

ORDINANCE NO. 28-2013

A GENERAL ORDINANCE AMENDING SECTION 96.10 AND ADDING
SECTION 96.99 OF THE CITY OF RICHMOND CODE

WHEREAS, Chapter 96 of the City of Richmond Code regulates the public right-of-way areas within the City and Section 96.10 of said Chapter includes procedures to perform excavation work on said right-of-way areas; and

WHEREAS, It is in the best interest of the City to amend Section 96.10 to comprehensively update all sub-sections to reflect and clarify the current application practices currently in place in the City of Richmond Department of Public Works and Engineering and omit any outdated language, practices, and procedures in connection with the excavation of right-of-way areas process; and

WHEREAS, It is in the best interest of the City to amend Section 96.10 in order to allow Contractors to obtain a thirty (30) day excavation permit extension and to allow the Department of Public Works to charge the reasonable fee of One Hundred Dollars \$100 for any permit extension being sought from the City; and

WHEREAS, A section designated as Section 96.99 (Unconstitutionality Clause) should additionally be added to Chapter 96.

NOW, THEREFORE, be it ordained by the Common Council of the City of Richmond, Indiana, that the following Section 10 of Chapter 96 of the City of Richmond Code is hereby amended as follows:

96.10 EXCAVATIONS IN RIGHT-OF-WAY AREAS

(a) Definitions: For the purposes of this section, certain terms are defined as follows:

1. DPW: As used herein, DPW shall mean the City of Richmond, Indiana, Department of Public Works & Engineering.

2. Excavation: As used herein, excavation shall mean to cut, dig, trench, excavate, grade, tunnel, bore, or to in any way disturb the existing earth or infrastructure contained within a public right-of-way of the City of Richmond, Indiana.

3. Contractor: As used herein, Contractor shall mean any person, company, firm, or corporation performing an excavation within the Right-of-Way of the City of Richmond, Indiana.

4. City: As used herein City shall mean the City of Richmond, Indiana.

5. Winter Season: As used herein, Winter Season shall mean the period of time between December 1st of one year and March 31st of the following year, or when Hot Mix Asphalt materials are not readily available.

6. Plans: The approved plans, profiles, typical cross sections, standard drawings, working drawings, and supplemental drawings or exact reproductions thereof.

7. Right-of-Way: As used herein, Right-of-Way shall mean the strip of land dedicated to the use of the public by virtue of legal documentation or long use. Types of Right-of-Ways include but are not limited to: roads, streets, alleys, utility easements, trails, etc.

8. Work Day(s): As used herein, Work day(s) shall mean those days Monday - Friday, from the hours of 8:00 am to 4:00 pm, and shall exclude government holidays as observed by the City of Richmond, Indiana.

(b) Permit Required

1. It shall be unlawful for any Contractor to make an excavation for any purpose whatsoever without first obtaining a Right-of-Way Excavation Permit from the DPW. In order to obtain a permit, a Contractor must adhere to the following requirements:

- i. Execute a bond to cover any and all damages that may occur by performing such work.
- ii. Provide proof of liability insurance.
- iii. File an application for permit with the DPW.
- iv. Must agree to restore the place of such work to good condition and in the manner provided by the terms of this section.

2. In the event of an emergency, an excavation may proceed without delay on the condition that, within two (2) full working days after the commencement of such excavation, notice of such work shall be given to the DPW, a bond shall be posted, proof of insurance shall be provided, and an application for permit shall be filed, as required under this section.

3. A Contractor shall obtain one (1) permit for each excavation. In the event there are more than one (1) excavation within a city block(s),

along a particular street, the Contractor may obtain one (1) permit for the group of excavations along said street; in this instance only one (1) permit will be issued, however the permit fee will be calculated as described in subsection (g) (Permit Fees), along with any application or extension fees. Each permit shall only be valid for thirty (30) calendar days.

4. For a planned construction project the Contractor may obtain one (1) permit for the project, as long as the plans and specifications for that planned construction project are included with the initial permit application and are clearly identified as a single construction project, and such application is made at least twenty (20) full working days prior to start of construction. The permit fee will be calculated as described in subsection (g) (Permit Fees) for the required excavations for the project, along with any application or extension fees.

(c) Permit Application

1. Any Contractor desiring to make an excavation shall file an application for permit with the DPW. Such application(s) shall be filed with the DPW two (2) full working days in advance of beginning work and will be assessed a Twenty-Five Dollar (\$25.00) application fee. The Application Fee will be added into the total Permit Fee per subsection (g) (Permit Fees).

