

MARCH 18, 2024

REGULAR SESSION

The LaGrange County Commissioners met in Regular Session on Monday, March 18, 2024, in their meeting room, County Office Building, 114 W. Michigan Street, LaGrange, Indiana, 46761, at 8:30 a.m., with the following present: Commissioners, Mr. Terry A. Martin, Peter A. Cook, and Mr. Kevin R. Myers; and LaGrange County Auditor, Kathryn Hopper. Mr. Terry Martin, President, called the meeting to order and led in saying the Pledge of Allegiance to the Flag. Mr. Kevin Myers made a motion to adopt the proposed agenda with flexibility. Mr. Terry Martin seconded the motion and it carried unanimously.

HONEYVILLE METAL LAWSUIT

Mr. Kurt Bachman, County Attorney, explained that an agreement has been reached in the Honeyville Metal lawsuit matter. Mr. Peter Cook made a motion to approve the settlement and authorize the president to sign the necessary documents outside of a public meeting. Mr. Kevin Myers seconded the motion and it carried unanimously.

ESTATE OF BARBARA EBERT LAWSUIT

Mr. Kurt Bachman, County Attorney, explained that an agreement has been reached in the Estate of Barbara Ebert lawsuit matter. Mr. Kevin Myers made a motion to approve the settlement and authorize the president to sign the necessary documents outside of a public meeting. Mr. Peter Cook seconded the motion and it carried unanimously.

INFORMATION TECHNOLOGY DIRECTOR OFFER OF EMPLOYMENT

Mr. Kurt Bachman, County Attorney, explained that authority needs to be granted to extend an offer of employment to a new Information Technology Director once one is selected. Mr. Kevin Myers made a motion to authorize the President to extend an offer of employment. Mr. Peter Cook seconded the motion and it carried unanimously.

SOUTH MILFORD PROPERTY – 7720 S STATE ROAD 3

Mr. Kurt Bachman, County Attorney, explained that in order to sell the lot in South Milford, located at 7720 S State Road 3, two appraisals are required. Caldwell Appraisals and Stanner Appraisal Service are willing to do the appraisals. Mr. Kevin Myers made a motion to hire two appraisers for the property. Mr. Peter Cook seconded the motion and it carried unanimously.

CHAMPION HOMES

Mr. Kurt Bachman, County Attorney, inquired about enforcement against Champion Homes and the County Roads Mrs. Tharon Morgan, County Engineer, will speak with Champion Homes.

ORDINANCE CREATING A PERMITTING PROCESS TO REGULATE PROJECTS ON LAGRANGE COUNTY RIGHT-OF-WAYS

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE
ORDINANCE NO. 2024-03-18 A

AN ORDINANCE CREATING A PERMITTING PROCESS TO REGULATE PROJECTS ON
LAGRANGE COUNTY RIGHT-OF-WAYS.

WHEREAS, the Board of Commissioners of the County of LaGrange (“Commissioners”) on behalf of LaGrange County, Indiana (“County”), desires to provide for the health, safety, and well-being of all people in the County as they use the County’s right-of-ways;

WHEREAS, the Commissioners have found that persons have been performing unauthorized work on its right-of-ways, which jeopardize the County’s interests;

WHEREAS, the Commissioners desire to regulate projects performed on County right-of-ways by providing, among other things, for the issuance of permits, which grant authority to perform work thereon and which ensure the subsequent restoration of the right-of-ways;

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WHEREAS, pursuant to Indiana Code (“IC”) 36-9-2-7, the Commissioners may regulate the use of public ways;

WHEREAS, pursuant to IC 8-1-2-101, the Commissioners may regulate the manner in which a public utility occupies the County’s right-of-ways;

WHEREAS, pursuant to IC 36-8-2-4, the Commissioners may regulate conduct, or use or possession of property, that might endanger the public health, safety, or welfare;

WHEREAS, the Supreme Court of the State of Indiana has determined in *Tomlinson vs. City of Indianapolis* that “the power to regulate implies the power to license and to exact a reasonable fee for such license”; and

WHEREAS, pursuant to IC 36-1-3 (“Home Rule”), the County has all powers granted it by statute and all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute, and may exercise those powers to the extent that the power: (i) is not expressly denied by the Indiana Constitution or by statute; and (ii) is not expressly granted to another entity.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA THAT:

SECTION I – NAME

The name of this ordinance is the “Right-of-Way Permit Administration Ordinance,” or the “Administration Ordinance” where the context is obvious.

SECTION II – RECITALS

The foregoing recitals, including all defined terms, are hereby incorporated into this ordinance and found to be true, accurate, and correct.

SECTION III – DEFINITIONS

A. Meaning. Whenever the following terms are used in this ordinance, they shall have those meanings herein ascribed to them unless the context clearly indicates or requires otherwise.

1. “Administrator” means the person designated by the Commissioners to administer this ordinance; the term includes any other person to whom the administrator has delegated a portion of his or her duties under this ordinance to the extent of the delegation.
2. “Applicable law” means this ordinance, all laws, constitutions, regulations, codes, ordinances, rules, orders, permit terms, license terms, authorizations, judgments, injunctions, writs, and decrees of any government or quasi-government entity having jurisdiction over the Department, the project, or the right-of-way, especially the Indiana Department of Transportation and the Indiana Manual of Uniform Traffic Devices.
3. “Application” means the form and other required documentation that is submitted on behalf of a respective owner to obtain a permit to perform work on a right-of-way.
4. “Bond” means any cashier’s check or letter of credit procured from a bank or any bond procured from a surety, any of which is issued in conjunction with an application as may be required by this ordinance; the term includes a permit bond, a performance bond, a maintenance bond, a utility bond, a construction bond, and a right-of-way bond.
5. “County-owned infrastructure” means any right-of-way, bridge, causeway, viaduct, small structure, drain, flood control device, or other structure owned by the County.
6. “Department” refers to the LaGrange County Highway Department, including any engineering division, however either may be constituted.
7. “Driveway” means the tangible portion of a public right-of-way that provides direct vehicle access to real property; the term includes a farm’s field entrance.

