

## **ORDINANCE NO. 02-18-2025-01**

### **AN ORDINANCE TO ADOPT ENCROACHMENT SPECIFICATIONS WITHIN THE TOWN OF CICERO**

**WHEREAS**, the Town of Cicero ("Town") is governed by the duly elected Town Council ("Council"); and

**WHEREAS**, the Town is willing to permit for encroachment within its easements and right of ways by utilities under certain circumstances and conditions; and

**WHEREAS**, it is the desire of the Council to adopt encroachment standards to apply within the Town's easements, right of ways, and property.

**NOW THEREFORE BE IT ORDAINED** that Title IX of the Cicero Municipal Code is amended as follows;

1. The following is hereby added to Title IX as new Chapter 102 entitled "Encroachment Into Easements and Rights of Way" and shall read as follows:

#### 101.01 PURPOSE AND AUTHORITY

The purpose of this Ordinance is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum standards for construction as required by the latest version of the Town of Cicero Code of Ordinances. Also, this Ordinance provides procedures to control, review, and approve the construction of public improvements as well as procedures for the control and maintenance of the Town rights-of-way.

The Town of Cicero is responsible for maintaining all streets and structures accepted within the Cicero rights-of-way, and it is therefore necessary to set minimum standards for the construction of all improvements for which the Town will be responsible in order to avoid assuming unnecessary maintenance costs and inconvenience to the citizens and businesses of the Town of Cicero.

All improvements intended for public use, to be constructed in a Town right-of-way or easement, must conform to Town standards according to the latest version of the Town of Cicero Code of Ordinances and shall conform to or exceed the standards as set forth in this Town Ordinance.

The standards set forth in this Town Ordinance are intended to be minimum standards. Variances from these standards may be considered by the Cicero Utility Superintendent or their designee upon written application. Variance requests must cite unusual conditions and justify changes based upon sound engineering practices. Proposed variances shall have been reviewed by any applicable agency of jurisdiction before consideration by the

Cicero Utilities and Street Departments. Also, any proposed variances must be supported by a Professional Engineer that is registered in good standing with the State of Indiana.

All improvements shall be constructed to conform to the latest version of the Town of Cicero / Hamilton County Construction Standards Specifications (June 2010) referred to in this Ordinance as "Standard Specifications", except where deviations are hereinafter allowed or variances granted. Copies of the Standard Specifications are on file at the Clerk-Treasurer's Office and are available for review. In the event an aspect of the project is not addressed in Town of Cicero / Hamilton County Construction Standards Specifications, then the Standard Specifications of the Indiana Department of Transportation (INDOT) shall be utilized.

#### 102.02 SUBGRADE AND BACKFILL

Flowable fill shall be required as backfill on any cut made in streets, alleys, or shoulders within five-foot (5') of the edge of asphalt. The Cicero Utility Superintendent and/or their designee, herein referred to as "Town" shall review and approve any exceptions. The installation of all underground utilities outside of the five-foot (5') edge of asphalt easement shall be in compliance with the latest version of the Town of Cicero Code of Ordinances.

#### 102.03 Right-of-Way Encroachments

Any person, firm, or corporation desiring to open, cut, bore into or under any street, alley, or other public way, paved or unpaved, or to obstruct the right-of-way for the express purpose of construction, vending, or other purpose restricting the intended use of the right-of-way within the limits of the Town shall be required to obtain a specific permit for such purpose. Aerial work beyond five feet of pavement which does not obstruct traffic or cause any traffic hazards and does not damage the Town's right of way is exempt from permits.

#### 102.04 Encroachment Permit Authority

The Town of Cicero has the legal responsibility for the management of all Town property. The proper use of the public rights-of-way are within the legal authority of the Street Department. All encroachments shall be in accordance with this Ordinance and subject to the authorization of the Cicero Utility Superintendent. The Cicero Town Council shall hereby grant the Cicero Utility Superintendent the authority to approve encroachment permits, as an agent of the Town, on specifically designated local streets for normal and routine encroachment requests. The Cicero Utility Superintendent shall have the right to appoint a deputy to perform the duties of encroachment permit administration.