2. The DPW shall have the right to prescribe the method and limits of repair, and the time the proposed excavation shall be performed.

3. Permit Applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- i. Full contact information of the Contractor applying for the permit i.e. name, address, company, phone, persons responsible.
- ii. If applicable, who the excavation is being completed for.
- iii. Exact description of the work to be done.
- iv. Location of the excavation within the right-of-way.
- v. Estimated start and completion dates during which the excavation is to be made.

4. Said Contractor shall agree, in connection with each application and upon issuance of a permit, to do at a minimum the following:

i. To maintain the site of the excavation in a smooth and uniform condition, similar to the immediate surrounding area, for a period of three (3) years. Such maintenance is to meet the approval of the DPW.

ii. To erect and maintain all necessary temporary traffic control measures (in conformance with the Federal Highway Administration Manual of Uniform Traffic Control Devices – current edition) required to direct traffic safely over or around the place where the excavation is being performed, for as long as the work in any way interferes with the normal flow of vehicular or pedestrian traffic. At any location where vehicular traffic is limited to one lane, a flagger(s) shall be used and provided by the Contractor, and it shall be the responsibility of the Contractor to ensure that the lane restriction is alleviated prior to leaving the site, through temporarily backfilling the excavation to make it flush with the surrounding pavement (top three (3) inches shall be asphalt cold mix) or by covering the excavation with a steel plate of sufficient size and thickness to satisfactorily carry the traffic.

iii. To give notice daily to the DPW of the location where work on an excavation is being performed. Notice may be given by sending an e-mail to streetcut@richmondindiana.gov, or by calling the DPW at (765) 983-7325.

iv. To provide to the DPW an Excavation Report after the excavation is made. The Excavation Report may be one that is currently used by the Contractor or the Contractor may use the DPW Standard Excavation Report.

v. To contact the DPW, within five (5) working days, of the completion of permanent repair and request a final inspection of the excavation.

vi. To indemnify, defend, and hold harmless the City of Richmond, Indiana, its officials, and employees from any liability due to damage or injuries to the person or property of anyone on or off the right-of-way arising out of or resulting from the issuance of this permit or the work connected therewith caused by or resulting from the negligence of Contractor, its agents, employees, or subcontractors engaged in the performance of the work or the joint negligence of any said party. The Contractor also agrees to pay all reasonable expenses and attorney fees incurred by or imposed on the City arising out of a lawsuit filed against the City for damages, provided a court of competent jurisdiction makes a

determination that the Contractor, its agent, employees, or subcontractors has been guilty of negligence in pursuance of the work resulting from the issuance of a permit for an excavation, in which negligence caused damage to the prevailing or aggrieved, party, provided the City was not guilty of independent or concurring negligence.

(d) Permit Approval

Before the approval of a permit to any Contractor, the DPW shall:

1. Require the Contractor to file with the DPW an insurance policy, or a certificate showing insurance to be in effect and naming the City as an additional insured, issued by a responsible insurance carrier to protect the Contractor and the City from personal and property damage arising from, caused by, or affected to any extent by any excavation made pursuant to the permit.

2. Require the Contractor to file either a Blanket Excavation Permit Bond or a Project Specific Excavation Permit Bond with the City of Richmond, with surety to be approved by the DPW. Bonding requirements will be determined by the DPW. Said bonds shall be maintained as follows:

i. Shall guarantee that the place where excavation was performed shall be restored to DPW standards.

ii. Shall remain in full force for a period of three (3) years to guarantee the repair for a period of three (3) years from the date of the completion of the Contractor's work to protect the City of Richmond and its citizens in case the work is deficient or incomplete.

iii. Blanket Bonds shall be in the sum of Ten Thousand Dollars (\$10,000.00) and shall provide provisions that the liability of the Surety is for each and every permit issued to the Contractor for the excavation project.

iv. Project Specific bonds shall be in a sum based upon one-hundred percent (100%) of the estimated cost of labor and materials needed to restore the excavation(s) to a condition uniform to its immediate surroundings, however at no time will the bond amount be less than Five Thousand Dollars (\$5,000).

v. Shall provide for the surety to guarantee that the principal of said bond shall faithfully perform all the duties imposed upon said principal for each and every excavation according to the requirements of this section.

