

TOWN OF MORGANTOWN, INDIANA

ORDINANCE NO. 2025-05

**ORDINANCE APPROVING AND IMPOSING PRODEDURES AND
REQUIREMENTS FOR THIRD PARTY ROAD CUTS AND EXCAVATIONS**

WHEREAS, pursuant to Indiana Code Sections 36-9-2-5 and 7, an Indiana town may establish, vacate, maintain, operate, and regulate the use of its public ways;

WHEREAS, pursuant to Indiana Code Section 36-9-1-7, the definition of public way includes highways, streets, avenues, boulevards, roads, lanes and alleys;

WHEREAS, the Town Council of the Town of Morgantown, Indiana (the "Town") has determined that it is in the Town's best interest to adopt and enforce procedures and requirements for excavations or underground boring activities performed by third parties on under or anywhere within the Town's public ways;

ACCORDINGLY, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MORGANTOWN, INDIANA, AS FOLLOWS:

SECTION 1. PERMIT REQUIRED; APPLICATION; FEE.

(A) Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

Excavate means an operation for the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of tools or mechanized equipment or by discharge of explosives, including augering, backfilling, boring, digging, ditching, drilling, driving, grading, jacking, plowing in, pulling in, ripping, scraping, trenching, and tunneling. Indiana Code § 8-1-26-6.

Excavator. An individual, a corporation, a partnership, a limited liability company, an association, or other entity organized under the laws of any state that is performing an excavation.

Excavation Permit. A permit issued by the Town to an excavator, at the discretion of the Town, after submission of a complete application and posting of a requisite bond, pursuant to the terms of this Ordinance.

(B) Permit Required. Except in the event of an emergency, as provided for herein, any excavator seeking permission to excavate in, over, under or otherwise, partially or entirely, within a Town public way, shall, first, obtain an Excavation Permit from the Town and post a bond pursuant to the terms herein.

(C) Application. Requests for Excavation Permits shall be submitted to the Town's Clerk Treasurer, on forms approved by the Town, along with the applicable permit fee, as set by the

Town Council, from time to time. As of the effective date of this Ordinance, the permit fee is set at \$100.00.

(D) Performance Bond. All permit applicants, at the time of submitting their application, and as a condition of issuance of an Excavation Permit, shall post a performance bond with the Town's Clerk Treasurer, which bond shall remain with the Town until completion and acceptance of the work performed and the submission of a maintenance bond, as hereinafter set out. The minimum performance bond shall be \$2,500 and shall be in a form acceptable to the Town Attorney. The Town's Public Works Manager, because of the size and scope of the excavation, may require an increased performance bond. A performance bond shall be returned only upon inspection and approval of the work, by the Town's Public Works Manager, and the posting of a maintenance bond in the amount herein after set out.

The maintenance bond, as required under this ordinance, shall be in an amount equal to \$2,500, plus 10% of the construction costs. The excavator, within 24 hours of completing the work, and as a condition of its approval, shall submit to the Town's Public Works Manager an itemization of actual costs. The maintenance bond shall in a form acceptable to the Town Attorney, and be held by the Clerk Treasurer for a period of one (1) year from the date of submission.

(E) Emergency Exception. Utility providers which maintain lines under or along a Town public way, in the event of an emergency or interruption of service, at times when Town offices are closed, may excavate in or through a Town public way, to the extent necessary to preserve public safety and/or public or private property, including their own facilities, or to restore service, without first obtaining an excavation permit or posting a bond. As soon as is practicable after the emergency excavation, a representative of the utility shall notify the Town's Public Works Manager, fill complete an application for an Excavation Permit and post the requisite maintenance bond.

SECTION 2. NOTIFICATION: Except in the event of an emergency, as provided for herein, a permittee for excavation in a public way shall notify the Town's Public Works Manager 24 hours prior to beginning work. If necessary, arrangements can be made to have an inspector present while the work is in progress.

SECTION 3. GENERAL WORKSITE RESPONSIBILITIES: A permittee shall have a copy of the Excavation Permit on the job site at all times. A permittee shall be responsible for the condition of all repairs. All work shall be performed in compliance with and all applicable provisions of Indiana Code Chapter 8-1-26, incorporated herein by reference. Work shall not begin until all facilities have been properly located and marked (Indiana Code Section 8-1-26-18). A permittee shall be responsible for safely monitoring traffic in and around the worksite, at all times, and shall consult with the Town's Town Marshal about all matters related to traffic control.

SECTION 4. STANDARDS:

For any work proposed or conditions that may arise for which specific standards are not provided below, the *INDOT Standard Specifications, 2024*, as they may be amended, shall apply.

