

**TOWN OF DILLSBORO ORDINANCE 2024-10- 3**

An Ordinance regarding the use of right-of-way in the Town of Dillsboro. This ordinance shall repeal Section 93.01 to 93.06 and Section 93.99 and adopt the described Section 93.01 to 93.14 and 93.90 to 93.96.

**Chapter 93 Section 93.01-93.14 and 93.90-93.96 USE OF THE RIGHT-OF-WAY**

WHEREAS, the Dillsboro Town Council has authority of pass local ordinances to ensure the health, safety and welfare of its citizens; and

WHEREAS, the maintenance of local streets and local infrastructure is of primary importance to the Town and its citizens; and

WHEREAS, any closure, impediment, digging, cutting, excavating, or improvement to any street, right-of-way, alley or public place, or into or through any pavement thereon, has a potential negative impact to local streets and infrastructure;

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL, TOWN OF DILLSBORO:

**§ 93.01 Compliance with chapter required.**

It is unlawful for any person to do, cause or permit to be done any closure, impediment, digging, cutting, excavating, or improvement to any public street, right-of-way, alley or public place, or into or through any pavement thereon, in the town except in accordance with and as provided for in this chapter.

**§ 93.02 Right-of-way use permit required.**

Any person closing, prohibiting access to, digging, cutting, excavating, or constructing an improvement on or causing the same to be made in pavements or adjacent to pavements shall apply for a right-of-way use permit as required by this chapter. A person shall not begin the aforementioned activities until a right-of-way use permit has been duly granted as provided in this chapter. The right-of-way use permit shall be kept on site in paper or digital form and be able to be produced as requested by town staff.

Work done at the direction of the town council which includes, but is not limited to, maintenance and improvements to existing infrastructure, shall be exempt from the permitting process.

**§ 93.03 Application and permit fee.**

(A) Any person desiring to close, prohibit access to, make any opening or excavation, or make any improvement contemplated by this chapter is subject to application and permit fees as described:

(1) The application fee covers the cost of submitting an application for review. The fee does not guarantee the issuance of a permit upon review. The application fee is due upon submittal of the application for review and will not be refunded upon rejection of the application by town staff or cancellation of application by the applicant.

(2) The permit fee is the cost associated with the issuance of the permit upon approval. The permit fee is due before the permit is issued to the applicant.

(B) The application and permit fees to close, prohibit access to, or make any opening or excavation contemplated by this chapter are specified in Section 93.04 ("fee table") of the Town of Dillsboro Code of Ordinances and shall be paid to the town, prior to closing, prohibiting access to, or making an opening or excavation. Application and permit fees may be adjusted or waived at the discretion of the town council. The following entities, or their designees, are exempt from having to pay the fee required by this section and by Section 93.24 ("fee table"):

- (1) Town of Dillsboro Utilities Department;
- (2) Dearborn County;
- (4) State of Indiana;
- (5) Not-for-profit agencies with a 501(c)(3) designation; and
- (6) Any utility or entity performing work on a device or appurtenance owned or operated by and at the direction of the town.

**§ 93.04 Fee.**

(A) The right-of-way use and excavation fees shall be \$50.00.

**§ 93.05 Permit application and site plan required.**

(A) Any person desiring to close, prohibit access to, or make any opening or excavation contemplated by this chapter shall file the following with the town council, or their designees:

(1) An application for right-of-way use, which shall contain all information deemed necessary by the town council or their designee;

(2) A site plan which may identify the following and/or additional details, at the discretion of the town council or their designee:

(a) The distance from all streets, alleys, driveways, entrances, intersections, and/or road cuts wherein the excavation will be made and the device or structure being installed as a result of the excavation will be located;

(b) The specific location of all proposed improvements; and

(c) The specific location of all existing utilities within or near the proposed work area;

(d) The specific location of all existing improvements, structures, either privately or publicly owned, already located within or near the work area;

(e) A maintenance of traffic plan that is compliant with the Manual on Uniform Traffic Control Devices (MUTCD), if the proposed work will impact traffic.

(3) A bond in accordance with Section 93.26 ("bond required—amount—conditions"); and

(4) A certificate of insurance in accordance with Section 93.28 ("insurance and indemnity").

**§ 93.06 Bond required—Amount—Conditions.**

At the time of filing the application under the provisions of Section 93.23 ("application and permit fee"), the person desiring to close, prohibit access to, or make any opening or excavation shall also file a bond payable to the town or a cash deposit.

The bond or cash deposit shall be in a sum as shown in Section 93.27 ("bond amounts") or as designated by the town council, or their designee. Bond and cash deposit amounts are per permit unless a larger bond is on file in an amount sufficient to encompass multiple active permits.

