

**AN ORDINANCE REPEALING CERTAIN SECTIONS
OF THE NEWBURGH CODE AND
ESTABLISHING PROCEDURES FOR
MANAGEMENT OF THE
TOWN'S RIGHT OF WAY**

BE IT ORDAINED:

SECTION 1: AMENDMENT OF EXISTING CODE.

Chapter 5, Section 51.1 of the Newburgh Code of Ordinances is repealed and replaced by the following sections.

SECTION 2: USE OF PUBLIC RIGHT-OF-WAY.

It shall be a violation of this Ordinance for any person, firm or corporation to cut, tunnel under, make any opening in, disturb or place facilities in any public right-of-way accepted for maintenance by the Town of Newburgh without first meeting the requirements of this Ordinance.

SECTION 3: PERMIT AND NOTIFICATION REQUIREMENTS.

A. PUBLIC AND MUNICIPAL UTILITIES. For public or municipal utilities, as defined in IC § 8-1-2-1, who have received a certification from the Town pursuant to Section 3 (E) of this ordinance, notice of intent to excavate or construct in the public right-of-way shall be given 2 business days prior to such excavation or construction except in the case of an emergency. In the case of an emergency, such utility shall attempt to notify the office of the Town Manager of the excavation or construction prior to its initiation, and, within 2 business days after such construction or excavation, shall give the notification required herein. Payment of all fees required by this ordinance, if such utility is required to pay a fee, shall occur not later than 5 business days of the date of the notice given by the utility unless such utility has been granted a longer period to make such payment by the Town Council.

B. PERSON OTHER THAN PUBLIC OR MUNICIPAL UTILITIES. Any person, firm or corporation who is not a public or municipal utility or acting for such utility, or any public or municipal utility not certified pursuant to Section 3 (E) of this ordinance, must request permission from the Town Council to cut, disturb, make any opening in, tunnel under or place private facilities in a public right-of-way. Such request shall be made by tendering the following:

1. Submission of an Application on Forms supplied by the Town.
2. Payment of the application fee.
3. Payment of a \$100 contract preparation fee.
4. Payment of the encroachment fee (non-utilities only).
5. Written waiver of objection by all public or municipally owned utilities then occupying, or who have the right to occupy, the right of way if the proposed work may interfere with existing or future utility facilities (non-utilities only).
6. Agreement to register with, and pay the required fee to, the Indiana Underground Plant Protection Service regarding the proposed encroachment if it is underground.

C. BONDING. Upon granting a petition filed under Section 3 (B) for a permit to cut, disturb, make an opening in, tunnel under or place private facilities in a public right-of-way, or upon application by a regulated or municipal utility for permission to post bond in lieu of payment of fees, the applicant shall purchase and tender the necessary bond as may be required by the Town or this Ordinance. Non-utilities shall also execute a contract with the Town relating to the use of the public way by such applicant.

D. CONSTRUCTION STANDARDS. Any person, firm or corporation who cuts, disturbs, makes an opening in, tunnels under or places any facilities, public or private, in a public right-of-way, shall conform to those

reasonable construction standards applicable to public rights-of-way as may be adopted by the Town Council.

E. UTILITY CERTIFICATION. Any public or municipal utility may apply to the Town for a certification waiving the fees set out herein and providing that such utility may post a bond or an irrevocable letter of credit, on an annual basis, securing the duty of the utility to restore any public right-of-way which it may have disturbed under its statutory right to use the way. Granting any application by a public or municipal utility to post bond in lieu of payment of fees, as contemplated by the certification procedure, shall be discretionary with the Town Council, is a privilege and not a right, and shall be based on the record of past performance of the applicant utility in repairing Town rights of way.

SECTION 4: FEES.

1. Fees for the use of the Town right-of-way, where required to be paid, shall be limited to the direct, actual and reasonably incurred cost incurred in managing the right-of-way. Such cost includes and is based upon:

- the cost of registering right-of-way occupants
- the cost of verification of right-of-way occupation
- the cost of inspection of right-of-way interruption and restoration
- the cost of restoration of right-of-way improperly restored after notice of such improper restoration
- the cost of administering this ordinance

2. Fees for the use of the right-of-way shall be as follows:

Excavation in right-of-way for above ground facility	\$ 100.00
Commercial access permit (curb cut) , new construction with auxiliary lanes	\$ 400.00
Commercial access permit (curb cut), reconstruction	\$ 100.00
Encroachment permit, non-utility, in addition to other permits	\$ 50.00
Underground construction parallel to, but not in, pavement,	\$ 25.00
Boring or pushing under roadway, per bore or push	\$ 10.00
Installation of new overhead pole or wire lines*	\$ 25.00
Tap in pit	\$ 25.00
Facilities in public way below pavement**	\$ 700.00

*No fee or permit is needed for the replacement of a single above ground pole necessitated due to damage, deterioration or required new service, when work is done at the direction or request of the Town, nor, for installation of service to residential or commercial buildings in subdivisions.

**Subject to contractual requirements which may be imposed by the Town and the requirement that such facility may not impeded the use of the right-of-way, currently or prospectively, by a public or municipally owned utility.

**This reference is to longitudinal pavement cuts parallel to the road.

SECTION 5: BOND REQUIREMENTS.

A. Unless specifically waived by the Town, or as a part of the certification of a utility under Section 3 (E), each applicant who has been granted a permit shall be required, as a condition of the permit, to tender to and keep in force during the life of any permit a performance bond, or irrevocable letter of credit drawn on an FDIC insured financial institution, acceptable to the Town in an amount determined by the Town Council as necessary to secure the obligations accepted by an applicant for a permit under this Ordinance. In the alternative, a utility, or non-utility applicant, may submit a bond pursuant to the following bond schedule:

- | | |
|--|------------------------------|
| 1. Open Road Cut | \$5,000 |
| 2. Underground construction
Parallel to but not in
Pavement, | \$500 per mile or fraction |
| 3. Push or Bore | \$1,000 |
| 4. Closure of Town Street | \$1,000 per mile or fraction |
| 5. A comprehensive bond covering
all work on an annual basis. | \$5,000 |

B. Contractors who intend to apply for multiple permits over the course of a year, or public utility companies posting bond in lieu of payment of the fees as contemplated in Section 3 (E) above, shall provide a bond or letter of credit payable to the Town guaranteeing that the applicant or utility shall restore the public right of way pursuant to the Town standards for restoration of the right of way, in the minimum sum of \$5,000, with provisions of the bond or letter requiring that the bond or letter be irrevocable for a period of one year and requiring that the bond or letter is automatically renewable unless the bonding company or financial institution gives a minimum of 30 days notice to the Town that the bond or letter will not be renewed. If such bond or letter of credit is not renewed or not replaced by a new bond or letter of credit, such entity shall have no right to cut or use the public right of way until such bond or letter of credit is reestablished.

SECTION 6. PENALTY.

Any person, firm or corporation who violates this ordinance shall be subject to a civil penalty not to exceed \$2500 per violation and each day of violation shall be deemed a separate violation.

SECTION 7. REVOCATION OF CONFLICTING ORDINANCES.

All ordinances in conflict with this ordinance are repealed.

ADOPTED this 12 of October, 2005.

TOWN COUNCIL OF THE
TOWN OF NEWBURGH



President



Member



Member




Member



Member

ATTEST:



Rebecca Gentry, Clerk-Treasurer