For Rigid Base Pavements: Concrete on earth, asphalt on concrete base, asphalt on brick base, brick on earth:

Minimum Opening: All excavated openings shall be a minimum of four (4) feet as measured in any direction.

Saw Cut: All pavement cuts shall be saw cut in a straight and true manner, and shall be made at right angles or parallel to the pavement centerline. Cuts shall be made to the depth of the existing pavement section. Pavements less than 5 years old shall be cut only in emergencies and only with the approval by the Town Council.

Sizing of Pavement Replacement: For asphalt pavement on concrete or brick base, the existing pavement shall be milled one and one half (1 ½) inches to a minimum distance of five (5) feet in either direction (measured parallel to the road centerline) from the edge of the excavated opening or saw cut, with a width equaling that to the road centerline.

For utility cuts that cross the road centerline the existing asphalt pavement, on concrete or brick base, shall be milled one and one half (1 ½) inches to a minimum distance of five (5) feet in either direction (measured parallel to the road centerline) from the edge of the excavated opening, with a width equaling that to the entire road.

For concrete on earth or brick on earth pavement, the existing pavement shall be removed to a necessary size, not less than the minimum excavated opening of four (4) feet.

If a cut line is less than five (5) feet from an existing expansion or weakened plane joint, concrete or asphalt shall be removed to that joint.

Backfill: For asphalt pavements on concrete or brick base all trenches, holes, and pits shall be filled to a depth eleven (11) inches from the top of the existing pavement section. Backfill material shall be a "flowable fill" mixture in accordance with INDOT standard specifications section 213.

For concrete on earth all trenches, holes, and pits shall be filled with a flowable fill mixture, in accordance with INDOT standard specifications section 213, to a depth of six (6) inches from the top of the existing pavement section.

For brick on earth pavements all trenches, holes, and pits shall be filled with flowable fill mixture, in accordance with INDOT standard specifications section 213, to a minimum depth of six (6) inches from the bottom of the existing pavement section. This six (6) inches is filled with sand to the bottom of the existing pavement section.

Pavement Replacement: For asphalt pavement on concrete or brick base, the work of final restoration of the paving surface shall be performed by the permittee by placing ten (10) inches of HMA base and/or binder to fill the excavated opening, and one and one half

(1 ½) inches of HMA surface to match existing grade. A tack coat shall be applied between pavement surfaces and new asphalt.

For concrete on earth pavement the work of final restoration of the paving surface shall be performed by the permittee by placing six (6) inches of 4000 PSI concrete to match existing grade. All concrete replacement, including base material, shall be high-early strength concrete and shall be returned to traffic as soon as its strength reaches 2,800 psi (three (3) days).

Flexible Base Pavements: Asphalt with Stone Base.

Saw Cut: All pavement cuts shall be saw cut in a straight and true manner and shall be made at right angles or parallel with the pavement centerline. Cuts shall be made to the depth of the existing pavement section. Pavements less than five (5) years old shall be cut in emergencies only and/or with the approval by the Town Council.

Backfill: All trenches, holes, and pits shall be filled to a depth eleven and one half (1 ½) inches from the top of the existing pavement section. Such material is limited too flowable fill mixture in accordance with INDOT standard specifications section 213.

Sizing of Pavement Replacement: The existing pavement and base shall be removed to provide a minimum length of the trench, plus one (1) foot on either side (measured parallel to the road centerline), with a width equaling that to the road centerline. An additional length of five (5) feet of surface pavement (on either side of the trench), with a width equaling that to the road centerline, shall be milled to a depth of one and one half (1 ½) inches.

For utilities that cross the road centerline the existing pavement and base shall be removed to provide a minimum length of the trench, plus one (1) foot on either side (measured parallel to the road centerline), with a width equaling that of the entire road. An additional length of five (5) feet of surface pavement (on either side of the trench), with a width equaling that to the entire road, shall be milled to a depth of one and one half (1 ½) inches.

Pavement Replacement: The existing pavement and base within the trench plus the one (1) foot of length, shall be replaced with six (6) inches of flowable fill mixture in accordance with INDOT standard specification section 213, four (4) inches (minimum) of HMA binder, and one and one half (1 ½) inches of HMA surface. The remaining milled section shall be replaced with one and one half (1 ½) inches of HMA Surface.

A tack coat shall be applied between the HMA binder, and the HMA surface as well as at the saw cut joints.

Where a cut line is less than five (5) feet from an existing patch, and/or existing joint the asphalt shall be removed to include said patch.

SECTION 5. REPLACING SIDEWALK, DRIVEWAY AND CURB: Whenever a part of a block, square or section of curb, sidewalk or driveway is broken or damaged by the excavator the entire block, square or section shall be removed to the score, groove or saw cut line and replaced or reconstructed to the original thickness.

