

Ordinance No. 3919

AN ORDINANCE REPLACING CHAPTER 98.20 OF THE CITY CODE

WHEREAS, the City of New Castle ("City") may enact regulations for the use of its public ways; and

WHEREAS, the City has previously enacted Section 98.20, *et.seq.*, of the City Code regulating the excavation of City streets and rights -of -way; and

WHEREAS, excavation of streets and right of ways has become more frequent due to the increase in underground utility installations; and

WHEREAS, the City Code should be amended to provide greater oversight of the excavation of City streets and right of ways.

NOW THEREFORE BE IT ORDANIED by the Common Council of the City of New Castle, Indiana as follows:

1. Sections 98.20 though 98.24 of the City Code are repealed.
2. The following is made a part of the City Code:

Section 98.20 Permit Required.

(A) Definitions. The following terms and phrases, when used in this Chapter, shall have the meaning set forth below:

Building Inspector. The appointed Building Inspector for the City of New Castle.

Excavate. The removal of cement, concrete, earth or other materials by use of tools, mechanized equipment or other means, including boring, digging, augering, backfilling, ditching, drilling, grading, driving, jacking, plowing in, trenching or tunnelling.

Excavator. A person performing an excavation, who is not an employee of the City of New Castle.

Person. Shall include a natural person, corporation, partnership, limited liability company, association, group, business entity, public utility or private utility.

(B) Permit. A person shall obtain a Right of Way Permit prior to performing any excavation on, immediately adjacent to, or within any portion of a public right of way, street, sidewalk, curb, or other public place for the purpose of construction, installation, alteration or repair of any underground utility facility, pipe, line or other facility or for other purposes.

(C) Obtaining a Right of Way Permit. To obtain a Right of Way Permit, an excavator must submit, to the Office of the Building Inspector, the following:

- (i) A completed application, which shall be approved by an authorized representative of the utility for which the excavator is performing the work;
- (ii) Proof of occurrence based insurance with per occurrence limits of liability of no less than One Million Dollars (\$1,000,000) for bodily injury and property damage and naming the City of New Castle as an additional insured;
- (iii) A performance bond and maintenance bond as required by this Chapter;
- (iv) Proof of IURC Pipeline Safety Division training or 811 excavation training for the excavator, its managers and members of its work crew;
- (v) Plans and specifications for the project to be performed that include:
 - (a) the cost of the project;
 - (b) the location depicted by map and depth at which the excavator will be working;
 - (c) video evidence of the pre-construction condition of the ground that will be disturbed during construction;
 - (d) the order of work to be performed;
 - (e) the estimated start and completion dates for the work to be performed;
 - (f) a depiction of the lines or materials that will be installed by the excavator and all areas of the street, sidewalk or right of way that will be cut or impacted by the work; and
 - (g) internal sewer videos providing the location of all underground sewer lines and laterals in the area where the utility installation will occur;

and

(vi) Payment of the permit fee calculated in accordance with § 150.08 (a) (2) of the City Code.

(D) Scope of Permit. A Right of Way Permit shall be applicable to a single excavation project and shall remain in effect for a period of one (1) year.

(E) Issuance. A Right of Way Permit shall be issued by the Utility Impact Review Board if the application complies with the conditions set forth in § 98.20 (C). The Utility Impact Review Board may, as a condition of the issuance of a Permit, require an excavator to meet with the Building Inspector on a periodic basis to discuss the performance of the work.

Section 98.21 Indemnification

An excavator performing an excavation pursuant to a Right of Way Permit shall agree, as part of the application, to indemnify and hold harmless, the City of New Castle from and against all claims, demands, actions, judgments, damages, expenses or losses resulting from negligent acts or omissions of the excavator or from the failure of the excavator to comply with any applicable law or regulation, including the provisions of this Chapter.

Section 98.22 Bonds Required.

(A) Performance Bond. An excavator shall post a performance bond with the Building Inspector that will remain in effect until the completion and acceptance of the covered by the Right of Way Permit. The amount of the performance bond shall be in a sum of no less than Ten Dollars (\$10.00) per square foot of pavement cut or five dollars (\$5.00) per square foot if outside of the paved right of way, provided however, the minimum amount of performance bond shall be no less than Two Thousand Dollars (\$2,000.00). The Building Inspector may, in his or her discretion, accept a blanket bond in an amount of no less than Twenty- Five Thousand Dollars (\$25,000.00) covering all work performed by an excavator during a particular period of time.

The performance bond shall remain in effect until completion of the excavation project, inspection of the restoration by the Building Inspector, and the posting of the maintenance bond as required by Section 98.22 (B) below. If the excavator fails to restore the area of the excavation to a condition as good or better than existing prior to the work, the City of New Castle may call upon the surety to perform the restoration or may perform the restoration with its own employees or contractors and recover the cost of performing the excavation from the excavator.

