

TOWN COUNCIL
TOWN OF DAYTON, INDIANA

ORDINANCE NO. 2025-4

**AN ORDINANCE ESTABLISHING A PERMIT PROCESS FOR
EXCAVATIONS IN THE RIGHT-OF-WAY OF THE TOWN OF DAYTON, INDIANA**

WHEREAS, the Town of Dayton, Indiana (the "Town") is authorized by Ind. Code § 36-1-3-4 to exercise (1) all powers granted it by statute; and (2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute;

WHEREAS, the Town is permitted to impose a license fee under Ind. Code § 36-1-3-8(a)(5) provided the license fee is not greater than an amount reasonably related to the administrative costs incurred by the Town in exercising the regulatory power;

WHEREAS, the Town is permitted to impose a service charge or user fee under Ind. Code § 36-1-3-8(a)(6) provided the amount of that service charge or user fee is not greater than that reasonably related to reasonable and just rates and charges for the services;

WHEREAS, the Town is further authorized to exercise its police power in order to promote the health, safety, comfort, morals, and welfare, of the public, including residents of the Town;

WHEREAS, the Town has determined that implementing a permit process which would be required any time excavations occur in the right-of-way of the Town promotes the health, safety, comfort, morals, and welfare of the public as it enables the Town to ensure that any such excavations are being performed appropriately and that any such excavation does not create a danger or hazard to the public;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Dayton, Indiana, that:

Title IX Chapter 93 Section 93.20 Excavations is added to the Town of Dayton Code of Ordinances, effective upon due passage, as follows:

Title IX, Chapter 93, Section 93.20. Excavations

(A) Permit Required.

- i. Within the Town right-of-way, it shall be a violation of this Ordinance for any person to make an excavation or cause an excavation to be made on, in, or under a street, alley, sidewalk, trail, curb, gutter, median, planting strip, swale, or grassy area without first obtaining a permit to make such excavation and installation from the Town Manager or other designee of the Town Council.
- ii. Within the Town right-of-way, it shall be a violation of this Ordinance for any person to do work which restricts the flow of vehicular, pedestrian, or bicycle traffic in the street, alley, sidewalk, trail, curb, gutter, median, or planting strip, without first obtaining a permit to do such work from the Town Manager or other designee of the Town Council.
- iii. When any sidewalk is made new, replaced, or repaired within the Town limits, the new, replaced, or repaired sidewalk shall conform with the requirements of the Americans with Disabilities Act. When any sidewalk is made new, replaced, or repaired at an intersection within the Town's limits, an accessible ramp shall be constructed to conform to the specifications furnished by the Town Manager or other designee of the Town Council.

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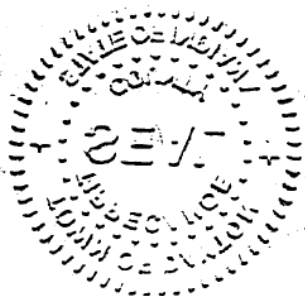
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- (B) Permit Application. All applications for permits to make excavations and installations for the purposes stated in this Ordinance shall be made in writing on printed forms at the office of the Utility Clerk of the Town or electronically via email by the applicants, and shall give the exact location, using a map or diagram, the starting point, course of termination, maintenance of traffic plan (if applicable), and purposes of the excavation or work to be contemplated.
- (C) Permit Issuance. The Town Manager or other designee of the Town Council shall review all applications for permits and, if acceptable, shall issue a permit on the prescribed form upon payment by the applicant of the fee for excavation and in accordance with such rules and regulations as established by the Town. All permits must be signed by the Town Manager or other designee of the Town Council to be valid.
- (D) Fees. The applicant shall pay to the Town the applicable excavation permit fee. If the applicant proceeds with work in a right-of-way of the Town without being granted a permit, the applicant shall pay a fee double to the ordinary permit fee. The Town Manager or other designee of the Town Council, at his/her discretion, may waive fees for work related to Town-funded projects, and for emergency work if notified in a timely manner and all other applicable codes are adhered to.
- (E) Possession and Display. The applicant shall have the applicant's copy of the permit on the premises of the work at all times when work is being done thereupon, and it shall be the duty of the Town Marshall to stop progress of work on any and all excavations in the city until a proper permit is shown for such work.
- (F) Bond. Before a permit is issued, the Town Manager or other designee of the Town Council shall require the applicant to file a bond in the penal sum of Five Thousand Dollars (\$5,000.00) covering liabilities under this article for the term of one year, thereupon guaranteeing to conduct operations in strict accordance with the provisions of this article. The applicant shall keep the Town free and harmless from the payment of any and all damages, costs, expenses, royalties, patent fees, attorney fees or any sum of money whatsoever, by reason of any action, claim, demand, or proceeding arising out of any infringements, or alleged infringements, or use of any patent or patent device, article, system or arrangement that may be used by the applicant in the procedure of this work, or default or negligence of such applicant in doing and completing of the work.
- (G) Guarding of Excavations. Any person to whom a permit is granted under this article, who shall make an excavation or cause an excavation to be made on, in, or under a street, alley, sidewalk, curb, gutter, median, planting strip, swale, or grassy area shall carefully guard such excavation during the progress and completion of the work.
- (H) Backfilling. Backfilling for streets, alleys, and sidewalks shall be done with granular materials and deposited with special reference to the future stability of the street, alley, or sidewalk. The materials shall be mechanically compacted to the subgrade of the street, alley, or sidewalk base. All surplus excavation shall be hauled away; in lawn spaces, the fill shall be made with the best of the excavated material suitable to maintain the previously existing turf.
- (I) Restoration of Streets, Alleys, etc.
- i. The restoration of the streets, alleys, sidewalks, curbs, gutters, median, planting strip, swale, or grassy area shall be the responsibility of the applicant and shall conform to the specifications furnished by the Town Manager. All restorations shall be done under the supervision of the Town Manager or other designee of the Town Council.

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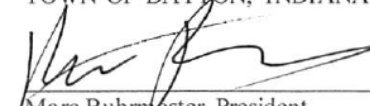
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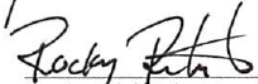
This Ordinance shall be in full force and effect from and after its passage in accordance with the laws of the State of Indiana.

Adopted: 2/18/2025

TOWN COUNCIL OF THE
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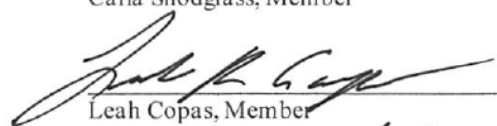


Marc Buhmester, President

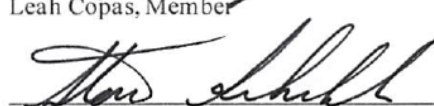


Rocky Richards, Member

Carla Snodgrass, Member



Leah Copas, Member

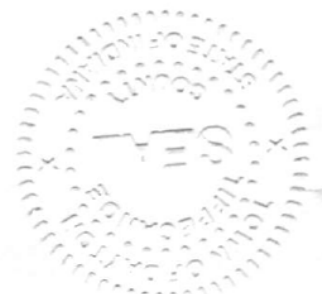


Steve Schuhle, Member

Attest:



Bridget Cadwallader, Clerk-Treasurer



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