

#25-92

**ORDINANCE OF THE
COUNTY BOARD OF THE COUNTY OF MARSHALL, ILLINOIS**

**AN ORDINANCE ESTABLISHING RIGHT OF WAY PERMIT FEES AND
REGULATING THE PLACEMENT OF UTILITIES AND FACILITIES WITHIN THE
RIGHTS-OF-WAY OF MARSHALL COUNTY HIGHWAYS**

WHEREAS, the Illinois Compiled Statues, as amended, provide for the County Board and the County Engineer to have authority over and supervision of County Highways; and

WHEREAS, the Illinois Highway Code (605 ILCS 5/5-414), as amended, grants county boards the authority to adopt regulations providing for the issuance of permits by the County Engineer for the temporary closure to traffic of any portion of a highway under their jurisdiction for any public purpose; and

WHEREAS, the Illinois Highway Code (605 ILCS 5/9-113), as amended, set forth the powers and authority of the appropriate highway authority as they relate to the placement, removal, relocation, modification, or abandonment of utilities and facilities within public highways including their placement within the rights-of-way of county highways. For county highways, the appropriate highway authority shall be the County Engineer; and

WHEREAS, the Illinois Highway Code (605 ILCS 5/9-115.1), as amended, requires that drainage facilities for the purposes of detention or retention of water may not be constructed within a distance of 10 feet plus one and one-half (1.5) times the depth of the drainage facility adjacent to the right-of-way of any public highway without the written permission of the highway authority having jurisdiction over the public highway. The toe of any earthen berm may not be constructed nearer than 10 feet to the right-of-way of any public highway without the written permission of the highway authority having jurisdiction over the public highway; and

WHEREAS, it would be in the public interest to adopt the recommended ordinance to preserve and protect the public safety, health, and general welfare as they relate to the operation and use of County Highways and their associated rights-of- way.

NOW, THEREFORE BE IT ORDAINED, by the County Board of the County of Marshall, Illinois that the ordinance titled "Marshall County Highway Utility and Facility Placement" be added to the list of County ordinances, which reads as follows:

MARSHALL COUNTY HIGHWAY UTILITY AND FACILITY PLACEMENT

Definitions.

For the purpose of this Article VI, the following words, terms, and phrases are hereby defined and shall be interpreted as such throughout this Article VI.

ABANDONED UTILITY OR FACILITY. Any utility or facility not in use or operation and with no immediate or foreseeable plans for repair or replacement to serve the same function.

APPURTENANCES, HIGHWAY. In highway terms, all of the constituent components subordinate to but nonetheless necessary for the operation, function, and/or maintenance of a roadway such as storm sewers, lighting, signage, and traffic control devices, and the like.

APPURTENANCES, NON-HIGHWAY. All of the constituent components subordinate to but nonetheless necessary for the operation, function and/or maintenance of a utility or facility such as utility poles, pedestals, transformers, valves, vaults, and manholes, and the like.

BERM. A man-made small hill or embankment-like facility made by the placement of earth, sand, gravel, rock, organic material, or other similar material, usually linear in nature, and used for screening or landscaping purposes and/or in conjunction with drainage facilities.

BERM, TOE OF. The point at which the bottom edge or slope of a berm meets the existing grade of the ground.

COUNTY. County of Marshall, Illinois, also Marshall County, Illinois.

COUNTY BOARD. The County Board of Marshall County, Illinois.

COUNTY ENGINEER. The Marshall County Engineer.

COUNTY HIGHWAY. A public road as defined by the Illinois Highway Code as part of the county highway system, including municipal extensions of county highways and any proposed roads as yet un-built but designated as a part of the county highway system.

CULVERT. A sewer pipe or drain that crosses under a roadway, driveway, or embankment and is used for the conveyance of roadside and/or watershed drainage.

DECOMMISSIONING BOND. A financial guarantee, usually a surety bond, ensuring a company will properly dismantle infrastructure and restore the land/right of way to its original condition when the project ends, preventing both abandonment and the shift of cleanup costs to taxpayers or landowners.

