If work within the County highway right-of-way impedes the normal flow of traffic, traffic control devices and flaggers shall be used to preserve traffic safety as set out in the Indiana Manual on Uniform Traffic Control Devices and as required by the Director. Safe traffic flow will be maintained at all times by the applicant and/or person performing the work. If a road closing is approved by the County Commissioners, the permit holder will mark and maintain any detours approved by the Director and will notify all appropriate agencies of the time and location of the closing a minimum of three (3) work days prior to the closing.

(8) Utility trench backfill for cuts of the roadway shall be done in accordance with the Manual for Construction Within and Adjacent to Monroe County Right-of-Way.

(9) Pavement shall be restored to a smooth permanent surface. Temporary patches shall be maintained in a smooth and safe condition by the permit holder until a permanent patching is accomplished. Temporary patching shall not exceed thirty (30) days, except during the period from November 15th through April 15th each year when the materials are not available. During this time period the applicant may leave a temporary patch in place, but a routine inspection shall be made by the applicant to insure the temporary patch is in good condition. An extension beyond the thirty (30) day requirement may be granted at the Director's discretion upon request, with a written justification, by the applicant. Aggregate surfaces shall be restored in kind and shall be stabilized to prevent loose material.

(10) Driveway access cannot be located over or immediately next to a storm sewer inlet, except for drives in a platted subdivision with rolled curb and gutters.

(11) The filling of the curb or gutter line of the drainage system of any road, with any material or pipe is prohibited. All curb modifications shall require a permit.

(12) Tree trimming operations do not require a permit to work in the right-of-way; however, they are bound by all of the requirements of this Chapter and are required to obtain a road obstruction permit if they desire to close a road.

(13) Breaks in access controlled roadway right-of-way or limited access right-of-way will not be allowed.

(14) All sod, swale, side ditches, shoulders and other improvements within the right-of-way which is disturbed by any work or construction within the right-of-way shall be repaired or replaced in a condition equal to or better than they were prior to the work or construction. Materials used in the repair of any disturbed area and the method used to make the repairs are subject to approval by the Director. Prior to commencement of the work, the applicant or contractor shall document (including photographs) the condition of the right-of-way and shall submit this documentation to the Director.

(15) The Highway Department shall be called before any digging is commenced. Anyone who cuts or damages an underdrain tile, storm sewer pipe or culvert pipe whether it appears abandoned or not, shall notify the Director immediately upon cutting the tile or pipe. The person cutting the tile shall then repair the tile as directed by the Director. If the tile or pipe is a regulated drain, then immediate notification and repair approval shall also be made to the Monroe County Highway Department.

(16) Loading or unloading of any equipment or materials on a County road which results in an undue or unsafe restriction of traffic or damage to the pavement is not allowed and is a violation of this Chapter.

(17) Crossing or traveling on a County road with a tracked vehicle directly in contact with the pavement surface is a violation of this Chapter. Crossing or traveling along the road will be allowed provided suitable protection (timbers, tires, etc.) is provided for the pavement. Damage to the pavement, grading, drainage, or other roadway structures and features is a violation of this Chapter and must be repaired by the party using, or directing the use of, the tracked vehicle.

(18) Dragging or depositing mud, soil, rocks, aggregate, or other earthen or construction materials, or animal waste onto a County road from any site is not allowed and is a violation of this Chapter. Mud, soil, etc., dragged or deposited on the road due to entering or leaving a site, shall be removed and cleaned up immediately. A full time road cleanup crew and/or wheel cleaning mechanisms shall be installed on sites that are muddy and that have a high volume of vehicles entering and leaving the site, all in accordance with best management practices approved by the Director. Aggregate shall be installed at construction and logging entrances to reduce the amount of soil and debris tracked onto the roadway. When construction or logging operations have been completed, the contractor shall be responsible for immediately removing aggregate placed at a site entrance as a requirement of this section.

(19) Depositing or storing construction materials or cleaning equipment in a manner that causes soils, rocks, construction material, etc., to flow into the County roadway drainage system, is a violation of this Chapter.

(20) All work within or adjacent to the County highway right-of-way shall be designed and constructed in a manner that shall not cause water to enter onto the roadway, and shall not interfere with the drainage system on the right-of-way. The applicant shall provide, at applicant's expense, the necessary drainage structures which will become an integral part of the existing right-of-way drainage system. The type and design of these structures are set forth in the Manual for Construction Within and Adjacent to Monroe County Right-of-Way. Drainage structures shall not restrict the existing right-of-way drainage system nor any adopted federal, state, or local government drainage plan. The right-of-way drainage systems are for the protection of the County highways they serve. They are not designed or intended to serve the drainage requirements of abutting properties beyond that which has historically flowed to the right-of-way. Drainage to the right-of-way shall not exceed the undeveloped historical flow and absolutely no detention is allowed on County highway right-of-way. Any and all proposed deviations to the requirements above must have the Director's approval prior to making application for the work.

(21) Installation of lawn sprinkler systems with heads and pipes within the County highway rights-of-way is not allowed.

(22) Rocks, concrete, or other types of non-break away obstructions are not to be located within ten feet (10') from the edge of pavement or face of curb.