#### 102.05 Types of Right-of-Way Encroachments

The following right-of-way encroachments which shall specifically require an encroachment permit:

- a. Right-of-Way Cuts
  1. The extension of services to a new development from existing Town right-of-way;
  2. The extension of services to existing homes in the right-of-way;
  3. Upgrade of service to a single user within the right-of-way;
  4. Directional bores within the right-of-way;
  5. Parallel, diagonal or perpendicular cuts through the existing pavement or the right-of-way;
  6. Installation of overhead services within the right-of-way;
  7. Emergency encroachments; and
  8. Open Trenching.
  
- b. Right-of-Way Blockage
  1. Obstruction due to dumpsters, construction equipment, materials or signage;
  2. Sidewalk sales commercial and residential,
  3. Business awnings, canopies, or sign encroachments;
  4. Authorized plantings within the right-of-way;
  5. Building facade restoration and renovations;
  6. Any work to be done by the resident pertaining to drive approaches or sidewalk replacement;
  
- c. Curb Cuts/New Access Into Existing Town Right-of-way
  1. New residential driveways;
  2. Upgrade of commercial or residential driveways;
  3. Addition of auxiliary lanes to existing development in accordance with Town standards.
  
- d. Special Provision Encroachments
  1. Pavement resurfaced within thirty-six (36) months of encroachment application.
  2. Brick streets, alleys, sidewalks or any other brick surface within the right-of-way of the Town of Cicero.

#### 102.06 Encroachment Application and Permit Procedures

All encroachment permit applications shall be in written form. Applications must be submitted to the Town of Cicero prior to the encroachment being granted. The encroachment permit application shall be administered and reviewed by the Cicero Utility Superintendent and approved only after the required conditions of the permit have

been established and all conditions are met to the satisfaction of the Cicero Utility Superintendent or their designee. On all applications submitted there will be up to a ten (10) working day review period. No work will be allowed prior to the review. A penalty fee of up to \$1,000.00 will be enforced by the Town with a stop work order for unauthorized work performed before permits are approved. All permit work shall be performed Monday through Friday, during the hours of 7:30 a.m. to 4:30 p.m., unless pre-approved by the Cicero Utility Superintendent and/or their designee. No boring shall be permitted after 3:00 p.m. Permittees are responsible for reimbursement of any overtime incurred by the inspectors for any work done out of the normal business hours of Monday through Friday, 7:30 a.m. to 4:30 p.m. Possession of a properly endorsed encroachment permit by the Town shall constitute permission to encroach upon the Town of Cicero rights-of-way. The permit shall be available at all times, on site during the period of encroachment.

a. Standard Encroachment Permit application

Standard encroachment permit applications must be obtained through the Cicero Utility Office, 331 E. Jackson St., Cicero, IN 46034. The Permittee must submit the original encroachment permit application, and a set of construction drawing of the proposed project drawing of the proposed right-of-way encroachment to the Cicero Utility Superintendent or their designee. The Cicero Utility Superintendent may require a full set of construction drawings that has been surveyed in right of way research conducted and incorporated on the drawings by a professional engineer. Upon receipt of the application, the Permittee shall be notified after a review period of up to ten working days of the approval or denial of the submitted application. Permits shall be returned by mail only when the Permittee provides the proper postage and envelopes.

b. Emergency Encroachment Permit Application

In the event that public health or safety is a concern after normal business hours, the Town may grant an emergency permit. Emergency encroachment permits are to be in written form. Permit must be filled out on site by a Town of Cicero representative for Permittee to be valid. No facsimile forms are accepted. All standard encroachment permit fees apply. The emergency permit will become void 24 hours from the time indicated by the Town representative on the permit.