DETENTION BASIN. A man-made facility for the temporary storage of stormwater runoff with controlled release during or immediately following a storm.

EMERGENCY REPAIR. An immediate repair or reconstruction to the utility or facility required to protect health, safety and welfare of the general public. The emergency work can be required as

a result of a natural disaster or other state emergency. The duration of the work period for an **EMERGENCY REPAIR** is generally considered 72 hours or less.

FACILITY. A non-roadway object, structure, way, or device, artificially made or natural, that is designed, constructed, located, or placed to serve a specific function or purpose or perform a particular service. **FACILITIES** include but are not limited to sidewalks, bike paths, sanitary or storm sewer lines, water lines, street lighting, signage, trees, public transportation shelters, or any other non-highway appurtenance.

IMUTCD. The current *Illinois Manual on Uniform Traffic Control Devices for Streets and Highways* as adopted by IDOT in accordance with 625 ILCS 5/11-301.

MAINTENANCE. A repair or inspection of an existing utility or facility that requires disturbance of the county highway and/or right-of-way.

NONCONFORMING UTILITY OR FACILITY. A utility or facility that was placed prior to the county permitting process.

PERMIT. A formal, written document authorizing certain work to be performed within the right-of-way of a county highway which sets forth the rules, regulations, and specifications of the work in conformance with this Article VI.

PERMITTEE. Any applicant to whom a permit is issued.

RIGHT-OF-WAY. A strip of land occupied or intended to be occupied for public highway purposes.

UTILITY. A unit, either publicly or privately owned, composed of one or more pieces of aerial or underground related equipment or constructed materials connected or a part of a structure or system designed to provide a service, including but not limited to fiber optic cable, coaxial cable, electric cable, telecommunication cable, or gas lines.

UTILITY EASEMENT. A platted easement, inside or outside of the county highway right-of-way, that is for the use or benefit of a public or private utility to accommodate its utilities as defined by this chapter.

Sec. 1 - Utility or Facility permit required within County Highway right-of-way.

- A. A permit shall be required for the reconstruction, relocation, repair, maintenance, modification, removal, upgrade or any and all manner or form of work relating to an existing utility or facility or any and all other manner or form of work relating to the construction or placement of a new utility or facility within the right-of-way of any County Highway. All work associated with a utility or facility to be placed or already existing within the right-of-way of any County Highway shall be performed at no cost to the County. A permit for work relating to a utility or facility shall be valid for a period not to exceed 18 months from the date of issuance and all rights arising from or created by the issued permit shall expire and terminate if the work contemplated under the permit has not been initiated. The County Engineer, upon written request, may extend the term of a permit for a period of time as the County Engineer may determine.
- B. This permit is required for any utility or facility work within the right-of-way. Examples of type of utilities include, but are not limited to, electric lines, telephone lines, data

communication lines, telecommunication lines, cable television lines, natural gas transmission lines, traffic signals and water distribution/conveyance lines. Examples of types of facilities include, but are not limited to, sidewalks, street lights, bike paths, storm sewers, water mains, sanitary sewer lines, trees, and other municipal or government owned facilities and general work performed within the right-of-way.