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8. "Emergency" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property, or that requires immediate repair or replacement in order to restore service to a customer.
9. "Enforcement Ordinance" means the Right-of-Way Permit Enforcement Ordinance.
10. "Facility" means any tangible thing, other than naturally occurring substances, located on a right-of-way; the term especially includes, but is not limited to, wires, pipes, switches, other equipment, etc. that belong to a public or private utility.
11. "Owner" means the person on whose behalf a respective application has been submitted; the term also includes:
 - a. for purposes of communication, the applicant;
 - b. in the case of an entity, the entity's principals;
 - c. in the case of an entity substantially owned by another entity, the other entity's principals; *and*
 - d. if the person has died or has been dissolved, the person's legal representatives, successors, and assigns;

except where any such inclusion would create a substantial injustice.

12. "Permit" means the nonexpired written authorization obtained from the Administrator in accordance with this ordinance prior to beginning work on a right-of-way or driveway; it allows the permittee to lawfully perform work on that part of the right-of-way or driveway pursuant to its terms.
13. "Person" means any individual or entity, such as, but not limited to, a partnership, firm, joint venture, limited liability company, corporation, cooperative, association, joint stock company, business trust, trust, estate, or governmental entity; the term also includes any legal representatives, agents, and permitted assigns except where the inclusion would create a substantial injustice.
14. "Project" means any action that involves the placement, modification, maintenance, or restoration of a facility or driveway on a right-of-way, or the substantial modification of the natural features of a right-of-way, each usually pursuant to a permit.
15. "Right-of-Way" includes the entire width of any highway, street, road, alley, or path, including any easement, sidewalk, curb, or shoulder thereof, under the jurisdiction of the County or in which the County has a legal interest; provided, however, that the term does not include any drainage easement.
 - a. "On," with respect to a right-of-way, includes on, in, over, above, under, through, or along the right-of-way.
16. "Work" means to organize, finance, supervise, or contribute labor to a project with the explicit, general, or implied consent of the owner, or to attempt to do any such activity.

- B. Arbitrator. The Commissioners have final authority in deciding the meaning of these terms.

SECTION IV – SCOPE

- A. Official Action. Nothing in this ordinance shall be construed to regulate any person to the extent that the person is working on a right-of-way on behalf of the County or cooperating directly with a law enforcement officer or County personnel.
- B. Contracts and Permits.
1. Nothing in this ordinance shall be construed to limit the right of the County and another person to enter into and abide by a special contract.
 2. Where this ordinance conflicts with the terms of a contract or permit entered into by the County, the terms of the contract or permit control with respect to that person and any facility that is the subject of the contract or permit.

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3. If an act would be construed as a violation of this ordinance or the Enforcement Ordinance but is specifically allowed in the contract or permit, the act is instead not a violation.
- C. Independence. A “permit” or “license” of any type issued by another County department does not fulfill the requirements of this ordinance.
- D. No Waiver. Nothing in this ordinance shall be construed to limit the right of the Commissioners to bring a civil action against any person to seek equitable relief or to otherwise recover any damages sustained as a result of a violation of this ordinance or other applicable law.
- E. Limitation of Liability. The issuance of any permit shall in no way operate to guarantee the safety of any person who works on the right-of-way.

SECTION V – PURPOSE

- A. The purposes of this ordinance are:
 1. to protect the County right-of-ways and adjoining streets and lands;
 2. to protect the facilities of the County, public utilities, and other persons who have been granted a permit;
 3. to protect County citizens and visitors who travel the right-of-ways;
 4. to ensure uninterrupted and unimpeded provision of County and third-party services;
 5. to coordinate the administration of multiple ongoing projects; *and*
 6. to ensure financial accountability for damage caused during a project.

SECTION VI – ADMINISTRATOR

- A. Position. The Commissioners hereby establishes the position of Right-of-Way Permit Administrator to administer the provisions of this ordinance. A person appointed as Administrator may have other regular or partial employment with the County.
- B. Ex Officio Appointment. Except as otherwise provided by this ordinance, the County Engineer shall serve as the default Administrator. To the extent that the County Engineer is to serve as the Administrator but is otherwise unavailable, the Highway Supervisor shall serve as the Administrator.
- C. Appointment by Motion. Notwithstanding Subsection (B), the Commissioners may instead appoint a different Administrator by motion.
- D. Delegation of Powers.
 1. The Commissioners hereby authorize and direct the Administrator to take all action necessary and proper to administer this ordinance, subject to applicable law.
 2. The Administrator may delegate any power and/or duty under this ordinance or other applicable law relating to right-of-way administration to another public servant, as appropriate, while retaining ultimate responsibility therefor.
 3. The Commissioners retain jurisdiction to be the final authority for the management and reporting on all right-of-way permits.
- E. Duties. The duties of the Administrator with respect to the permitting process for right-of-way projects include:
 1. creating and modifying the application form;
 2. establishing a fee schedule and insurance and bonding requirements;
 3. reviewing applications for completion and compliance and evaluating their merits;
 4. coordinating information and concerns with various County departments;
 5. communicating with owners and third-party utilities;

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6. issuing and administering permits, including their terms and conditions;
7. requesting appropriate street closures and restrictions from the Commissioners or the state department of transportation, as appropriate;
8. authorizing temporary signage and use of County amenities related to the project;
9. inspecting and monitoring projects; *and*
10. enforcing the Enforcement Ordinance as warranted.

SECTION VII – APPLICATION

- A. Responsibility. No person shall work on a right-of-way, including as part of a driveway project, without first having filed an application with the Administrator and then having obtained the respective permit.
- B. Form Creation and Contents.
 1. Protocols. The Administrator shall create, develop, implement, and update a permitting process and application form for the various needs of persons relating to this ordinance and make the application form available at the Highway Department.
 2. Form. The Administrator may request on, or as part of, an application:
 - a. the date the application has been submitted and, if applicable, resubmitted;
 - b. contact information for the owner, including full legal name, principal agent, mailing address, telephone number(s), and email address;
 - c. proof of an applicant's authority to act on behalf of the owner to the extent the applicant is acting in an agency capacity;
 - d. details about the project including, but not limited to: the site location, the location of buried facilities, proposed use, start and end dates, the nature of the work, heavy equipment used, depth of trench, and the type of road surface to be cut;
 - e. all pertinent information that may relate to the safe and efficient operation of the right-of-way and the owner's facilities;
 - f. full site plans and specifications of the proposed project, of all existing and proposed facilities, and restoration activities;
 - g. a survey and/or legal description of any property and/or specific area thereon that would be subject to the permit;
 - h. an appropriate indemnification statement;
 - i. a list of desired highway closings or restrictions and a contingency plan in case such a request is denied in whole or in part;
 - j. a traffic management plan; *and/or*
 - k. such other permit-related information as the Administrator may reasonably require.
- C. Waiver Powers. The Administrator may waive any irregularities in a particular application or the application process generally.