c. Additional Permits

The Permittee is responsible for obtaining all the necessary permits prior to the approval of the encroachment application; including, but not limited to the following:

1. Town of Cicero permits
2. Hamilton County permits

3. Indiana Department of Transportation permits
4. Department of Natural Resource permits
5. Indiana Department of Environmental Management
6. Federal permits through the Army Corps of Engineers.

d. Notification of Residents

The Permittee shall be responsible for the proof of proper notification of all residents affected by the proposed encroachment, as determined by the Town. A copy of the letters shall be provided to the Cicero Utility Superintendent to become part of the encroachment permit documentation.

e. Traffic Control

Traffic control shall be required for all encroachments that restrict the natural flow of traffic. All temporary traffic control measures shall conform to the latest addition of the Indiana Manual on Uniform Traffic Control Devices. Unless otherwise provided, the street shall be kept open to all traffic while undergoing improvements. Where so provided on maintenance of traffic plan, approved by the Cicero Utility Superintendent, traffic may be bypassed over a detour route. The detour route markings shall be erected, maintained, and removed by the Contractor. The portion of street being used by public traffic shall be kept in such conditions that such traffic will be adequately accommodated.

Flashing type II barricades or drums in accordance with INDOT Specification 801.09, shall be placed at 100 ft. intervals where drop-offs of greater than 3 inches are adjacent to the shoulder until the aggregate or earth wedge is placed. In areas allowing on-street parking, a distance of 50' to 25' may be requested.

f. No Work Between July 1st and July 5<sup>th</sup>

The Town of Cicero holds an annual town-wide celebration of the 4 of July over a three-day period each year. This event involves parades, a festival, a fireworks display and numerous other activities throughout the town. All encroachment work shall cease from July 1st and July 4<sup>th</sup> in order to avoid causing delay or other issues during this event. Worksites must be cleared of materials and equipment in advance of July 1<sup>st</sup>. The Cicero Utility Superintendent shall have the authority to inspect worksites, to approve their condition, and to require additional measures to secure and clear the site. Work may recommence on July 5<sup>th</sup>.

g. Encroachment Start Procedures

The Cicero Utility Superintendent shall require notification prior to the start of any encroachment. In accordance to Indiana Public Law IC-8-1-26, and I.U.P.P.S.

(Indiana 811) authorization number must be received a minimum of 72 hours prior to any encroachment in the right-of-way.

Failure of notification prior to the start of the encroachment shall result in a \$100.00 fine. If the encroachment duration is more than 5 working days, written weekly updates shall be provided to the Cicero Utility Superintendent and/or their designee and daily notification shall be required at the discretion of the Director. A copy of the approved encroachment permit shall be required to be on site at all times.

h. Permit Life

Encroachment start dates shall be provided on the encroachment permit application. If encroachment does not commence within 45 working days of the permit approval date, the permit shall be considered void and the encroachment application shall be resubmitted for approval consideration. All work must be completed within 60 working days of the application approval date. Exceptions shall be noted on the permit application and shall be authorized by the Town only.

Completion dates and times on all open cuts will be noted by Town designee on-site at the time of final inspection of the permit. (See 3.3(1))

i. Permit Cancellation Procedures

Cancellation of any scheduled inspections is required prior to inspection. Failure of prior notice will result in a penalty fee of \$100.00 per inspection.

j. Temporary and Permanent Patches

Maintenance periods will begin with the final inspection date approved by the Cicero Utility Superintendent and/or their representative. All open cuts in streets and alleys shall have permanent patches in place no later than 20 working days of the temporary patch inspection date, or within the permit life whichever comes first. Winter cut procedures will be determined by the Cicero Utility Superintendent and/or their representative for each individual permit application. Temporary construction patches shall be maintained to the satisfaction of the Cicero Utility Superintendent until permanent patches are complete. Bricks shall be replaced with original bricks removed from patches.

