

TOWN OF CHANDLER ORDINANCE NUMBER 2018-09

AN ORDINANCE REMOVING  
SECTION 93.04 (MAINTENANCE OF RIGHT-OF-WAY)  
AND CREATING SECTIONS 93.40 THROUGH  
SECTIONS 93.45 (REGULATION OF RIGHT-OF-WAY)  
OF THE CHANDLER MUNICIPAL CODE

WHEREAS, the Town of Chandler, Indiana, needs to make certain changes to its existing regulations regarding regulation of public rights of way; and

WHEREAS, the Town of Chandler believes the changes outlined in this ordinance will better regulate such public rights of way.

NOW, THEREFORE, BE IT ORDAINED, by the Town of Chandler, Indiana, as follows:

Section 1.     Removal of Section 93.04 of the Code. Section 93.04 of the Chandler Municipal Code shall be deleted and removed in its entirety.

Section 2.     Addition of Section 93.40 through Section 93.45. Section 93.40 through Section 93.45 of the Chandler Municipal Code shall be added as follows:

*Regulation of Public Rights of Way*

**§ 93.40           DEFINITIONS**

(A)     The following terms and phrases when used throughout this Chapter 93 shall have the meanings ascribed to them in this section.

*Article* means sections 93.40 through 93.45 of this Chapter 93.

*Director of Public Services* means such director and any person to whom such director specifically delegates the powers under this Chapter 93.

*Effective date* means the date upon which this article is considered adopted pursuant to IC 36-3-4-14.

*Entity* means a corporation, partnership, limited liability company, association, firm, other entity, and any governmental agency, authority, board, agency and department.

*Facilities* include, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, and other like equipment, fixtures and appurtenances used in connection with transmitting, receiving, distributing, offering, and providing utility services, cable television, communications, signaling, electricity, water, steam and other services or functions.

*Municipally owned utility facilities* mean any facilities owned by the town, or any division, department, bureau or agency thereof, including the utilities department and the department of public works, and for which a user fee or charge is made or collected by or on behalf of such owner.

*Occupant* means any person or entity who owns any facilities occupying the public rights-of-way. If the owner of any facilities leases or licenses such facilities exclusively to another person or entity and if the lease or license so provides and a copy of such lease or license is filed with the department of public works, then the lessee or licensee thereof shall be deemed the “occupant” of such facilities for purposes of this article.

*Occupy* (and the various forms of such word, such as occupying, occupied, etc.) means to install, construct, maintain, operate or own any facilities in the public rights-of-way.

*Person* means an individual or natural person.

*Public easement* means any easement owned or controlled by the town and established, acquired, dedicated, or devoted to public utility purposes, including the area above and below such easements.

*Public right-of-way* means any travelled way and/or any public easement.

*Public utility* shall have the meaning ascribed thereto in IC 8-1-2-1(a).

*Regulation* means any regulation adopted by the town council as well as the whole or any part of an agency statement of general applicability that: (1) is adopted pursuant to authority delegated by an ordinance of the council or statute of the state; (2) has or is intended to have the effect of law; and (3) implements, interprets or prescribes laws or policy of the agency.

*Traveled way* means any highway, street, alley, sidewalk or other public right-of-way for motor vehicle or pedestrian travel under the jurisdiction or control of the town, including any areas within any public right-of-way that may be unpaved and the unoccupied area above and below such rights-of-way.

*Utilities department* means the department of public utilities of the town created under IC 8-1.5.

(B) The terms public easement, public rights-of-way, travelled way and thoroughfare do not include the airwaves above the same as those airwaves are used for cellular or other non-wire telecommunications or broadcast services.

#### **§ 93.41 MAINTENANCE OF RIGHT-OF-WAY**

(A) Any limbs and foliage of trees planted on any premises that abuts any right-of-way that is not trimmed at least 10 feet above the ground of a sidewalk and 15 feet above any street, highway, or alley, or any similarly planted vegetation that hinders, obstructs, or

endangers the passage of persons or vehicles along any public way so as to obstruct drainage or the view of any traffic control sign or electronic device or the illumination of any public street light by any person traversing any right-of-way is declared to be a nuisance. Any person or entity violating the provisions of this article shall be liable to the town and to private persons or entities for any injury or damage arising therefrom.