3. No permit shall be issued by the DPW until the above-described bond has been filed with and approved by the DPW.

4. Notwithstanding the above bond requirements, a letter of credit issued by a financial institution approved by the DPW in the same amount as designated herein for such bond(s) may be filed with the application in lieu of said surety bond(s).

5. Check the records of the City to ascertain whether the Contractor has ever failed to reimburse the City for any work or materials furnished by the City in the filling and resurfacing of any excavation made by the Contractor on a previous permit. In the event that City records disclose any unpaid account owed by the Contractor, the permit shall not be granted until payment is made in full.

6. If the application is approved (and if all unpaid accounts on prior permits are brought current), a permit shall be issued by the DPW. The permit shall be numbered, shall state the issuer's name, the date of issuance, the date of expiration, shall specifically describe the location of the excavation, and shall describe in detail the work to be performed.

7. The DPW shall keep on file all such applications and a record of all permits approved.

8. A permit, once issued in compliance with the terms of this section, will be provided to the Contractor.

(e) Time of Completion

1. All permits will expire thirty (30) calendar days from the date of issuance, with the exception of permits issued during winter season and permits issued for a planned construction project. Permits issued during the winter season will have expiration date of April 30th of the year the winter season ends. Permits for a planned construction project will expire at the completion of the project.

2. If the Contractor needs additional time to complete the excavation for which a permit applies, the Contractor must give notice to the DPW and pay additional permit fees for such extension. Permits may be extended by an additional thirty (30) calendar days, for a total of sixty (60) calendar days. If a Contractor fails to extend a permit, or complete work within the maximum of sixty (60) calendar days, the Contractor will be subject to penalties as described in subsection (k) (Penalties).

3. For any excavations made during Winter Season, when weather conditions and/or materials availability do not allow permanent repairs to be completed, the Contractor shall make temporary pavement

repairs. Said temporary repairs shall be made with asphalt cold mix and shall be maintained by the Contractor until permanent repairs can be made. Permanent repairs shall be completed prior to April 30th of the year the Winter Season ends. All excavations made prior to the beginning of Winter Season shall have permanent repairs completed by December 1st of the same year. The Contractor shall be responsible for making and maintaining the temporary repairs to the satisfaction of the DPW until the permanent repairs are completed.

(f) Excavation Specifications

1. All work and repairs described herein shall be done in accordance with standards and specifications as prescribed by the DPW.

2. Any work in which untested and unacceptable materials are used without written approval of the DPW shall be removed and replaced at the Contractor's expense.

3. All excavations made, where the existing surface is concrete, shall be repaired to the full length and width of the section(s) affected. The section(s) being the area as defined by expansion joints or scoring, or as directed by the DPW.

4. All work and repairs shall conform to the existing conditions immediately surrounding where such excavation was made. All of said work and repairs shall be done to the acceptance and satisfaction of the DPW.

5. The Contractor agrees, in the event the excavation is not properly repaired (backfilled, resurfaced, and sealed) pursuant to the established standards and regulations of the DPW, and after due notice from the DPW of any defects and/or omissions, to immediately correct the defects and/or omissions in the repair.

(g) Permit Fees

1. Permit Fees shall be applied upon approval of the permit. The Total Permit Fee shall be calculated as follows:

Application Processing Fee + Total Inspection Fees = Total Permit Fee

2. An Application Processing Fee will be charged to all permits. Inspection Fees are calculated based on the schedule below. Pursuant to the schedule below, a Standard Excavation is defined as those excavations where there is a single excavation (square, rectangular, or circular) at a given location, whereas a Trench Excavation is defined as

those excavations that generally do not exceed three (3) feet in width and span a distance greater than fifteen (15) feet.

Schedule of Fees:

- i. Application processing fee: \$25.00

 - ii. Inspection fees:
 - Standard Excavation: \$25.00 x No. of Excavations

 - Trench Excavation: \$3.00 x Lineal Feet of Trench
- [Example: \$3.00 x sixteen (16) Lineal Feet of Trench = \$48]
- iii. Thirty (30) Day Permit Extension fee: \$100.00

3. Permit fees may be waived at the discretion of the DPW for City owned utilities and planned City construction projects.

(h) Inspection

1. It shall be the responsibility of the Contractor to contact the DPW and request an inspection for all excavations within five (5) working days of completion.

