

ORDINANCE NUMBER 2008-6
AN ORDINANCE REGULATING ACTIVITIES WITHIN
PUBLIC RIGHTS OF WAY UNDER THE
JURISDICTION
OF THE TOWN OF REDKEY (RIGHT OF WAY
PERMIT)

WHEREAS, the Town of Redkey has a duty to protect the safety and welfare of persons using public rights-of-way for transportation purposes, and

WHEREAS, other facilities owned privately or by public or government operated utilities are permitted to occupy space within the same right-of-way, and

WHEREAS, the need to protect the safety and welfare of the public and the integrity of public facilities should not be compromised more than necessary by such other permitted uses.

THEREFORE, BE IT ORDAINED THAT:

SECTION I. *This ordinance shall be known as the "Right-of-way use permit ordinance."*

SECTION II. DEFINITIONS *The following terms shall be defined as follows for the purposes of this ordinance.*

- 1. "Board"----- The Town Board of Redkey, Indiana.*
- 2. "Bond" ----- The posting of required surety to guarantee prompt and satisfactory replacement and repair of facilities damaged or disrupted by the permitted operations.*

3. *"Inspector"----- The authorized representative of the Town Board assigned to make detailed inspections of permitted performance.*

4. *"Permit"----- A form of written authorized to permit action to be done within the right-of-way as per outlined specifications.*

5. *"Person"----- The term person shall include any natural person and any entity recognized by the law.*

6. *"Right-of-way"----- The boundaries established by a recorded plat, a duly adopted thoroughfare plan, or usage, for the purpose of providing public transportation or utility services.*

7. *"Town"----- The Town of Redkey, Indiana.*

8. *"Utility facilities"----- Includes , without limitation, telephone , electronic, electric, cable, fibre optic, gas,water sewer, heating, and cooling facilities.*

SECTION III. ACTIVITIES REQUIRING A RIGHT-OF-

WAY USE PERMIT

Except as

provided in

Subsection 5 hereof, no person shall undertake any of the following activities within a public right-of-way without first acquiring a right-of-way use permit to do so from the TownBoard.

1. *Installation or repair of public utility facilities, private connections to public utility facilities , or facilities of any other entity having the right to use the public right-of-way.*

2. *Installation of mailboxes, mailbox approaches, sidewalks, or any such object of lawful encroachment which would share right-of-way space with governmental transportation needs.*

3. *Creation or alteration of egress or ingress ways to private property bordering a right-of-way.*

4. *Exceptions:*

A. *A permit is not necessary to maintain grass drives, or sidewalks within the right-of-way.*

B. *Right-of-way or public grounds dedicated to governmental entities (not including utilities) other than the Town of Redkey, e.g. State Highway right-of-way .*

C. *Public road construction and maintenance done under a contract with the Town of Redkey, Indiana.*

SECTION IV. UNLAWFUL ACTIVITIES WITHIN THE RIGHT-OF-WAY.

A. *Construct a parking area within a right-of-way.*

B. *Construct a fence within a right-of-way.*

C. *Place or placed any advertising material within a right-of-way.*

D. *Performing any work not listed under Section III*

(4) within a right-of-way without a permit.

SECTION V. PERMIT APPLICATION *A person desiring to undertake any of the activities set out in section III shall sign and file an application with the Clerk/Treasurer of*

the Town of Redkey, and secure a right-of-way use permit before starting any work or activity inside the right-of-way, all as set in the following sub-sections. The Town Board of the Town of Redkey is the permit issuing authority for all activities set forth in Section III. The Board shall exercise its discretion in the issuance or denial of a permit and may impose such reasonable conditions as it sees fit prior to the issuance of a permit. The work shall be done or activity taken prior to the issuance of the permit except in the event of an emergency requiring immediate remedial action for utility facilities, in which case the utility shall comply with Section VIII hereof.

1. Contents of permit application. The application for a right-of-way use permit shall be submitted to the Town Board of the Town of Redkey and shall at a minimum, include the following information and documents:

A. The name, address and phone number of the person or entity for whom the work is to be done or the activity is to be conducted , and the name, title and phone number of the person responsible for the work or activity.

B. The name and address of the contractor responsible for work.

C. The nature of and the reason for the the work or activity site and dimensions of any excavation.

D. The precise location of the work or activity site and the dimensions of any excavation.

E. The anticipated beginning and ending dates of the project.

F. The method of traffic control to be used

by the applicant at the site.

G. Any other pertinent information requested by the Town Board.

H. Written approval from the appropriate department if the proposed work involves a sanitary sewer, storm sewer or affects drainage within a public right-of-way.

2. Insurance Requirements. There shall be furnished to the Board at the time of making application written proof that the applicant or the contractor for the applicant is covered by liability insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000) for property damage and Three Hundred Thousand Dollars (\$300,000) for injury to any one person, and One Million Dollars (\$1,000,000) for any one occurrence. Applicant shall prove to the satisfaction of the Town Board the payment of a premium for said insurance so that the Town of Redkey will be protected for a period of one (1) year from the date of the commencement of the work.