Concrete and sod areas are to be restored to equal, if not better condition within the twenty (20) working day completion period. All patches listed in this Ordinance Section 102.03 shall be maintained by the permit application holder for a period of one year. All temporary patch methods are to be determined by the Cicero Utility Superintendent or their representative.

k. INDOT Encroachment Permits

The Town may request to review all Indiana Department of Transportation permits obtained for work within the Cicero Corporate limits.

#### 1. Inspections

All encroachment permits defined in Section 102.05 shall be inspected by the Town before, during, or after encroachments.

#### 102.07 Encroachment Permit Insurance and Bonding

The Permittee shall be required to submit proof of insurance for general liability. The Cicero Utility Superintendent and/or their representative may require the Permittee to post a bond equal to 125% of the estimated work in favor of the Town of Cicero. This bond shall be valid for a period commencing from the start of the encroachment for a period of 12 months after construction and/or installation is completed and shall cover costs such as the repair of any later discovered damage to roads, water infrastructure, sewer infrastructure, stormwater infrastructure, or any other damage to Town property. The minimum insurance requirement shall be \$1,000,000 per occurrence, \$300,000 per person, and \$50,000 for legal unless an exemption is requested through the Cicero Utility Superintendent and/or their representative.

The Permittee shall execute an agreement requiring it to name the Town of Cicero as an additional insured.

#### 102.08 Encroachment Details

All asphalt encroachments shall conform to the latest version of the Town of Cicero Code of Ordinances. upon completion, unless instructed otherwise and approved by the Town.

#### 102.09 Encroachment Permit Fees and Public Improvement Responsibilities

A separate encroachment permit application shall be required for each individual right-of-way cut or encroachment. Each standard application under Chapter 102.05 shall require a minimum \$50.00 fee to be paid upon receipt of the approved encroachment permit.

Exceptions are encroachments as defined in Section 102.05 (a)(8) shall require an additional fee of \$0.10 per foot if extended over 100 feet. Encroachments defined in Section 102.05(b) of this Ordinance are valid for thirty (30) days and require an additional \$25.00 fee. Encroachments as defined in Section 102.05 may require review of construction plans by the Town.

- a. Special provision encroachment fees as stated in Section 102.05 (d) are as follows. These fees are in addition to the standard encroachment fees.
  1. Pavement resurfaced within twelve (12) months of encroachment applications shall require a \$300.00 fee. This fee is to be paid upon receipt of the approved encroachment application.

2. Pavement resurfaced within twenty-four (24) months of encroachment application shall require a \$200.00 fee. This fee is to be paid upon receipt of the approved encroachment application.
  3. Pavement resurfaced within thirty-six (36) months of encroachment application shall require a \$100.00 fee. This fee is to be paid upon receipt of the approved encroachment application.
  4. Any brick streets, alleys, sidewalks or any other brick surface within the right-of-way controlled by the Town of Cicero. A fee of \$100.00 shall be required upon receipt of the approved encroachment application.
  5. The Town of Cicero holds all options to invoke special fees per the approval of the Public Works Department when applicable for encroachments not covered within these standards.
- b. The Cicero Utility Superintendent shall have exclusive authority to grant a street cut request on all primary and secondary arterials. The street cut methods shall conform to the related details of this Ordinance and the latest version of the Town of Cicero Code of Ordinances.
  - c. Street cuts requiring authorization by the Cicero Utility Superintendent, shall be a minimum 1 1/2" mill and overlay for the entire effected street surface for streets paved within 3 years of the encroachment permit application date as listed under Section 102.05 (d).
    - i. Open street cuts parallel, diagonal or perpendicular to the travel lanes shall require a full pavement width mill and overlay. The required resurfaced area shall extend a minimum of 10' beyond each of the saw cut edges, as determined by the Director and/or his representative.
  - d. The Utility Superintendent shall require the implementation of special methods of street cuts from November 1 through April 30 to ensure temporary street cut patches do not interfere with the normal operation of Town services.