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- D. Updates. The owner must notify the Administrator as soon as practicable before the project commences concerning any information on the submitted application that has become materially outdated or obsolete.

SECTION VIII – FEES

A. Fee Schedule.

1. The Administrator may create and administer a fee schedule to recoup some or all of the costs that the Administrator reasonably anticipates in the management and review of the permit process and of all costs reasonably associated with degradation of a project site as a result of a proposed project.
2. The fee schedule shall be posted in one or more prominent, publicly accessible places within the Department. The Administrator shall make the fee schedule available on the Department web site, if feasible.

B. Scope of Fees.

1. The fees charged pursuant to this ordinance shall be designed to cover or defray the costs related to: developing the application form; processing and reviewing permit applications; creating and maintaining information on a geolocation mapping system or program; inspecting and monitoring project sites; maintaining, supporting, protecting, or moving user facilities during work on the right-of-ways; determining the adequacy of right-of-way restoration; correcting work inadequately performed; the administration and enforcement of this ordinance or the Enforcement Ordinance; and other legal and administrative costs the County may incur in managing the provisions of this ordinance.
 2. In setting the fees, to the extent possible, the amounts in the fee schedule should approximate the average respective costs actually incurred over the recent past for similarly situated owners.
 3. The fees charged pursuant to this ordinance shall not be designed to generate income.
 4. The Administrator shall conduct periodic permit process reviews to ensure this goal is being met and adjust the fee schedule accordingly for new applications.
- C. Advance Payment. The Administrator may set, modify, charge, and collect an application fee upon submission of the application, regardless of whether a permit is ultimately issued.
- D. Processing Fee. The Administrator may set, modify, charge, and collect a reasonable fee related to the costs of processing another fee assessed pursuant to this ordinance.
- E. Fees Doubled. Except for work performed on an emergency basis in accordance with this ordinance, the application fee shall be doubled with respect to any project in which the right-of-way has been disturbed without a respective permit, and the fee must be paid before the owner should be permitted to perform additional work.
- F. Exclusivity. The fees charged by this section shall be in addition to any other fee or cost required by other County departments (e.g., drainage permit from the Drainage Board).
- G. Nonrefundable. All fees and fines collected pursuant to this ordinance are nonrefundable.
- H. Fee Waiver. The Administrator may waive or partially refund a fee in appropriate cases for good cause.
- I. Fund Deposits. All fees charged pursuant to this section shall be accounted for by the Administrator and deposited into the Motor Vehicle Highway Fund upon collection.

SECTION IX – FINANCIAL GUARANTEES

- A. Prohibition. The Administrator shall not issue a permit that would enable a person to seriously damage County-owned infrastructure without sufficient financial safeguards.

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- B. Policy; Waiver. The Administrator may require an owner to submit a financial guarantee in accordance with this section or, except to the extent it would violate Subsection (A), may waive the requirement, but shall treat all similarly situated owners uniformly. The Administrator may waive the requirement if the owner already has a financial guarantee on file that would also provide sufficient coverage with respect to the new permit.
- C. General.
 - 1. Form. The financial guarantee must be a cashier's check or letter of credit; provided, however, that the owner may instead submit any other conforming bond.
 - 2. Amount. The Administrator may promulgate rules to determine the amount of the financial guarantee that will be required for projects generally.
 - 3. Standard. Any required financial guarantee or insurance policy must be in a standard format acceptable to the Administrator and provided by a surety, insurer, or bank authorized to do business in the State of Indiana.
 - 4. Pre-Approval. Any required bond or insurance policy need not be purchased until after approval of the application but must be purchased before issuance of the permit.
 - 5. Beneficiary. Any required bond or certificate of insurance must show the "Board of Commissioners of LaGrange County, 114 W Michigan Street, LaGrange, IN 46761" as the respective beneficiary or obligee. Failure to state the name in this manner, however, shall not, per se, void the certificate or bond.
 - 6. Duration. Any bond and insurance policy must remain in full force and effect and without material change throughout the project, notwithstanding any extension thereto.
 - 7. Applicable Law. Any bond and insurance policy purchased pursuant to this ordinance must be interpreted in accordance with the laws of the State of Indiana.
- D. Insurance.
 - 1. Specific Policy Limits. The owner must acquire coverage in the amount of One Million Dollars (\$1,000,000.00) each occurrence for bodily injury and property damage and must acquire umbrella coverage of at least Two Million Dollars (\$2,000,000.00).
 - 2. Deductible. The owner must pay any deductible or retention incurred under any insurance policy purchased pursuant to this ordinance.
- E. Bond.
 - 1. Form. This paragraph does not apply to a letter of credit or cashier's check. The Administrator may stipulate and/or provide the form of the bond, including its enforcement. The bond must be acknowledged by the owner and surety in a notarized statement. The bond must be construed as a statutory bond and not as a common law bond. Any provision in the bond that conflicts with applicable law must be deemed deleted therefrom and all provisions that bring the bond into conformance with applicable law shall be deemed incorporated therein. An attorney-in-fact who signs a bond must affix a current power of attorney that bears the seal of the company and shows the agent's authority to execute the bond.
 - 2. Restoration Requirement; Failure to Perform.