Town council, or their designee, may require an amount not to exceed the total projected cost of the project, plus twenty-five percent, in the event such amount is deemed necessary to ensure performance of the contractor.

Bonds shall be conditioned to hold the town harmless from any loss, cost or damage by reason of such proposed work, and that the same shall be done in all respects in conformity with the requirements of all laws regulating the same.

Entities with a bonding agreement approved and filed with the town council shall be exempt from this section. The following entities are eligible for this bonding agreement:

- (1) Town of Dillsboro Utilities Department;
- (2) Dearborn County;
- (5) State of Indiana;
- (6) Indiana Department of Transportation
- (7) Not-for-profit agencies with a 501(c)(3) designation; and
- (8) Any utility or entity performing work on a device or appurtenance owned or operated by and at the direction of the town.

Contractors hired by these entities are required to have a bond on file with the town unless otherwise approved in the agreement approved and filed with the town council.

**§ 93.07 Bond amounts.**

Permit	Bond Amount (per permit)
Street cut	\$20,000.00
Push or bore	\$5,000.00
Placement/removal of poles	\$5,000.00
Residential driveway installation	\$5,000.00

Storage of dumpsters or construction materials	\$5,000.00
Sidewalk replacement	\$5,000.00
Commercial driveway installation	\$10,000.00
Lane, or sidewalk closure	\$5,000.00
Street closure	\$5,000.00

**§ 93.08 Insurance and indemnity.**

Each applicant for a permit under this chapter shall provide a certificate of liability insurance, insuring the applicant, and naming the town as co-insured, against the following liabilities and in the following amounts relative to such activity:

- (1) Personal injury: \$100,000.00 per occurrence and \$300,000.00 in the aggregate; and
- (2) Property damage: \$50,000.00 per occurrence and \$100,000.00 in the aggregate.

Each applicant for a permit under this chapter shall provide a document approved by the corporation counsel for the town, in which the applicant agrees to indemnify and forever hold harmless the town for losses and/or expenses arising from the opening and excavating work performed pursuant to a permit issued under this chapter.

**§ 93.09 Permit issuance.**

It shall be the duty of the town council, or their designee, upon the filing of the application, site plan, approved bond, proof of insurance, and the payment of a fee as required by this chapter, to issue to the petitioner a permit to close, prohibit access to, or make such excavation and do such work, and such permit shall describe the kind and location of the same. Staff may deny permits deemed incomplete or for work not in the public's interest as determined by the town council, or their designee. The permit may also describe any restrictions or special instructions by which the responsible party to the permit must abide.

**§ 93.10 Traffic control devices.**

Traffic control plans for all streets, sidewalks, or other town right-of-way within the town shall be made in compliance with the Indiana Manual on Uniform Traffic Control Devices. Other specific safety precautions may be required by the Town Manager, or their designees. All proper traffic control devices including but not limited to barricades, signage, lights, temporary markings, cones, and other safety precautions shall be maintained by the party to whom the permit was issued under the provisions of this chapter until construction has been inspected and approved by the Town Manager, or their designees. Deviation from or failure to maintain approved traffic control plans shall be considered a violation of this chapter and shall be subject to penalty as described in Chapter 93.90 -96.

**§ 93.11 Location of mains and pipes—Supervision of work.**

It shall be the duty of the responsible party in connection with all work contemplated by this chapter, through its duly authorized agents, to determine the proper location for all utilities including, but not limited to, water, gas, storm and sanitary sewer. It shall also be the duty of the responsible party to coordinate repair and incur expenses if there are damages to existing utilities due to their work. The town council, or their designee may supervise the replacement of the excavation and pavements and see that all work in connection therewith is completed and in compliance with all federal, state, and local safety requirements and specifications required hereunder. The following persons shall be considered responsible parties, in connection with all work contemplated by this chapter:

- (1) The property owner;
- (2) Persons with any possessory interest in the property; and
- (3) Any person who, whether as property manager, principal agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who, either individually or in concert with another, took part in the work.

**§ 93.12 Refilling of excavations.**

After any work requiring excavation has been properly completed, the responsible party to the permit under the provisions of this chapter shall refill that portion of the street, alley, right-of-way, or public place excavated and restore the excavated area in accordance with specifications and standards as set forth by the town council, or their designee. Excavation done on a street that has been paved in the last three years may require a mill and pave of the full traffic lane or lanes as determined by the Town Manager.

In the event the responsible party fails to follow the above requirements or the refilling of the excavation fails, the town may refill the excavation, or employ another contractor to do so, at the expense of the responsible party. Such expense may be deducted from the bond required by Section 93.26 ("bond required—amount—conditions"). Fines may also be assessed per the fine schedule in Section 93.94 ("penalty") for non-compliance.