2. The DPW shall inspect each excavation for which a permit has been issued to ensure that the excavation has been properly repaired, and to give notice (if applicable) to properly repair the excavation in the event that the restoration is not completed within the allotted time or is inadequately or improperly completed by the Contractor. On final inspection, the DPW shall record the completion date of the excavation, close the permit, and shall note, if applicable, any moneys expended by the City on behalf of the Contractor in completing the excavation.

(i) Enforcement

1. Whenever the DPW has reason to believe that a violation of any provision of this section, or a rule or regulation issued pursuant thereto, has occurred, it may cause a written notice to be served upon

the alleged violator(s). The notice shall specify the provisions of this section, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than ten (10) days after the date such order is served, the person(s) so served request, in writing, a hearing before the Board of Public Works and Safety. In lieu of such order, the Board of Public Works and Safety may require that the alleged violator(s) appear before it for a hearing at a time and place specified in the notice, to answer the charges complained of, or the DPW may initiate appropriate action for the recovery of penalty pursuant to this section.

2. Additionally, the DPW may order the work stopped on that portion of an excavation site deemed to be in violation, or on all work being conducted, by issuing a Stop Work Order to the Contractor. Whenever work has been stopped at a particular excavation site, the DPW shall notify the Contractor in writing. Such written notice may be served in person or served by First Class U.S. Mail. The Stop Work Order shall specify in writing that portion of the work in violation and to be stopped. It shall be the Contractor's responsibility to ensure that the Stop Work Order is complied with. Any Contractor who shall continue or permit to be continued any work on a stopped excavation site, or portion thereof, other than corrective work, shall be in violation of this Code and be subject to the penalties as set forth in subsection (k) (Penalties).

3. In the event that street excavations are not properly filled, closed, and sealed in accordance with this Section (96.10), the DPW may proceed to properly close and resurface the excavation, and shall bill the Contractor for the cost of labor and material required to properly close and resurface the excavation. The Contractor shall agree to reimburse the City for costs so incurred.

(j) Voluntary Repair or Construction of Sidewalks

No permit shall be necessary for any curb and sidewalk repair or construction performed pursuant to Section 96.35. (Ord. 36-1997)

(k) Penalties

If any Contractor violates, or commits any act prohibited herein, or fails to perform any duty lawfully mandated, within the time prescribed by the DPW, or fails, neglects, or refuses to obey any lawful order given by the DPW in connection with the provisions of this section, Contractor shall be fined One Hundred Dollars (\$100.00) for the first offense and Five Hundred Dollars (\$500.00) for each subsequent offense within a calendar year. Each such violation, act, failure, or refusal, and every day the aforementioned continues shall constitute a separate offense.

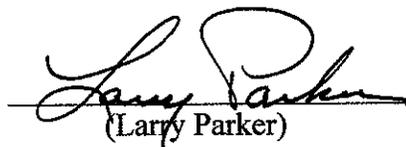
((72 Code, 4.13) (Ord. 1663-1958; Ord. 1862-1961) (Ord. 36-1986) (Ord. 58-1991) (Ord. 52-1992) (Ord. 38-1997) (Ord. 38-1997) (Ord. 28-2013)

NOW, THEREFORE, be it also ordained by the Common Council of the City of Richmond, Indiana that the following Section 99 of Chapter 96 of the City of Richmond Code is hereby added as follows:

96.99 UNCONSTITUTIONALITY CLAUSE

Should any section, paragraph, sentence, clause, or phrase of this Chapter be properly declared unconstitutional or invalid for any reason, the remainder of said Chapter shall not be affected thereby. (Ord. 28-2013)

Passed and adopted this 20 day of May, 2013, by the Common Council of the City of Richmond, Indiana.

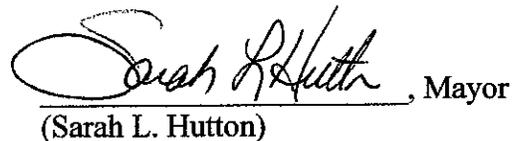
 President
(Larry Parker)

ATTEST:  City Clerk
(Karen Chasteen, IAMC, MMC)

PRESENTED to the Mayor of the City of Richmond, Indiana, this 21 day of May, 2013, at 9:00 a.m.

 City Clerk
(Karen Chasteen, IAMC, MMC)

APPROVED by me, Sarah L. Hutton, Mayor of the City of Richmond, Indiana, this 21 day of May, 2013, at 9:05 a.m.

 Mayor
(Sarah L. Hutton)

ATTEST:  City Clerk
(Karen Chasteen, IAMC, MMC)