SECTION 6. MARKINGS: Each Street cut shall be marked on its four (4) corners with a paint marking.

SECTION 7. TRENCHING OPERATION: At no time shall more than 200 lineal feet of trench be opened and incompletely backfilled. The remainder of the area of trenching operations shall be available for safe vehicular and pedestrian traffic at all times.

SECTION 8. ADDITIONAL RESTORING OPENING: If the Town's Public Works Manager finds that the pavement surfaces and adjacent surfaces to a street opening may be damaged where trenches are made parallel to the street, or where a number of cross trenches are laid in close proximity to one another, or where the equipment used causes damage, the Town's Public Works Manager may require milling and resurfacing throughout the limits of the patching in such street. Any operation in the right-of-way not covered by the above specifications, submitted with this permit, shall be done in accordance with instruction of the Town's Public Works Manager.

In granting any permit, the Town's Public Works Manager may impose other conditions necessary to prevent damage to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property or in a manner likely to create a nuisance. Such conditions may include, but shall not be limited to: a) limitations on the time during which the work may be performed; b) restrictions as to the size and type of equipment to be used; c) designation of routes upon which materials may be transported; d) the place and manner of disposal of excavated materials; e) requirements related to tracking or dust, the cleaning of streets, noise, and other conditions offensive or injurious to the neighborhood or the general public; and f) regulations as to the use of streets in the course of the work.

The Permittee shall notify the Town's Public Works Manager and/or his/her designee in writing upon completion of all work accomplished under the provisions of the permit. The Town's Public Works Manager shall issue a certificate of final inspection to each permittee one year after the permanent restoration of the excavation has been made, provided that the work authorized by the permit has been performed according to the Town specifications. Prior to the issuance of a certificate, the Town's Public Works Manager shall make a full inspection of the restoration to determine whether the Town specifications have been adhered to. If any settlement in a restored area occurs within one year from the date of completion of the permanent restoration, any expense incurred by the Town to correct the condition shall be reimbursed by the permittee or recovered from the posted bond.

SECTION 9. TEMPORARY TRENCH COVERING: All cuts, trenches, holes, and pits shall be covered while work is not being performed. Acceptable temporary coverings include: a) a granular, or flowable fill, backfill material capped with bituminous patching mixture conforming to INDOT standard specification section 403; or b) Metal plating that substantially covers the trench and allows for normal travel of traffic. At no time should a trench be temporarily backfilled with only a granular material.

All trenches across traffic lanes, where it becomes necessary to remove an existing surfacing or pavement, the final surface shall take place before the construction year ends, no later than November 15th, and all cuts made in the off season, November 15th to April 15th, shall be completed before June 15th of the following construction season, unless prior arrangements have been made with the Town's Public Works Manager. All off season cuts shall be provided with temporary trench cover, after proper compaction. Minimum requirements for temporary trench cover shall be bituminous patching mixture, conforming to INDOT standard specifications section 403 or as specified by the Town's Public Works Manager. Temporary trench covers shall be properly maintained by the permittee until a permanent trench cover is placed,

SECTION 10. TIME LIMIT TO FINAL RESTORATION: The permittee shall ensure final restoration shall occur in a timely manner. Complete restoration shall be completed to the standards listed in this Ordinance within ten (10) days of completion of work.

SECTION 11. RESTRICTIONS; NEW PAVEMENT:

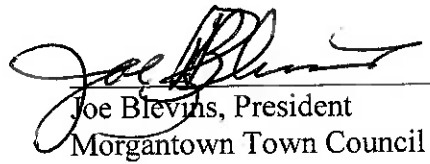
Street Excavations. No permit shall be granted for making an excavation or opening within the limits of a street, which will result in permanent or prolonged interference with the public use of the street.

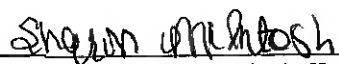
SECTION 12. PENALTY: Any person, firm, or corporation violating any provision of this ordinance is responsible for a civil infraction, subject to a fine of two thousand five hundred dollars (\$2,500). Additionally, the Town may pursue all remedies for enforcement, including injunctive relief and all remedies for damages to Town property or improvements.

SECTION 13. CONSTRUCTION: This Ordinance repeals and replaces all ordinances and parts thereof with which it may be in conflict.

SECTION 14. EFFECTIVE DATE: This Ordinance shall be effective upon its final adoption and publication as required.

Introduced and adopted, on July 14, 2025, by unanimous consent and the affirmative vote of at least four (4) members of the Morgantown Town Council.


Joe Blevins, President
Morgantown Town Council

ATTEST: 
Sharon McIntosh, Clerk-Treasurer