In the event a second inspection of the refilled excavation is necessary as a result of noncompliance with any section herein, a re-inspection fee of \$25.00 shall be charged by the town council, or their designee, for each subsequent inspection that occurs.

**§ 93.13 Protection of sides of excavation—Injury to adjoining right-of-way.**

Any person making excavations or causing the same to be made in pavements or adjacent to pavements, shall so protect the sides of the excavation that the adjoining soil shall not cave in. It is unlawful for any person to excavate so as to undermine or injure any adjoining right-of-way including, but not limited to, curbs, streets, tree plots and sidewalks.

**§ 93.14 Emergencies.**

A utility may perform a closure of and excavation in the town's right-of-way without having a permit to do so under this chapter in the event an emergency necessitates closure and excavation work. An emergency is defined as a sudden and unexpected event that, if left uncorrected, will cause serious damage to property or jeopardize the safety and health of persons.

Any emergency closure in town right-of-way shall be done in compliance with the Indiana Manual on Uniform Traffic Control Devices temporary traffic control guidelines. Excavations must be repaired to town standard for temporary or final repair.

In the event an emergency occurs, the affected party shall contact the Town's emergency contact number to inform them of the excavation work being performed.

When closure and excavation due to an emergency occurs, the contractor conducting such emergency closure and excavation shall have current bonding and insurance on file with the town per requirements in Sections 93.06 ("bond required—amount—conditions") and 93.08 ("insurance and indemnity"). The contractor conducting such emergency closure and excavation shall file an application for a permit no later than seventy-two hours from the commencement of the said emergency work.

**§ 93.90 Authority.**

All departments, officials and public employees of the town that are vested with the duty or authority to review and/or issue permits shall conform to the provisions of this title of the Town of Dillsboro Code of Ordinances and shall issue no permit for any use, excavation, activity or purpose which would be in conflict with the provisions of this title. Any permit issued in conflict with the provisions of this title shall be null and void. The town councils, or their designee are designated enforcement officials with full authority to investigate, issue notices of violation, and secure remedies, including but not limited to injunctive relief, for any violation of this title.

**§ 93.91 Penalties and remedies for violations.**

(A) For the purposes of this chapter, a violation shall be defined as violation of or failure to comply with:

- (1) Any provision or requirement of Chapter 93; or
- (2) The required elements of the submission on the basis of which any permit or approval has been rendered hereunder.

(B) Any violation as defined herein is hereby declared a common and public nuisance, and any person who is a responsible party as defined in Section 93.95(a) with respect to such violation shall, in addition to any other penalty or remedy provided herein, be liable for maintaining a common and public nuisance.



(C) Any violation, as defined in subsection (a) above, shall be subject to the penalties and remedies provided in this chapter, and the town shall have recourse to any remedy available in law or equity.

(D) Each day that any violation continues shall be considered a separate violation for purposes of the penalties and remedies specified in this chapter. A violation continues to exist until corrected. Correction includes, but is not limited to:

- (1) Cessation of an unlawful practice;
- (2) Removal of a building, structure, or other improvement;
- (3) Faithful or otherwise-approved restoration or replacement of a building, structure, site, excavation, traffic control devices, walk around, or natural feature;
- (4) Any other remedy specified in this title; and/or
- (5) Other remedy acceptable to the town.

(E) The town may institute appropriate action to impose and collect fines and/or other penalties; to enforce or defend any action taken pursuant to Section 93.95(d) of this chapter; and to prevent, enjoin, abate, remove or correct any violation of or noncompliance with this title or any condition, requirement, or commitment established in connection with this title or any development approval hereunder.

(F) The remedies provided for in this title shall be cumulative, and not exclusive, and shall be in addition to any other remedies available in law or equity.

### **§ 93.93 Administration.**

The Town Manager, or their designee shall maintain a record and tabulation of all complaints and investigations, and the resolutions of those complaints, whether made by citizens or by staff; communicate with citizen complainants about the progress being made in investigating and resolving their complaints; and report to pertinent boards or commissions on an as-needed basis.

**§ 93.94 Penalty.**

(A) Any violation that is subject to this chapter shall be subject to a civil penalty of not more than \$2,500.00 for each such violation, and not more than \$7,500.00 for the second and any subsequent violation, in addition to any and all other remedies available to the town, except where a lesser fine is specified herein.

(B) The following violations of this title shall be subject to the fines listed in the table below for the first offense. In addition, if a responsible party commits a second or subsequent violation of the same provision within three years of the first such violation, regardless of whether the second or subsequent violation is on the same property as the first such violation, the listed fine for such second or subsequent offense shall be twice the previous fine, subject to the maximum set forth in subsection (a) above. (For example, a violation that is subject to a \$100.00 fine per the table will be subject to a \$200.00 fine for the second offense, a \$400.00 fine for the third offense, and so forth.)