- C. The rights-of-way of County Highways are established for the location of highways and highway associated appurtenances. Utilities and facilities shall be located within such rights-of-way in a manner that will not impede or conflict with any existing highway or associated appurtenance or any future improvement or widening of a highway and the construction or reconstruction of associated appurtenances. A utility or facility is not considered a highway appurtenance. Therefore, whenever a County Highway pavement is widened, reconstructed, resurfaced, or additional lanes are added, and an existing utility or facility will be under the widened pavement, the owner of the existing utility or facility or the permittee shall relocate, remove, or modify the utility or facility from under the widened pavement at no cost to the County. The County Engineer shall determine the need for the relocation, removal, or modification on a case-by-case basis. Any and all additional or extraordinary costs that may be incurred by the County due to the presence, abandonment, or proposed placement of any utility or facility within the right-of-way of a County highway shall be borne solely by the owner of the utility or facility. Payment to the County for the additional or extraordinary costs shall be made as determined by the County Engineer.
- D. In the event of any utility or facility work within a County Highway, and as a result of the utility or facility work, there would be conflict of any nature with an existing utility or facility located within the right-of-way, the authority owning the utility or facility shall place, relocate, remove, or modify the utility or facility as necessary for the construction of the utility or facility work within a County Highway. Said placement, relocation, removal, or modification shall be performed in a reasonable time as set forth by 605 ILCS 5/9-113 and shall be at no cost to the County.
- E. A permit is required for any utility work within the right-of-way. However, the County Engineer may, at the County Engineer's discretion waive any permit and/or permit fee for governmental agencies including but not limited to local city or village governments, reclamation district, and water districts.
- F. Property Owner's Permission
 - 1) The issuance of a permit under the rules, regulation, and specifications of this Ordinance does not relieve the permittee from obtaining permission from the legal property owner to locate the utility or facility on any County highway where the right-of-way is in the form of an easement for public road purposes and the County does not own the right-of-way. The rules, regulations, and specifications of the permission shall not be in conflict with the provisions of this Article VI, Chapter 82, nor supersede, diminish, alter, or in any manner or form interfere with

use of the easement for roadway purposes, nor shall that permission result in any costs to the County either now or in the future.

- 2) Failure to obtain permission can be just cause not to issue a permit or to suspend or revoke an issued permit.

Sec. 2 - Powers, responsibilities, strategies and practices regarding the enforcement of utility and facility permits.

By authority of the County Board and adoption of this amendment of this Article VI, through powers vested through the Illinois Compiled Statutes, as amended, and all other applicable laws, statutes, orders and regulations of this state and this County, the County Board of this County hereby grants and assigns to the County Engineer and the Marshall County Highway Department the following powers, responsibilities, strategies, and practices regarding the enforcement of this ordinance:

- A. To review, plans specifications, and estimates, and issue or deny permits for the placement, abandonment, removal, and/or relocation or modification of utilities and facilities within County Highway rights-of-way.
- B. To issue utility and facility permits and maintain records thereof.
- C. To develop and set in place application procedures for the permits.
- D. To develop and set forth the types, extent and nature of the studies, drawings, sketches, plans, engineering plans, forms, applications, types of permits or any other types of documents that are needed for the administration and implementation of this amendment of this chapter; and to change, modify and/or revise the nature and extent of said studies, drawings, sketches, plans, engineering plans, forms, applications, types of permits, or any other types of documents as needed.
- E. To review, approve, disapprove, or cause changes and modifications to be made to all studies, drawings, engineering plans, and other documents that are required by this ordinance.
- F. To conduct inspections and field investigations, as necessary, to ensure compliance with the rules and regulations of this ordinance.
- G. To institute any appropriate action as set forth in the Illinois Compiled Statutes, as amended, or this ordinance and/or to request the Marshall County State's Attorney institute any proceedings to prevent the unlawful placement, construction, reconstruction, enlargement, relocation, modification, removal or any other work performed in the right- of-way of any County Highway relating to utilities and facilities located therein after the adoption of this ordinance.

- H. To develop and place into use any forms, applications, sketches, drawings, and/or permits to be used for the administration and implementation of this amendment and to change, modify, and/or revise these forms, applications, sketches, drawings, and permits as needed.
- I. The County Engineer to perform such duties as assigned by this ordinance by designating an agent or through the County staff.
- J. To collect such funds as may be derived from any funds, fees, or charges collected pursuant to the administration of this amendment.
- K. To administer and carry out the provisions, rules, regulation, and specifications of this amendment in reasonable time given staffing levels, workload, and budgeting constraints.
- L. To refer all violations of this ordinance and 605 ILCS 5/9-113, as amended, to the Marshall County State's Attorney.

Sec. 3 - Utility and Facility Permit Procedure.