(B) The owner of any property abutting a right-of-way shall maintain it in a reasonably neat, clean, and sanitary condition. Property areas, including any right-of-way, shall be maintained free from any accumulation of garbage, litter, debris, overgrown or noxious vegetation, or other conditions which constitute a nuisance as defined by Chapter 94 of this Code. For the purposes of this article, owners shall be responsible for maintaining the property to the centerline of abutting right-of-ways.

(C) Except as otherwise permitted and required under this article, it shall be unlawful for the owner of any premises abutting upon any right-of-way to cause or contribute to a physical condition of the right-of-way by constructing, placing, causing, creating, maintaining, or permitting to remain upon any part of the right-of-way anything, structure, or condition dangerous or hazardous to the use of the right-of-way by the public, including, but not limited to, the following:

- (1) Defective sidewalk surfaces, including, but not limited to, broken cement or stub-toes and depressions within or between sidewalk joints;
- (2) Defective cement surfaces placed adjacent to the public sidewalk or defects at the juncture between said cement surfaces and the public sidewalks, including stub-toes or depressions at the junction;
- (3) Defects in sidewalks or public ways caused or contributed to by the roots of trees located either on private adjoining property or on the planting strip portion of the street right-of-way;
- (4) Defective conditions caused by tree limbs, foliage, brush, or grass on or extending over public sidewalks;
- (5) Defective conditions on the planting strip area between the curb line and the sidewalk or, if there is no curb line, then between the edge of the traveled portion of the street and the sidewalk and between the sidewalk and the abutting property line;
- (6) Defects resulting from accumulation of ice and snow on public sidewalks or on the right-of-way between the curb line or, if there is no curb line, then between the adjacent edge of the traveled portion of the street roadway and the abutting property line;
- (7) Defects consisting of foreign matter on the public sidewalks, including, but not limited to, gravel and oil thereon;

- (8) Defective handrails or fences or other similar structures within or immediately adjacent to the right-of-way area; or
- (9) Bicycle ramps, skateboard ramps, or other similar structures or obstructions within the right-of-way area.

(D) Any structures or obstructions installed or omitted within the right-of-way in violation of this article shall be considered a nuisance and may be corrected by the town at the property owner's expense in accordance with Chapter 94 of this Code.

**§ 93.41 PERMIT REQUIRED; FEE**

It shall be unlawful for any person to dig into, excavate in, bore under, or in any manner change the surface of any public right-of-way within the town without first having submitted a written plan to, and obtained a written permit from, the Director of Public Services. The written plan shall be in a form reasonably required by the Director of Public Services. The permittee shall pay to the Clerk-Treasurer or agent the sum of One Hundred Dollars (\$100) for the permit.

**§ 93.42 SUPERVISION**

Unless exempted by the Director of Public Services, the operation of excavating, boring, or in any manner changing the surface of, any public right-of-way within the town, and the refilling and resurfacing of any excavation or boring, shall be done under the supervision of the Director of Public Services or other officer or employee designated by the Town Council.

**§ 93.43 REPAIRS**

(A) All excavations in, or boring under, a public right-of-way shall be repaired according to the type of the existing surface as follows:

- (1) Existing asphalt surface:
  - (a) Excavation shall be filled with thoroughly compacted sand to a depth not less than ten inches below finished grade;
  - (b) Portland cement concrete with a 3,000 psi minimum shall be deposited on top of the sand fill to within one inch below finished grade;
  - (c) After portland cement concrete has cured for a minimum period of four days, asphaltic primer RC-3 shall be applied at a rate of 0.5 gallons per square yard;
  - (d) A one-inch course of hot asphaltic concrete, Indiana State Highway Department, Type B shall be applied, thoroughly compacted and rolled. If the weather is unsuitable for properly applying hot asphaltic concrete for repairing the surface, a temporary patch may be applied consisting of asphalt coated aggregate (cold patch), provided that when suitable paving weather occurs, the temporary patching materials shall be removed and replaced with hot asphaltic concrete as specified above.
- (2) Existing concrete surface:

- (a) Excavation shall be filled with thoroughly compacted sand to a depth not less than eight inches below finished grade;
- (b) Portland cement concrete with a 3000 psi minimum shall be placed in the remaining cavity and troweled with a wooded float to finish grade.