#### 102.10 PENALTIES

- a. Any person, firm, corporation, or any other entity who shall be in violation of Chapter 102 of this Ordinance, or any amendment thereto, shall receive a fine of not more than \$500. Each day an entry or cut is made without the issuance of a proper permit under this chapter shall constitute a separate offense, and each separate offense shall subject the violator to a separate fine as provided herein.
- b. Any person, firm, or corporation, or any other entity who shall be in violation of Section 102.09 (a) 1-5, shall be subject to a fine twice that of the original encroachment application fee. Each day an entry or cut is without the issuance of a proper permit under this chapter shall constitute a separate offense, and each separate offense shall subject the violator to a separate fine as provided herein.



- c. Any agency whose approval is required under this Ordinance or any interested person may seek an injunction against any person who violates or threatens to violate any provision of this Ordinance.
- d. In accordance to any other sanction under this Ordinance, a person who fails to install or to maintain the approved public improvements in accordance with the approved construction plan shall be liable to the Town of Cicero in a civil action, for damages in an amount equal to the cost of installing or maintaining the controls, all engineering fees, court costs, litigation expenses, and attorney's fees incurred by the Town.
- e. Any persons, firm, corporation, or any other entity who fails to secure any service that can cause damage to property or health due to its failure, shall receive a \$500.00 penalty for every 24-hour period that corrections are not made. The twenty-four (24) hour period will start from the time the damaged service is reported. This application should fall under Section 102.06(b) on procedures and time frames.
- f. Any governing authority that recovers damages in accordance with this subsection shall deposit them in a special fund, to be used solely for:
  - 1. Correcting, to the extent possible, the failure to install or maintain the public improvements according to the approved plans and specifications;
  - 2. Correcting, to the extent possible, the failure to follow the procedures outlined under permits issued in accordance with this Ordinance; and
  - 3. The administration of the construction inspection as per this Ordinance.
- g. The Town of Cicero shall hold the right to secure and/or complete without prior notification to the applicant any and all permit cuts found to be public health or safety concerns. Costs incurred by the Town of Cicero, any and all actions taken by the Town shall be reimbursed by the applicant/applicant as reflected in Attachment A4 of this ordinance.
- h. Failure to complete permanent patches within the 20-working day requirement may result in a fine of \$100 per day, up to five (5) working days. In the event the repairs are not made in this time period, the Town may repair the patches as defined in section 102.10 (g), including all fines.

#### 102.11 SEVERABILITY

If any portion, section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance, it being the intent of the Town of Cicero that this Ordinance shall stand, notwithstanding the invalidity of any portion, section, subsection, sentence, clause, or phrase, hereof.

2. The following standards, specifications, fees, application, and forms are attached and hereby incorporated and adopted as part of this ordinance:
  - a. Attachment A2 – General Details
    - i. Attachment A2.1 Repair Cuts with Pavement Limits
    - ii. Utility Relocation and Installation Detail
    - iii. Utility Pothole Detail
    - iv. Utility Backfill Limits w/ or w/out sidewalk or trail
  - b. Attachment A3 – General Requirements for Final Inspection and General Requirements for Horizontal Directional Drilling
  - c. Attachment A4 – Costs
  - d. Attachment A5 – Encroachment Application
  - e. Attachment A6 – Encroachment Permit
3. Except as amended hereinabove, all of the other terms, provisions, conditions and penalties contained in the Ordinance shall remain in full force and effect.
4. This Ordinance amendment shall become effective thirty (30) days after it is published in compliance with the IC 36-3-4-14 and IC 5-3-1 et al.

ADOPTED by the town council of the Town of Cicero this 18<sup>th</sup> day of February, 2025.

TOWN COUNCIL OF THE TOWN OF  
CICERO, INDIANA

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Joseph R. Cox, President

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Dennis D. Johnson

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Eric C. Hayden

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Emily K. Pearson

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Christopher J. Lutz

ATTESTED TO:

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Rhonda Gary, Clerk-Treasurer