The permit process for utility and facility permits consists of the following steps:

- A. The applicant for the permit, a permittee, must be the owner of the subject utility or facility. The permittee shall submit a cover letter describing the proposed work in the right-of-way, person in-charge and contact information, and a copy of plan showing the proposed location of the utility or facility.
- B. After the initial submittal of said plan, the Marshall County Highway Department staff or permittee may request for a meeting to discuss permit related requirements, work plans and to determine final submittals including traffic control plans, application fee, performance guarantee, and any other information. The prescribed application form will be made available on the County website. The permittee shall sign and submit an application and application fee.
- C. All re-submittals will be reviewed by the Marshall County Highway Department within 25 working days and a permit will be issued or denied to the permittee.
- D. (1) *Emergency repair; permit.* Emergency repair work may be performed on a utility or facility located within a right-of-way of a County Highway prior to obtaining a permit to perform the work necessary to remedy the emergency situation. For all emergencies, the owner of the facility/utility lines shall notify the Marshall County Highway Department within 24 hours after the discovery of the emergency and the Marshall County Sheriffs Department shall be notified outside of normal business hours.
- (2) *Emergency repair work traffic control.* When emergency work creates a hazard on the traveled portion of the roadway, immediate steps shall be taken by the utility or

control standards in accordance with *IMUTCD*, Marshall County Highway Standards, and IDOT Standards shall be used at all times. The person in charge shall notify the Marshall County Highway Department of any lane closure and when the lane reopens. Any time a portion of the county highway requires closure outside of normal business hours, the Marshall County Sheriff's Office shall be notified.

(3) *Emergency work duration.* The duration of the work under an emergency situation by definition is considered 72 hours or less. This time frame is meant to resolve the immediate emergency and temporary pavement may be required as part of this job. The County Highway shall be open to traffic as soon as possible. All permanent restoration to pavement, shoulders, and right-of-way that was disturbed as the result of emergency work shall be completed within one week of the completion of the emergency repair. Should the emergency occur during the winter months, temporary restoration measures shall be required until permanent restoration can be completed in the spring.

(4) *Emergency work permit requirements.* Performance of the emergency repair work does not relieve the owner of the utility or facility of all other applicable rules, regulations, and specifications, as set forth in this Ordinance. A permit application shall be submitted after the incident describing the work carried out within the County right-of-way with the requisite permit application fee. Said permit application for the emergency work shall be received by the Marshall County Highway Department no later than one week after the emergency had been identified.

Sec. 4 Utility and Facility Permit fee schedule.

Unless otherwise waived pursuant to Sec. 82-105(E) or this Sec. 82-108 of this ordinance, all applications for permits pursuant to this Ordinance shall be accompanied by fees set forth in the "UTILITY AND FACILITY PERMIT FEE SCHEDULE" attached to this ordinance as Appendix

1. Said fees may be amended from time to time by the Marshall County Board by amending this Ordinance. The County Engineer may, at the County Engineer's discretion, waive any fees imposed by this ordinance if the fees are for a permit to perform work within a county highway right-of-way that is needed due to a county improvement or maintenance operation or if the work is being performed by another state or municipal agency within the County of Marshall, Illinois. (A copy of Appendix 1 is available at the Marshall County Highway Department, 552 State Route 26, Lacon, IL 61540)

Sec. 5- Utility and Facility Permit Performance Guarantee Required Prior to Permit.

An acceptable performance guarantee to protect the County Highway system and to ensure compliance with this amendment and with issued permits shall be provided prior to the issuance of a permit as provided for in this ordinance. A performance guarantee for all facilities or utilities shall be in the form of a cash bond, irrevocable letter of credit, decommissioning bond, or surety bond. The County Engineer shall be, and is hereby authorized to act for the County in all matters relating to performance guarantees. The County Engineer may, upon receipt of written application substantiating good and reasonable cause, waive this requirement for facilities. This waiver shall be at the discretion of the County Engineer except that "good and reasonable cause" shall not include financial or banking difficulties. The County Engineer shall establish performance guarantee policies showing the items and costs used to determine performance guarantee amounts and the length of the term of the performance guarantee. These items shall reflect the costs needed to restore the right-of-way of the County Highway to its original conditions or better. Additional costs may be