(3) Existing aggregate surface:

- (a) Excavation shall be filled with sand up to a depth not less than eight inches below finished grade;
- (b) The remaining depth shall be filled with crushed stone of the size required by the Street Commissioner.

(4) Existing earth surface: Excavation or boring shall be filled with earth, and earth mounded above the excavation or boring to a height above finished grade amounting to 10% of the depth of the excavation. After settling has occurred, earth shall be added or removed to level the fill with finished grade, and the surface restored to the same condition as existed before excavation was made.

(B) Exploratory drill holes shall be filled in the same manner as trench or pit excavations, except that when the holes are made in an existing earth surface, it shall be refilled with sand except the upper six inches of fill material, which shall be earth.

(C) Excavation or boring under sidewalks shall be refilled with fully compacted earth or sand to a level four inches below finished grade of the sidewalk in pedestrian travelled areas and six inches below finished grade of sidewalk in driveway areas. The sidewalk shall be replaced to the same width as that removed and to a depth of four or six inches respectively in pedestrian and driveway areas. Sidewalk material shall be portland cement concrete, air-entraining type, 3000 psi strength, finished with a wooden flute and steel edging tool and scored to match adjacent sidewalk scoring.

(D) The entire expense of excavating, boring under, or in any manner changing, the surface of any public right-of-way within the town shall be borne by the permittee. The town shall not be liable for any expenses incurred therefrom, nor for any injury or damages caused to any person or property.

**§ 93.44 STREET CUTS AND BORING**

(A) All cuts made in the driving area of a street, sidewalk, or alley shall be covered with steel plates and anchored safely to the paved surface until the cut is ready for traffic. Cold-patch type asphalt concrete shall be placed all around the plate to lessen any possible damage to the vehicles crossing the area. No more than ten calendar days shall elapse between the date the hole is first cut in the street right-of-way and the date on which the repair is complete and the patch is paved to finish grade and open to traffic.

(B) All boring under public right-of-ways shall be located at least thirty-six inches (36") below the pavement surface or thirty-six inches (36") below the bottom of roadside drainage ditches, whichever is a greater depth.

**§ 93.45 RESURFACING OF ENTIRE STREET**

Any person or entity causing a total of five or more holes, a maximum of 3 feet × 3 feet, or a trench or trenches totaling 30 feet in length to be made in an average 300 foot-long city block during one 12-month period shall be required to resurface the entire width of the street or alley for the full city block within the current paving season with a one-inch compacted thickness of surface-type hot asphaltic concrete. The existing paved surface shall be tack-coated before paving.

**§ 93.45 ENFORCEMENT AND PENALTIES**

(A) The Department of Public Services is exempted from the provisions of this article.

(B) If the place or places where the excavation and repairs are refilled or replaced under the provisions of this article fail within the life of the street pavement or before the street is repaved by the town, the permittee shall, at his own expense within ten days after receipt of written notice from the Clerk-Treasurer, refill and resurface it.

(C) If the permittee fails to refill or resurface after the receipt of ten days written notice, the town shall make the necessary repairs and render a statement of charges to the permittee which statement shall be due and payable within 30 days after receipt of the statement.

(D) Should any excavation, cut, jacking, or boring in project be willfully started by a person or entity before receiving the permit required by this article, said person or entity shall for each violation be fined an amount not to exceed One Thousand Dollars (\$1,000) and such excavation, cut, jacking, or boring shall be stopped and temporarily repaired until a proper permit has been issued.

(E) In addition to all other penalties and fines, if any person or entity violates, or commits any act prohibited herein, or fails to perform any duty lawfully mandated, within the time prescribed, or fails, neglects, or refuses to obey any lawful order given by the town in connection with the provision of this article, such person or entity 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.

Section 3. Effective Date. This ordinance shall be in full force and effect on the day of its final passage and adoption.