(23) Mailbox posts shall be wood, in accordance with the Manual for Construction Within and Adjacent to Monroe County Right-of-Way. Mailboxes and posts are not to be of masonry or concrete construction. Mailboxes are not to have metal or concrete reinforcement. Mailbox posts are not to be of metal construction.

(24) Failure to timely comply with a stop work order issued by the Director is a violation of this Chapter.

(25) Failure to provide traffic control, to provide a safe work site (safety fencing, shoring, etc.), or to comply with the conditions set out in a permit or as directed by the Director is a violation of this Chapter.

(26) A permit is not required for surfacing or resurfacing of a driveway provided it does not change any drainage flows and does not expand the width of the existing drive. The maintenance of any drive and its associated culverts will remain the responsibility of the applicant or subsequent property owner and must be maintained in a manner which does not interfere with the use of the right-of-way for its dedicated purpose.

(27) Improvements installed within the County highway right-of-way, with or without a permit, are installed at the risk of the owners of the improvements, and must be removed or relocated, at the improvement owner's expense and within a reasonable time, at the Director's request, if removal or relocation is necessary to the County's safe and efficient maintenance, alteration, improvement, or use of the County highway right-of-way.

(28) Monroe County Commissioner approval must be obtained, in accordance with I.C. 8-20-8-1, et seq., prior to the Director's issuance of a permit for the temporary closing of a County road. Completed applications for temporary road closing shall be presented to the Board County Commissioners for its consideration during a meeting scheduled to take place within thirty (30) days of the submission of the application. If the temporary road closing relates to the movement of a house or structure, permit approval may be withheld if the route, traffic management plan, or time of the move is found to be unacceptable by the Director, based on the Director's experience and engineering judgment.

(B) In addition to the foregoing standards, all work must comply with applicable zoning, subdivision, and development approval standards, conditions, and commitments (e.g., subdivision control standards and conditions made part of a subdivision approval). In the event of a conflict between applicable standards, conditions, and/or commitments, the standard, condition, or commitment that is deemed to be more exacting by the Director shall control, unless expressly waived or varied by the appropriate board, commission, or agency (e.g., waiver of a subdivision standard by the Plan Commission).

755-8 Hold Harmless.

Regardless of whether a permit is required, as a condition of working within the County right-of-way, the person performing and the person causing the work to be performed shall hold harmless and indemnify Monroe County from any and all claims for injuries and damages arising out of their occupation and work in the County right-of-way.

755-9 Violations.

The violation of any requirement or standard of this Chapter shall constitute a Class A Ordinance Violation. Each day that a violation occurs or continues to exist constitutes a separate and distinct violation of this Chapter. Civil penalties, restitution of all damages, and any other remedies authorized by law (see, e.g., Monroe County Code Chapter 115) may be sought for each separate and distinct violation. Any person who has directed work to be done within the County highway right-of-way shall be jointly and separately liable for all actions taken by the person, or by the person's contractor or representative.

755-10 Right of Appeal.

(A) The Applicant aggrieved by the denial of a permit under this Chapter, or any other person whose property interests would be significantly harmed by any work permitted under this Chapter, shall have the right to appeal the permit decision to the Board of Commissioners.

(B) A person, other than the Applicant, whose property interests would be significantly harmed by any work permitted under this Chapter may appeal the matter only if the person files with the Board of Commissioners an affidavit:

- (1) specifically setting forth the person's affected property interests; and
- (2) alleging that the person is aggrieved by the permit decision.

(C) An appeal of a permit decision under this Chapter must be taken within thirty (30) days after the permit decision is made.

(D) Any person aggrieved by the decision of the Board of Commissioners may appeal such decision to the Monroe Circuit Court in accordance with the procedures set forth in I.C. 36-2-2-27 and -2-28.

755-11 Manual for Construction Within and Adjacent to Monroe County Right-of-Way.

The Manual for Construction Within and Adjacent to Monroe County Right-of-Way, which is marked as Exhibit A, is incorporated by reference to this Chapter as if more fully set forth herein.

755-12 Duty to Maintain Land Adjacent to Right-of-Way.

(A) Artificial Condition. An owner or occupant of real property adjacent to a County right-of-way may not create or permit to remain thereon an artificial condition:

- (1) which interferes with use of the right-of-way by the County; or
- (2) which poses an unreasonable risk of harm to persons who are traveling with reasonable care on a public road or highway.

(B) Natural Condition. An owner or occupant of real property adjacent to a County right-of-way may not permit to remain thereon a natural condition:

- (1) which interferes with use of the right-of-way by the County; or
- (2) which poses an unreasonable risk of harm to persons who are traveling with reasonable care on a public road or highway.

(C) Violations. If a condition violating subsections (A) or (B) exists on real property, employees or contractors of the County may enter onto the property and take appropriate action to bring the property into compliance with this Section. However, before action to bring compliance is taken, all persons holding a substantial interest in the property shall be given written notice by the County and reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the County takes action to bring compliance:

(1) the expenses incurred by the County to bring compliance shall constitute a lien against the property; and

(2) the County may issue a bill to the owner of the real property for the costs incurred by the County in bringing the property into compliance with this Section, including administrative costs and removal costs.

[End of Chapter]