added to ensure completion of the work permitted under this amendment. The length of the term for performance guarantees shall be the amount of time required to complete the permitted work and restoration work plus any additional time to ascertain any problems with the permitted work and restoration work. In no case shall the length of the term for the performance guarantee be less than 18 months. If the permittee fails to perform the permitted work and/or the restoration work with sufficient work force and equipment or with sufficient materials to ensure the completion of the work, or complete the permitted work or restoration within the specified time, or performs the work unsuitably as determined by the County Engineer, or neglects or refuses materials or performs anew such work as shall be rejected as defective and unsuitable, or discontinues the execution of the work, or for any other cause whatsoever does not carry on the work in an approved manner, the County Engineer shall give notice to the permittee and the permittee's bank or surety, if any, of the delinquency. This notice shall specify the corrective measures required. After the notice, the County Engineer shall draw on the performance guarantee in accordance with the terms of the performance guarantee. The County Engineer shall deliver any funds drawn upon to the Marshall County Treasurer and request deposit in the appropriate fund. In the event the Marshall County Highway Department takes over the responsibilities for completing the permitted work or restoration, then all materials or equipment on the ground as may be suitable and acceptable may be used by the Marshall County Highway Department to complete the restoration or any such other methods as shall be required for the restoration in an acceptable manner.

Sec. 6 - Berms and Earth Filling.

- A. No permanent berm or berming, in whole or in part, shall be allowed on or within the right-of-way of a County Highway.
- B. No permanent earth filling of any type or nature shall be allowed on or within the right-of-way of a County Highway.
- C. No berm or earth filling located outside the right-of-way of a County highway shall alter or change in any manner or form any existing drainageways that will adversely affect the existing drainage of a County Highway.
- D. The toe of any berm or earth filling shall not be located within ten feet of the right-of-way line of a County Highway without receipt of a permit.
- E. The toe of any berm or earth filling designed to detain water shall not be located nearer to the right-of-way of a County Highway than ten feet plus one and one-half times the depth of the earth excavation, detention or retention basin, as measured from the bottom of the basin to the top of berm, without receipt of a permit.

Sec. 7 - Detention/Retention Facilities/Earth Excavation.

- A. No detention or retention basins shall be allowed on or within the right-of-way of a County Highway unless the detention or retention basins are constructed as a highway appurtenance to a County Highway.
- B. No earth excavation, detention or retention basin shall be located at a distance closer than ten feet plus one and one-half times the depth of the earth excavation, detention or retention basin from the right-of-way line of a County Highway without receipt of a permit.

Sec. 8 -Traffic Control Devices.

- A. Any existing traffic control device removed due to construction and restoration work shall be reset as that area is restored. Regulatory and warning devices shall at all times be kept in clear and unobstructed view of the public using the right-of-way. The permittee shall be responsible for the cost of any damaged or lost devices and for the cost of resetting any devices.
- B. If traffic signals handholes, fiber optic, interconnection lines, or other County-owned facilities need to be relocated, the following note shall be included on the plans: "The Marshall County Highway Department must be notified for locates 72 hours before construction begins for the relocation of fiber optic, interconnect lines, handholes, or other County-owned facilities."

Sec. 9 - Responsibility for damage claims.

- A. The permittee shall indemnify, save harmless and defend the Marshall County Highway Department and Marshall County, its elected and appointed officials and employees against all loss, damage, or expense that it or they may sustain as a result of any suits, actions, or claims of any character brought on account of property damage, injury to or death of any person or persons, including all persons performing any work under the permit, which may arise in connection with the work to be performed under the permit.
- B. The permit is not intended by any of the provisions of any part of the permit to make the public or any member thereof a third party beneficiary of the permit, or to authorize anyone not a party to the permit to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the permit.
- C. The duties, obligations, and responsibilities of the parties to the permit with respect to third parties shall remain as imposed by law.

Sec. 10 - Violation and Penalties.

- A. Whoever shall construct, or cause to be constructed, any utility or facility within the right-of-way of any County Highway, or whoever shall repair, relocate, revise, modify, enlarge, remove, reconstruct, or abandon any existing utility or facility within the right-

of-way of any County Highway in violation of this Ordinance of the Marshall County Code shall be subject to a fine of not less than \$100 and not more than \$500. Each day the violation continues shall constitute a separate offense subject to the above penalties. A violation shall also include any utilities and facilities within the County Highway built without approval and a permit as required in this Ordinance of the Marshall County Code.