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- a. The bond must guarantee, whether by its own terms or in reference to this ordinance or the terms of the permit, that the owner and/or surety must restore the project site to a condition substantially equal to or better than in all respects it had been immediately before the project had begun, and that the owner and/or surety must also remedy all defects in materials or workmanship arising out of or relating to the project in the one (1) year that immediately follows the date of written notice to the Department that the project has been completed or abandoned. A court shall broadly construe a provision of any such bond towards the finding of such a guarantee where possible.
- b. If, upon notice, the owner and/or surety should fail to restore damaged County-owned infrastructure in the manner and to a condition satisfactory to the Administrator or should fail to satisfactorily and timely complete all repairs required by the Administrator, the Administrator may perform or cause to be performed the restoration. In such an event, the owner and/or surety shall be jointly and severally liable to the County for the cost incurred by the Department in performing the restoration, and the County may collect upon the bond.
3. Notice to Surety. By issuing a letter of credit or by becoming a surety to the owner, the surety thereby waives any notice from the County or the Department of any change to the application or permit.

F. Driveway Projects.

1. Any bond required for a driveway project must be in the amount of at least Ten Thousand Dollars (\$10,000.00).
2. Notwithstanding anything in this subsection to the contrary, the owner may satisfy all bonding requirements of this subsection by placing Fifteen Thousand Dollars (\$15,000.00) in escrow with the County. The County shall owe no interest on any such escrowed amounts. The escrowed amounts shall be returned to the owner upon satisfactory performance of the requirements of this ordinance. The County may pay itself from any escrowed amount for any work it performs or causes to be performed on the right-of-way to bring a driveway project into compliance.

SECTION X – ASSURANCES

A. Certifications. The owner, applying for a permit, certifies that:

1. it is either an individual at least 18 years of age or an entity duly organized and existing under the laws of the state in which it was formed;
2. it is the lawful owner of any facilities that the project intends to improve;
3. it has familiarized itself with, and intends to comply with, all applicable law, including this ordinance, and all other regulations, ordinances, orders, standards, permit terms, other agency license terms, and rules of any government, judicial, or quasi-government entity having jurisdiction over the project;
4. it has communicated with the Administrator over any questions it may have concerning the application approval and permitting process;
5. it does not have any personal interest, direct or indirect, that would give rise to a conflict of interest in the application approval and permitting process that has not been disclosed in writing to the Administrator;
6. all information and any assertions contained in the application are true and correct to the best of its knowledge;
and
7. it has the right and power to submit an application and its submitting representative is fully authorized and empowered to submit the application on its behalf.

B. Applicable Law. By applying for a permit, the owner covenants to comply with all applicable law, acquire all other applicable licenses or easements or rights-of-entry, adhere to all terms and conditions of the permit, and follow all instructions from the Administrator before, during, and after the project.

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- C. Financial Responsibility. By applying for a permit, the owner covenants to bear any and all risks and costs relating to and in compliance with the project, including, but not limited to, the relocation of facilities, indemnifying other persons against damage or loss to their facilities; obtaining all other necessary permits, licenses, and authority; restoring the project site; and paying all fees required by any other town, city, county, state, or federal rules, laws, or regulations.
- D. Indemnification. By applying for a permit, the owner covenants to irrevocably indemnify, defend, and hold harmless the County, its officers, employees, representatives, agents, boards, departments, related municipal corporations, assigns, or any person identified in interest therewith, whether individually or jointly, from and against any and all claims, liabilities, fees, fines, penalties, damages, punitive damages, injuries, deaths, liens, costs, expenses, lost wages or benefits, and attorneys' fees (including paralegal fees), and any amounts paid in good faith arising from any threatened or pending claim, demand, action, suit, settlement, or judgment, whether any such amount is known or unknown, and whether past, present, or future, arising out of or resulting from the issuance of the permit and/or the work on the right-of-way; provided however, that this indemnification does not apply to the extent that the acts or omissions constitute the sole willful misconduct or gross negligence of the County.
- E. Relocation. By applying for a permit, the owner covenants to alter and/or relocate the owner's facilities at the owner's expense, as may be necessary to allow for construction, reconstruction, alteration, preservation, improvement, or maintenance of the right-of-way, as may hereafter be ordered.
- F. Forum. By applying for a permit, the owner covenants to file any action arising from, or relating to, this ordinance or any insurance contract, bond, or permit resulting therefrom in any way either in the state courts located in LaGrange County or the United States District Court for the Northern District of Indiana, Fort Wayne Division; to submit to the exclusive jurisdiction of the courts; and to waive any right of transfer therefrom.
- G. Scope. Any certification, covenant, or representation made as part of an application shall also thereby be made on behalf of any co-owner, contractor, subcontractor, or other agent acting on the project on behalf of owner.
- H. Breach. For any material breach of any certification, covenant, or representation made as part of an application, the County may revoke and/or suspend the permit, may permanently remove the respective facilities, and may avail itself of any other remedy allowed by law.

SECTION XI – APPROVAL OR DENIAL

- A. Consideration. The Administrator may approve any application or deny any permit. In order to determine whether to approve an application, the Administrator may consider all evidence available.
- B. Good Faith. The Administrator shall act in good faith and without undue delay in considering and responding to each application.
- C. Denial. The Administrator may deny or restrict a permit for any application:
 - 1. that fails to provide complete responses, sufficient details, or all required documents;
 - 2. that contains a material misrepresentation or misleading statement;
 - 3. that does not include the required application fee, insurance, or bond;
 - 4. for which the owner or applicant is not legally competent to enter into contract;
 - 5. for the owner's perceived lack of professional or financial responsibility;
 - 6. for calendaring conflicts with other permittees or County events;
 - 7. that is deemed unsuitable for structural, design, safety, or emergency reasons;
 - 8. for which, absent sufficient evidence of commensurate proactive measures by the owner, a permit granted thereto will materially:
 - a. endanger or interfere with surrounding pedestrian or vehicular traffic;
 - b. subject the surrounding area to an unreasonable degree of noise or exposure to rubbish or hazardous materials;