(C) Fines for right-of-way use violations.

Right-of-way Use Violation	Fine
Right-of-way closure or excavation without a permit	\$500.00 maximum
Unrepaired damage to right-of-way following excavation	\$100.00
Failure to comply with town standards and specifications for right-of-way repairs	\$100.00
Right-of-way use without approved maintenance of traffic plan	\$500.00
Failure to maintain approved maintenance of traffic plan; including but not limited to maintaining compliant traffic control devices	\$500.00
Failure to have permit on site	\$100.00

Failure to reopen right-of-way per approved dates for right-of-way use permit	\$250.00
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**§ 93.95 Enforcement procedures—Notices of violation.**

(A) If the Town Manager, or their designee finds that any violation subject to this chapter is occurring, or has occurred, a notice of violation (NOV) may be issued to the responsible party. Any person charged with violating any provision(s) of this chapter may, in the sole discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this chapter's provisions. For purposes of issuing a notice of violation, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation:

- (1) The property owner;
- (2) Persons with any possessory interest in the property; and
- (3) Any person who, whether as property manager, principal agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who, either individually or in concert with another, causes, maintains, suffers or permits the violation to occur and/or to continue.

(B) The notice of violation (NOV) shall be in writing and shall be served on all of the responsible parties in one or more of the following manners: delivery in person or by first class mail. The notice of violation shall state:

- (1) The location of the violation;
- (2) The nature of the violation;
- (3) The date the violation was observed;
- (4) The daily fine assessed for the violation;
- (5) Additional remedies the town may seek for violation;
- (6) That the fine is paid to the Town of Dillsboro;
- (7) That the notice of violation may be appealed to the town council; and
- (8) That the fine may be contested in the Dearborn County Circuit Courts.

(C) Each item of noncompliance enumerated on the notice of violation shall be considered to be a separate violation, and each day that each such item of noncompliance continues shall be considered to be a separate violation. Fines shall accrue from the date the violation commenced.

(D) In addition to issuing a notice of violation (NOV), the town council, or their designee may utilize and/or seek through legal proceedings one or more of the following remedies:

(1) Revoke or withhold other approvals, certificates and/or permits relevant to the site on which the violation has occurred or to the parties committing the violation; and/or

(2) Issue a stop work order; and/or

(3) Request the building department to issue a stop work order and request the building official to suspend and withhold all building code inspections relevant to the development or use of the site on which the violation has occurred; and/or

(4) Draw on a performance or maintenance surety, as necessary, to affect any remedial actions required to abate the violations; and/or

(5) Revoke the permits, certificates and/or approvals that have been violated; and/or

(6) Any and all penalties and remedies listed in Section 93.92 ("penalties and remedies for violations").

### **§ 93.96 Appeals.**

(A) Intent. The purpose of this section is to outline the procedure employed by the town in order to afford citizens an avenue of appeal when there is some doubt that an administrative official, staff member, administrative board or other body, has rendered a correct interpretation of the applicable ordinances and regulations while administering or enforcing any part of this title.

(B) Applicability. An administrative appeal may be made by any person aggrieved by an order, requirement, decision, or determination made by an administrative official, staff member, administrative board or other body, charged with the administration or enforcement of any part of this title.

(C) Application Filing Deadline. An administrative appeal must be filed with the town council within seven days of the order, requirement, decision, or determination that is being appealed.

(D) Review. At its next regularly scheduled public meeting, the town council shall review:

- (1) The written statement and supportive material submitted by the appellant;
- (2) The record of action supplied by the administrative official or body from which the appeal is taken;
- (3) The written and oral testimony of the public;
- (4) The testimony of the appellant; and
- (5) The testimony of the administrative official or body from which the appeal is taken.

(E) Decision. The board shall issue its decision to uphold or deny the appeal to waive or adjust fines.

(F) Fines levied for violations may be challenged in the Dearborn County Circuit Court and must be filed within seven days.

**DILLSBORO, INDIANA  
TOWN COUNCIL**

Date: October 14, 2024

Charlie Caldwell  
CHARLIE CALDWELL  
 Aye  
 Nay  
 Abstain

Tim Benning  
TIM BENNING  
 Aye  
 Nay  
 Abstain

Doug Baker  
DOUG BAKER  
 Aye  
 Nay  
 Abstain

Becky Fryman  
BECKY FRYMAN  
 Aye  
 Nay  
 Abstain

Jerry Jackson  
JERRY JACKSON  
 Aye  
 Nay  
 Abstain

**ATTEST:**

Rita Stevens  
RITA STEVENS  
Clerk-Treasurer