3. Bond Requirements. The applicant or the applicant, shall file bond in the penal sum of not less than Five Thousand Dollars (\$5,000) or as determined by the Town Board, conditioned on the performance of the work and the maintenance of said work for a period of two (2) years from the completion of such work, all in accordance with the terms of this ordinance. Individual property owners are not required to pay the bond.

4. Indemnity Agreement. The applicant shall furnish a written agreement to indemnify and hold harmless the Town of Redkey, Indiana, its officials, agents and employees from any liability due to loss, damage, injuries or other

casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way arising out of, or resulting from the issuance of the permit of the work or activity connected therewith, or from the installation, existence, use, maintenance, conditions, repairs, alteration, or removal of any equipment or material, whether due in whole or in part to the negligent acts or omissions of (1) the Town, its officials, agents, or employees, or (2) the applicant, his agents, contractors or employees, or other persons engaged in the performance of the work or activity, or (3) the joint negligence of any of them, including any claims arising out of the workman's compensation act or any other law, ordinance, order or decree, for a period of the applicable statute of limitations. The indemnity shall also provide that the applicant shall pay for all costs associated with the removal and/or moving of the public utility facility or other object located within the right-of-way or reimburse the Town of Redkey, Indiana for all expenses it incurs in the event that the Town removes and/or moves said public utility facility or object on behalf of the applicant. The indemnity shall also provide that the applicant shall pay all reasonable expenses and attorney fees incurred by or imposed by the Town of Redkey in connection herewith in the event that the applicant shall default under the provisions of the indemnity agreement.

5. The applicant shall be responsible for the design of the facility to be installed within the right-of-way. The Town will only be responsible for the review and approval of the proposal with respect to the locations of the facilities to be installed in the manner of installation. Approval of the permit does not relieve the applicant of responsibility for the design. The Town does not alter current regulations or authority for installing utility facilities nor for determining financial responsibility for replacing or adjusting utility facilities. The

Town limits itself to matters which preserve the safe operation maintenance and integrity of the Town right-of-way.

SECTION VI. PERMIT FEES. *A permit fee shall be paid at the time of filing the application as set out below:*

1. The permit fees for utilities, contractor doing utility work or commercial drive installation shall be paid at the time of filing and shall include Forty Dollars (\$40.00) for plan review and Twenty Dollars (\$20.00) per working day for the number of days estimated to complete the permitted activity. The said fee is intended to reimburse the Town for its cost of plan review, daily inspections and record keeping. If the permitted activity cannot be completed within the estimated time, then additional daily permits must be purchased prior to the time needed. Unused daily permit fees will be refunded or credited to the applicant.

2. Any violation to the terms of this ordinance or the specifications and instructions adopted by the Town Board pursuant to this ordinance shall be assumed to require additional inspection and one (1) additional daily permit fee will be assessed for each such infraction.

3. The requirement for daily permit fees shall end on the day a final inspection verifies that all requirements of this ordinance have been met.

SECTION VII. TOWN BOARD TO ESTABLISH RULES AND REGULATIONS. *The Town Board is hereby authorized to establish such and Specifications and Procedural Instructions for work and activity within the right-of-way as may be necessary to accomplish the purposes of this ordinance. The Specifications and Procedural Instructions shall be kept on file*

in the office of the Town Hall and may be amended from time to time by the Town Board.

SECTION VIII. EMERGENCIES. *In the event of an emergency, a utility or government operated utility may commence work within the public right-of-way, without submitting an application for a right-of-way use permit. In such event the utility or government operated utility shall:*

A. Submit an application, bond and indemnity agreement for a right-of-way use permit within twenty-four (24) hours of starting its work or the next working day to the Clerk Treasurer, whichever is sooner.

B. Attach to the application a full and complete written explanation concerning the emergency and its cause.

In the event that the Town Board shall determine that in their judgment an emergency did not exist he shall forward a copy of the application and all attachments to the Town Attorney as a violation of this ordinance.

SECTION IX. *The Town shall require relocation of the public utility facilities, private connections to public utility facilities of any entity having the right to use the public right-of-way when the Town is installing utility facilities in the right-of-way. The costs for the relocation of the facilities shall be paid by those entities or persons that have installed the same in the Town's right-of-way.*

SECTION X. PENALTIES. *A person or entity who is guilty of a violation of any provision of this ordinance shall be punished by fine not to exceed One Thousand Dollars (\$1,000) nor less than Two Hundred Fifty Dollars (\$250). Each day any portion of the ordinance is violated shall constitute a separate*

offense.

SECTION XI. NOTIFICATIONS. All notifications required under this ordinance shall be in writing or deemed not to have occurred .

SECTION XII. This Ordinance shall be effective ten (10) days after publication.

Dated this 14th day of August, 2008

<i><u>Doug Stanley (signed)</u></i>	<i><u>Dottie Quakenbush (signed)</u></i>
<i>Board Member</i>	<i>Board Member</i>

<i><u>Phil Philebaum (signed)</u></i>	<i><u>Terri Taylor (signed)</u></i>
<i>Board Member</i>	<i>Board Member</i>

<i><u>Charles Noble (signed)</u></i>
<i>Board Member</i>

ATTEST:

Sandra Kirby (signed)
Clerk Treasurer