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- c. limit County resources;
 - d. compromise proper police, fire, ambulance, and/or other emergency service;
 - e. create a public nuisance;
 - f. otherwise endanger the safety of persons or the protection of property; *or*
 - g. violate other applicable law;
- 9. because the owner owes outstanding fines, fees, deposits, or costs to the County;
 - 10. because the Administrator has reasonably determined that the owner has previously worked on a right-of-way that resulted in County or third-party damages attributable to the owner that have not been satisfied;
 - 11. because the Administrator has determined that within the previous three (3) years the owner has worked on a right-of-way for which a permit had not been obtained or has committed two (2) or more separate and material violations of this ordinance; *and/or*
 - 12. for other good cause for which an appropriate remedy does not exist.
- D. Notice.
- 1. If the Administrator should approve an application, the Administrator shall notify the owner in writing thereof, communicate the amount of the fees and bonds required, and state the permit restrictions that will be imposed (if any).
 - 2. If the Administrator should deny a permit, the Administrator shall communicate to the owner in writing the specific reason(s) for the denial.
 - 3. Rather than denying a permit outright, the Administrator may notify the owner in writing to allow the owner to clarify any perceived deficiency in the application.
 - 4. Except for an application the Administrator deems frivolous, where a permit has been denied for project-related time, place, and manner reasons, the Administrator shall inform the owner of the most approximate circumstances that would be required in the Administrator's view to permit the project.
 - 5. Failure by the owner to receive the notice shall not operate to compromise the power of the County to deny any permit.
 - 6. The Administrator shall add a copy of each notice to the application file.
- E. Resubmission. Any owner who has been denied a permit may resubmit the application with any deficiencies corrected. The filing date of a resubmitted application relates back to the original filing date.
- F. Fee. If the Administrator should deny a permit, the application fee shall not be returned; however, no application fee shall be required for a resubmitted application unless the Administrator should determine that one or more of the applications was frivolous.
- G. Passive Denial. If the owner has not received an approval of an application or a denial of a permit within ten (10) days after an application has been filed or within three (3) days before the listed start date of the project in the application, whichever is earlier, then the application shall be considered denied unless the Administrator provides good cause as to why a decision has not yet then been made and the owner is willing to accept an agreed-upon amount of delay in making the determination.

SECTION XII – PERMITS

- A. Function. A permit issued by the Administrator allows the owner to work on a County right-of-way subject to the limitations of the permit and other applicable law.

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- B. Restrictions. The Administrator may impose any number of reasonable restrictions on the permit, which shall be prominently displayed thereon. Restrictions include, but are not limited to, location, materials, size, project days, duration, and procedures.
- C. Issuance. The Administrator shall issue a permit to the owner after all of the following have occurred:
 - 1. the Administrator has approved the respective application;
 - 2. a certificate of insurance and/or bond has been filed that conforms to this ordinance;
 - 3. the owner agrees to any permit restrictions that will be imposed and continues to meet all conditions and covenants made as part of the approved application; *and*
 - 4. no substantive, unaddressed application updates have been filed.
- D. Scope. A permit is valid only for the area of the right-of-way(s) specified in the permit. No permit issued shall be construed as authorization from the Department to work on a right-of-way in disregard to the rights of other persons.
- E. Driveway Specifications.
 - 1. The Administrator may designate the width, location, materials, and standards (including adjacent culvert standards) of driveway construction and reconstruction.
 - 2. Driveway Limitations. For good cause, the Administrator may limit the number of new driveways on any property and may require that an existing driveway be removed in order to permit the construction of a new one.
- F. Copy. The owner must keep a copy of the permit at the project site at all times. The Administrator shall add a copy of the permit as issued to the application file.
- G. Voidness. Any permit issued based on false or intentionally misleading information in an application is null and void.
- H. Nontransferable. Except among co-owners of the same project, a right-of-way permit may not be knowingly transferred to another person.
- I. Waiver. The Administrator may waive and/or impose reasonable accommodations for de minimus violations of the permit and/or this ordinance at his or her discretion.

SECTION XIII – PROJECT REQUIREMENTS

- A. Work Notices. The owner must notify the Department in writing: (1) at least seven (7) days before beginning the project of the owner's proposed start date; and (2) within seven (7) days after the project has been substantially completed of the proposed completion.
- B. Third-Party Notice. No person shall work on a right-of-way without having first notified all persons who have facilities in the right-of-way within twenty-five (25) feet of any portion of the project site.
- C. Prevailing Conditions. Except in the case of an emergency and with the approval of the Administrator, the owner must not perform work on any right-of-way when conditions are unreasonable for the work.
- D. No Interference. No person shall interfere with the facilities of another person unless expressly permitted by the Administrator or the respective facility's owner.
- E. Public Welfare. The owner must keep the project site safe at all times and take care to avoid unnecessary damage to vegetation.
- F. Obstructions.
 - 1. Except as prudent to maintain a safe project site or as permitted by the Administrator, no person shall obstruct traffic at the project site.

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2. No person shall obstruct a landowner's property entrance or loading area without the landowner's permission.
- G. Nuisances Prohibited. No person shall let a project become a public or attractive nuisance.
- H. Drains. No person working on a project shall thereby obstruct the County's drains nor allow erosion thereon.
- I. Particles. For each project, the owner must practice standard dust control measures and remove all excess dirt, rock, debris, and garbage resulting from the project.
- J. Inspection. The owner must permit the Administrator to fully inspect the project site at all reasonable times when work is ongoing.
- K. Repairs. To the extent that the Administrator has identified damage to County-owned infrastructure or third-party facilities at the project site that need to be repaired, time shall be considered of the essence until the damage is repaired.
- L. Restoration. Once a respective project is substantially finished, the owner must restore the project site to a condition substantially equal to or better than in all respects it had been immediately before the project had begun.
- M. Plan Updates. Upon substantial completion of any project, if the Administrator should determine that the owner has significantly departed from the project plans, drawings, and/or maps that were submitted as part of the application, the Department may require owner to amend its application and provide a set of updated plans after project completion that show the exact location of all facilities.
- N. Records. The owner must keep a copy of all records relating to the project for two (2) years after its completion.

SECTION XIV – EMERGENCIES

- A. Owner Notice. The owner, whether or not a permit has expired, shall immediately notify the Administrator of any event that it considers to be an emergency with regard to the owner's facilities. The owner may proceed to take whatever actions are necessary in order to respond to the emergency.
- B. Department Notice. In the event that the Administrator becomes aware of an emergency regarding the owner's facilities, the Administrator may attempt to contact the owner. In addition, the Administrator may take whatever action is deemed necessary in order to respond to the emergency, the cost of which shall be borne by the owner whose facilities occasioned the emergency.
- C. Application. Within three (3) business days after the occurrence of any emergency that necessitated work on the right-of-way, the owner must apply for a new permit, pay the fees associated therewith, and take all steps necessary to otherwise make the work performed during the emergency conform to applicable law.