(B) Maintenance Bond. A maintenance bond shall be posted upon the completion of the excavation project in the amount of Two Thousand Dollars (\$2,000.00) plus ten percent (10%) of the construction costs set forth in the permit application (to the extent such costs exceed Two Thousand Dollars (\$2,000.00)). The maintenance bond must be posted within seven (7) days following the completion of the excavation project and shall remain in effect for a period of two (2) years following completion of the excavation project.

Section 98.23 Performance Standards.

(A) Compliance with Law. An excavator shall comply with all applicable laws and regulations in performing an excavation.

(B) Existing Utility Locates. Prior to commencing a project, an excavator shall locate all existing utilities utilizing the procedures required by Indiana Code § 8-1-26 and shall confirm the locations by hand digging or by hydro vacuum excavation prior to utilizing other machinery for excavation. An excavator shall hand dig or hydro vacuum excavate at all utility crossings and at intervals of no more than fifty feet (50') if installing lines at a location that is parallel to an existing utility located within eight feet (8') from the line being installed.

(C) Personnel and Inspections. An excavator shall, at all times, have sufficient personnel on site during the performance of an excavation to adequately supervise the performance of the project and to address questions from the Building Inspector or his or her designee regarding the project. The work shall be subject to periodic inspection by the Building Inspector or his or her designee.

(D) Separation from City Utilities. An excavator shall comply with Chapter 52.02 of the City Code in the placement or relocation of underground utility lines.

(E) Notifications Prior to Commencement of Work. Prior to the commencement of work, an excavator shall provide notice in writing to:

(i) all owners or occupants of property upon which, or adjacent to the area, the excavator will be working no less than thirty (30) days prior to the commencement of the work; and

(ii) the Office of the Building Inspector no less than two (2) days prior to the closure of any street or anticipated interruption of service.

(F) Restoration and Plans. No later than five (5) days following the completion of an excavation project, all ground disturbed or impacted during the project (including borings) shall be restored to as good or better condition than existing at the start of the project and in compliance with all existing standards of the City of New Castle for the construction or repair of streets and sidewalks, as applicable. Prior to completion of the restoration work, the excavator shall contact the Office of the Building Inspector. All manholes, pedestals and other points of access to utility lines shall be installed at grade in a manner that is level with the street or sidewalk where it is installed so that it does not create a hazard to vehicles or pedestrians.

Not later than forty- five (45) days following the completion of the work, the excavator shall provide a copy of “AS-BUILT” drawings of the underground facilities depicting the pipe, line or other structure was installed, including the depth of installation at intervals of no more than fifty feet (50’).

(G) Notification of Change of Ownership. If the ownership of any underground pipes, lines or facilities changes, the Office of the Building Inspector shall be notified no less than fifteen (15) days prior to the effective date of the change of ownership.

Section 98.24 Emergency Work.

In the event an excavation is required on an emergent basis to restore utility service or to prevent injury to persons or property, an excavator may commence work prior to obtaining a Right of Way Permit, but shall otherwise comply with all other provisions of this Chapter. No later than two (2) business days after commencing work on an emergent basis, an excavator shall obtain a Right of Way permit for all work previously performed and to be performed.

Section 98.25 Penalties.

(A) Fine. Any person who violates this Chapter shall be fined in an amount of no less than Five Hundred Dollars (\$500.00) and no more than Two Thousand Five Hundred Dollars (\$2,500.00). Each day a violation occurs shall be deemed a separate offense.

(B) Stop Work Order and Revocation of Permit. The Building Inspector may, upon discovery of a violation of this Chapter, issue an order to cease work or may revoke a Right of Way Permit that has previously been issued.

(C) Cumulative Remedies. In addition to the penalties set forth in 98.25 (A) and (B) above, the City of New Castle may seek any other relief available at law or in equity upon a violation of this Chapter.

REPEALER: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SEVERABILITY: Any provision herein contained which is found by a court of competent jurisdiction to be unlawful or which by operation of law shall be inapplicable, shall be deemed omitted but the rest and remainder of this ordinance, to the extent feasible, shall remain in full force and effect.

EFFECTIVE DATE: This Ordinance shall become effective immediately upon passage and publication as required by law and shall be enforced upon the posting of appropriate signage.

ADOPTED BY THE COMMON COUNCIL OF THE CITY OF NEW CASTLE THIS
____ DAY OF _____, 2024.

Greg York, Presiding Officer,
Common Council, City
of New Castle, Indiana

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NAY

ATTEST:

Ashley Huffman, Clerk-Treasurer

APPROVED BY ME THIS ____ DAY OF _____, 2024.

Greg York, Mayor of the City
of New Castle, Indiana