- B. Any person violating any provision of this ordinance for which no specific penalty is prescribed shall be subject to the discretion of the County Engineer.
- C. Whenever a violation shall come to the knowledge of the County Engineer, the County Engineer may take any action as deemed appropriate and as set forth in the Illinois Compiled Statutes, as amended. The provisions of this ordinance shall not be deemed exclusive and shall not be deemed to prevent the maintenance of any other action or proceeding in law or equity to enforce the provisions of this ordinance.
- D. Non-conforming utilities or facilities will be phased out over time as they are abandoned, their useful life expires, or they are upgraded.
- E. The County Engineer shall have the authority to:
 - 1) Delay the issuance of permits to an applicant due to the failure of the applicant to comply with the provisions of other permits issued to the applicant.
 - 2) Delay the issuance of permits if the property served by the permitted work or facility is in violation of or has not complied with any other policy, ordinance, statute, regulation, or administrative order that may apply to the property.
 - 3) Revoke any active permit issued to the applicant due to the failure of the applicant to comply with the provisions of other Marshall County Highway Department permits or the failure of the applicant to comply with the provisions of this Ordinance.

Sec. 11- Separability, Law Governing.

- A. *Separability.* Each chapter, section, subsection, sentence, clause, phrase, word, provision, rule and regulation or restriction established by this Article VI or any amendments thereto is hereby declared to be separable and independent, in accordance with the following:
 - 1) If any court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, that judgment shall not affect any provision of this chapter not specifically included in the judgment; and
 - 2) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this ordinance, that judgment shall not affect the application of the

provisions to the placement, removal, relocation, modification, or abandonment of any utility or facility not specifically included in the judgment.

- B. *Law governing.* In any controversy or dispute under this ordinance or in any claims arising hereunder or related hereto, whether in contract or tort, they shall be governed by the laws of this state. Any suit regarding requirements, rules, regulations, and specifications of this ordinance must be brought in a court of competent jurisdiction in Marshall County, Illinois.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect immediately upon its adoption.

BE IT FURTHER ORDAINED that the Clerk of the County Board is hereby authorized to prepare and deliver certified copies of this Ordinance to the Marshall County Auditor, Treasurer, Administrator and Engineer.

APPENDIX 1

Marshall County Highway Department										
UTILITY AND FACILITY PERMIT FEE SCHEDULE										
Item/particulars	Application Fee	Highway Permit fee						Traffic control fee		
		Installation of lines/cables 1/4 mile or less	Installation of lines/cables more than 1/4 mile	Involves one location boring across county highway	Involves multiple locations boring across county highway	Involves one location open cut across county highway	Involves multiple locations open cut across county highway	Does not impede traffic	Involves county road lane closure	Involves county road closure and/or detour
Utility or Facility cables and structures										
Overhead (OH) cables on poles only	\$500.00	\$100.00	\$200.00	N/A	N/A	N/A	N/A	\$0.00	\$150.00	\$550.00
Underground (UG) cables	\$500.00	\$100.00	\$200.00	\$75.00	\$150.00	\$1500.00	\$2500.00	\$0.00	\$150.00	\$550.00
Combined OH & UG cables	\$500.00	\$100.00	\$200.00	\$75.00	\$150.00	\$1500.00	\$2500.00	\$0.00	\$150.00	\$550.00
Utility main/service lines and structures										
Underground (UG) main line/service lines	\$500.00	\$100.00	\$200.00	\$75.00	\$150.00	\$1500.00	\$2500.00	\$0.00	\$150.00	\$550.00

Note: (1) Utility permit fee shall be the sum of application fee, various highway permit fees and traffic control fee.

Note: (2) Highway permit fee shall be determined based on the total sum of different components involved in a particular application.

Note: (3) Any utility permit application involving multiple County highways, each highway will be considered as a separate permit application.