SECTION XV – ADMINISTRATIVE APPEALS

- A. Grievances.
 1. In the case of a permit denial, restriction, revocation, or other alleged adverse action from the Administrator or other non-judicial officer, the owner may file a grievance with the Administrator, which may be done orally or in writing, in person or remote.
 2. If the Administrator determines that the adverse action was made in error, then the Administrator shall reply to the owner in writing acknowledging the error and provide appropriate relief under the circumstances.
 3. If the Administrator determines that the adverse action taken was just, then the Administrator shall reply to the owner in writing reaffirming the action and communicating the right of the owner to file an appeal in accordance with this section.
- B. Appeals. Any owner who fails to resolve a grievance with the Administrator may file an appeal thereof with the Commissioners through the office of the Auditor within thirty-five (35) days of the final adverse action by the Administrator. The appeal must be signed and dated by the owner and state the underlying facts, the adverse action taken, the substance of the grievance, and the desired relief.

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- C. Filing Fee. The Auditor shall charge and collect in advance a nonrefundable filing fee of Fifty Dollars (\$50.00) for each appeal filed pursuant to this section, which fee shall be deposited into the General Fund.
- D. Scheduling. The Auditor will add the matter to the meeting agenda for the then-next regularly scheduled Commissioners' meeting that is at least seven (7) days later. The Auditor shall communicate with the owner the date, time, and location of the meeting at which the appeal will be considered. If both the Commissioners and the owner agree, the date of the meeting may be expedited.
- E. Record. The Auditor shall promptly gather a full record of the application, the grievance, the appeal, and all related communications and shall promptly submit them to the Commissioners and the County Attorney for review.
- F. Consideration. The Commissioners may consider an appeal filed at the meeting indicated and make a final ruling on the issues raised. The owner has no right to address the Commissioners either personally or through counsel, though the Commissioners may invite any person to speak on the matter.
- G. Decision. The decision of the Commissioners is final, and the Auditor shall promptly communicate to the owner in writing the grounds, terms, and/or conditions upon which the decision is based.

SECTION XVI – REPEAL OF PRIOR LAW

- A. Repeal. The Commissioners hereby repeal Ordinances 2020-09-08-E and 2023-05-15-A in their entirety.
- B. Continuance.
 - 1. The express or implied repeal or amendment by this ordinance of any other ordinance or part thereof does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.
 - 2. To the extent that the provisions contained in this ordinance substantially restate the provisions of a prior ordinance or resolution, the provisions shall not be deemed a new enactment, but rather shall be deemed the continuation of the original provisions.
 - 3. All rules and regulations adopted under any continued version of this ordinance shall remain in full force and effect except as specifically directed otherwise.
- C. Revival Prohibited. The express or implied repeal or amendment by this ordinance of any other ordinance or resolution or part thereof shall not be construed to revive any former ordinance, resolution, section, clause, or provision.

SECTION XVII – MISCELLANEOUS

- A. References.
 - 1. Except where a specific version or edition is given, reference to another section of this ordinance or to another law, document, fund, department, board, program, public servant, or public office, shall extend and apply to the same, as may be subsequently amended, revised, recodified, renamed, reappointed, or renumbered from time to time.
 - 2. Reference in this ordinance to a law, document, fund, department, board, program, public servant, or public office, either generally or by title, without reference to another jurisdiction, shall be construed as though it were preceded or followed, as appropriate, by the words “(of) LaGrange County (Indiana).”
 - 3. Should a provision of this ordinance require an act to be done which, by law, an agent or deputy may do instead of the principal, the requirement is satisfied by the performance of the act by an authorized agent or deputy.
- B. Judicial Review. This ordinance is intended only to improve the internal management of the County. Notwithstanding anything in this ordinance to the contrary, nothing in this ordinance shall be construed to create any new legal duty,

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right, or benefit, whether substantive or procedural, enforceable against the County; nor to waive or diminish any protection that may be applicable to the County or any of its elected or appointed officials, employees, agents, or representatives under any applicable law providing governmental immunity, nor any other right, protection, immunity, defense, or limitation on liability that the County or such related parties is provided by applicable law.

- C. Conflicts. No part of this ordinance shall be interpreted to conflict with any local, state, or federal laws, and all reasonable efforts should be made to harmonize the same.
- D. Severability. Should any section or part thereof of this ordinance be declared by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of this ordinance as a whole, nor any other portion thereof, and for this purpose the provisions of this ordinance are hereby declared to be severable.
- E. Promulgation. The Auditor is hereby authorized, empowered, and directed to take all action necessary or proper to authenticate, record, publish, promulgate, and/or otherwise make this ordinance effective.
- F. Codification. To the extent a substantive change in meaning does not result, the codifier of ordinances may omit the Recitals, Name, Repeals, Miscellaneous, and Adoption sections of this ordinance from the official code, may renumber or reorder any section of this ordinance, and may alter references to this ordinance and to exhibits as appropriate.
- G. Effective Date. This ordinance shall take effect immediately upon adoption; provided, however, that the repeal of Ordinance 2020-09-08-E shall not take effect until a new Right-of-Way Permit Enforcement Ordinance takes effect.

Mr. Peter Cook made a motion to approve the Ordinance. Mr. Kevin Myers seconded the motion and it carried unanimously. Mr. Peter Cook made a motion to waive the requirement for second reading. Mr. Kevin Myers seconded the motion and it carried unanimously.

ORDINANCE CREATING ENFORCEMENT MECHANISMS FOR THE RIGHT-OF-WAY PERMIT ADMINISTRATION ORDINANCE
Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE
ORDINANCE NO. 2024-03-18 B

AN ORDINANCE CREATING ENFORCEMENT MECHANISMS FOR THE RIGHT-OF-WAY
PERMIT ADMINISTRATION ORDINANCE.

WHEREAS, the Board of Commissioners of the County of LaGrange ("Commissioners") on behalf of LaGrange County, Indiana ("County"), desires to provide for the health, safety, and well-being of all people in the County as they use the County's right-of-ways;

WHEREAS, the Commissioners have found that persons have been performing unauthorized work on its right-of-ways, which jeopardize the County's interests;

WHEREAS, the Commissioners desire to regulate projects performed on County right-of-ways by providing, among other things, for the issuance of permits, which grant authority to perform work thereon and which ensure the subsequent restoration of the right-of-ways;

WHEREAS, pursuant to Indiana Code ("IC") 36-9-2-7, the Commissioners may regulate the use of public ways;

WHEREAS, pursuant to IC 8-1-2-101, the Commissioners may regulate the manner in which a public utility occupies the County's right-of-ways;

WHEREAS, pursuant to IC 36-8-2-4, the Commissioners may regulate conduct, or use or possession of property, that might endanger the public health, safety, or welfare; *and*

WHEREAS, pursuant to IC 36-1-3 ("Home Rule"), the County has all powers granted it by statute and all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute, and may exercise those powers to the

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extent that the power: (i) is not expressly denied by the Indiana Constitution or by statute; and (ii) is not expressly granted to another entity.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA THAT:

SECTION I – NAME

This name of this ordinance shall be the “Right-of-Way Permit Enforcement Ordinance,” or the “Enforcement Ordinance” where the context is obvious.

SECTION II – INCORPORATION

- A. Recitals. The foregoing recitals, including all defined terms, are hereby incorporated into, and made a part of, this ordinance and found to be true, accurate, and correct.
- B. Administration Ordinance. The Definitions, Scope, and Purpose sections of the Right-of-Way Permit Administration Ordinance are hereby incorporated by reference as if fully set out herein.

SECTION III – DEFINITIONS

In addition to the definitions incorporated into this ordinance, the following terms shall have such meanings ascribed to them unless the context clearly indicates or requires otherwise.

- 1. “Officer” means any competent authority that enforces this ordinance including, but not limited to, the Commissioners, the Administrator, the Engineer, the Highway Supervisor, the County Attorney, the Prosecutor, and/or any law enforcement agent.
- 2. “This ordinance,” with respect to Sections IV-VI of this Ordinance, includes this Right-of-Way Permit Enforcement Ordinance, the Right-of-Way Permit Administration Ordinance and the respective right-of-way permit.

SECTION IV – VIOLATIONS

- A. Permit Violations. No person shall work on a right-of-way:
 - 1. except in case of emergency, without a permit that the person is obligated to apply for, obtain, and maintain pursuant to this ordinance; *nor*
 - 2. without having updated any outdated information submitted as part of the application;
 - 3. pursuant to an expired or revoked permit; *nor*
 - 4. beyond or contrary to the terms of the permit; *nor*
 - 5. contrary to the information contained in the respective application; *nor*
 - 6. without a permit located in the immediate vicinity of the person; *nor*
 - 7. in a manner that endangers any County-owned infrastructure, except as may occur through normal wear and tear; *nor*
 - 8. in a manner that endangers the safety or welfare of any person.
- B. Fraud. No person shall submit an application or reply to an officer in any manner that the person knows or should know is false or misleading.
- C. Traffic Obstruction. No person shall work on a right-of-way in a manner that unreasonably obstructs or impedes the operation of traffic, including any non-motor vehicle.
- D. Cooperation. No person shall:
 - a. disobey or contravene the reasonable instructions of an officer; *nor*

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b. impede any officer from carrying out his or her duties.

E. Catchall. No person shall otherwise fail to comply with any requirement of this ordinance.

SECTION V – ENFORCEMENT

A. Warning. Any officer who has reasonable suspicion that a minor or easily corrected violation of this ordinance has occurred may issue a verbal or written warning.

B. Citation. Any law enforcement officer who has reasonable suspicion that a violation of this ordinance has occurred may issue a citation for an ordinance violation, which may be prosecuted in accordance with IC 34-28-5.

C. Remedy. Any officer may require that a person remedy any violation of this ordinance to the satisfaction of the officer. The Commissioners may order an appropriate officer to bring the violation into compliance.

D. Satisfaction. Any officer may require that a person who has damaged another person's facilities provide satisfaction to the other as a condition for not revoking the permit.

E. Permit Revocation. A permit issued under this ordinance is a privilege and not a right. Any officer may alter, suspend, or revoke a permit, without fee refund, for failure to adhere to the terms of this ordinance.

F. Removal. For any person who violates this ordinance, the Commissioners may order the removal of that person's facilities from the right-of-way.

G. Administrative Proceeding. The Commissioners may, on their own motion, convene an administrative proceeding of their own body to enforce this ordinance after providing proper notice of the time and date of the hearing to the alleged violator at least ten (10) days before the hearing and after providing an opportunity for that person to be heard.

SECTION VI – PENALTIES AND COSTS

A. Fines.

1. A person shall be liable to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00) for a first violation of this ordinance.
2. A person shall be liable to a fine of up to Five Thousand Dollars (\$5,000.00) for a second violation of this ordinance.
3. A person shall be liable to a fine of up to Seven Thousand Five Hundred Dollars (\$7,500.00) for a third or subsequent violation of this ordinance.
4. A person shall be liable to a fine of up to Seven Thousand Five Hundred Dollars (\$7,500.00) for a violation of this ordinance if the violation is reckless or intentional and it either causes injury to persons or damage to County-owned infrastructure.

B. Permit Fee Doubled. Except in case of an emergency, the application fee and any other project fees with respect to any person who, without a permit, enters on a right-of-way with the intent to perform work thereon or performs work thereon shall be doubled and must be obtained before resuming a project.

C. Costs. Any person found to have violated this ordinance shall be responsible for any costs, including reasonable attorney's fees, paralegal fees, and collection costs, to the extent allowed by law, incurred by the County to prosecute and/or correct such violation and/or to return property to its pre-violation state.

D. Rules.

1. Each day in which a violation should continue shall constitute a separate violation.
2. For the purpose of determining whether a violation is a second, third, or subsequent violation under this section, a look-back period of three years from the date of the violation shall be used.

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3. Any owner who is liable for a fine, fee, or costs relating to a violation of this ordinance is jointly and severally responsible for the fine, fee, or costs with each other owner and any other person found to have caused the violation.
- E. Time to Pay. Any fine or cost imposed pursuant to this ordinance shall be paid within sixty (60) days.
- F. Deposits. All fines and costs collected under this ordinance shall be remitted to the General Fund within thirty (30) days of collection.

SECTION VII – MISCELLANEOUS

- A. References.
 1. Except where a specific version or edition is given, reference to another section of this ordinance or to another law, document, fund, department, board, program, public servant, or public office, shall extend and apply to the same, as may be subsequently amended, revised, recodified, renamed, reappointed, or renumbered from time to time.
 2. Reference in this ordinance to a law, document, fund, department, board, program, public servant, or public office, either generally or by title, without reference to another jurisdiction, shall be construed as though it were preceded or followed, as appropriate, by the words “(of) LaGrange County.”
 3. Should a provision of this ordinance require an act to be done which, by law, an agent or deputy may do instead of the principal, the requirement is satisfied by the performance of the act by an authorized agent or deputy.
- B. Conflicts. No part of this ordinance shall be interpreted to conflict with any local, state, or federal laws, and all reasonable efforts should be made to harmonize the same.
- C. Severability. Should any section or part thereof of this ordinance be declared by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of this ordinance as a whole, nor any other portion thereof, and for this purpose the provisions of this ordinance are hereby declared to be severable.
- D. Incorporated Materials. Two (2) copies of all materials incorporated by reference herein shall be on file in the Office of the Auditor for public inspection.
- E. Promulgation. The Auditor is hereby authorized, empowered, and directed to take all action necessary or proper to authenticate, record, publish, promulgate, and/or otherwise make this ordinance effective.
- F. Codification. To the extent a substantive change in meaning does not result, the codifier of ordinances may omit the Name, Incorporation, Miscellaneous, and Adoption sections of this ordinance from the official code, may renumber or reorder any section of this ordinance, and may alter references to this ordinance and to exhibits as appropriate.
- G. Effective Date. This ordinance shall take effect immediately upon adoption and promulgation to the extent required by law.

Mr. Peter Cook made a motion to approve the Ordinance. Mr. Kevin Myers seconded the motion and it carried unanimously. Mr. Peter Cook made a motion to waive the requirement for second reading. Mr. Kevin Myers seconded the motion and it carried unanimously.

JUSTICE BUILDING – RENOVATION

Mr. Kevin Myers made a motion to move forward with Kimmerle Engineering for the renovation of the basement of the Justice Building. Mr. Peter Cook seconded the motion and it carried unanimously.

INTERNAL CONTROL POLICY ESTABLISHING A TAX RECEIPT POLICY RELATED TO PROPERTY TAX PENALTIES

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Mr. Kurt Bachman, County Attorney, explained that he has worked with Mrs. Connie Brower, County Treasurer, and put together an internal control policy establishing a tax receipt policy related to property tax penalties. Mr. Peter Cook made a motion to accept the policy. Mr. Kevin Myers seconded the motion and it carried unanimously.

ORDINANCE REGULATING BAD CHECKS AND OTHER FORMS OF DISHONORED OR REJECTED PAYMENT TO THE COUNTY

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

**COUNTY OF LAGRANGE
ORDINANCE NO. 2024-03-18 C**

**AN ORDINANCE REGULATING BAD CHECKS AND OTHER FORMS OF DISHONORED OR
REJECTED PAYMENT TO THE COUNTY.**

WHEREAS, the government of LaGrange County, Indiana ("County") and the LaGrange County court system have received dishonored checks and other forms of rejected payment in return for the services they provide;

WHEREAS, the Board of Commissioners of the County of LaGrange ("Commissioners") now finds it necessary and in the public interest to implement a processing fee for a bad check, as defined herein;

WHEREAS, the Commissioners find it necessary to impose penalties and collect costs for tendering a financial instrument to the County that is later rejected or otherwise dishonored;

WHEREAS, pursuant to Indiana Code ("IC") 26-2-7, a person liable for stopping payment on a check or allowing a check to be dishonored is liable for certain remedies prescribed therein;

WHEREAS, pursuant to IC 34-24-3-1, if a person suffers a pecuniary loss as a result of a violation of IC 35-43 (including criminal conversion and theft), the person may bring a civil action against the person who caused the loss for the prescribed therein;

WHEREAS, pursuant to IC 36-1-3 ("Home Rule"), the County has all powers granted it by statute and all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute, and may exercise such powers to the extent that the power: (i) is not expressly denied by the Indiana Constitution or by statute; and (ii) is not expressly granted to another entity;

WHEREAS, pursuant to IC 36-1-8-13, to the extent that the County is unable to obtain payment of a dishonored check, the County shall refer the matter to the county prosecutor for prosecution not later than ninety (90) days after the check was initially received; *and*

WHEREAS, the Commissioners desire to repeal and replace its previous ordinance relating to bad checks.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE THAT:

SECTION I – NAME

The name of this ordinance is the "Bad Checks Ordinance."

SECTION II – RECITALS

The foregoing recitals, including all defined terms, are hereby incorporated into, and made a part of, this ordinance and found to be true, accurate, and correct.

SECTION III – DEFINITIONS

C. Meaning. Whenever the following terms are used in this ordinance, they shall have the meanings herein ascribed to them unless the context clearly indicates or requires otherwise.

1. "Bad check" means a check executed and tendered that is drawn on or payable by a financial institution for which the payor does either of the following:

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- a. without valid legal cause cancels, stops, or reverses payment on the check or otherwise takes action for the check to be dishonored; *or*
 - b. allows the check to be dishonored because of any of the following:
 - i. insufficient funds;
 - ii. failure to have an account; *or*
 - iii. lack of an authorized signature of the drawer or a necessary endorser.
3. "Check" means any financial instrument that has been authorized by the County's Authorized Financial Instruments Ordinance.
 4. "County" includes the LaGrange County government and any of its departments, department heads, boards, courts, agencies, offices, programs, and utilities.
 5. "Day" means a calendar day; provided, however, that if a prescribed period should end on a non-business day, then the term includes the next business day after that period.
 6. "Financial institution" has the meaning provided in IC 28-1-1-3; provided, however, that the term includes any credit card company, payment processor, or other financial institution to the extent allowed under applicable law, including Home Rule.
 7. "Payor" means, with respect to any check, any of the following: the person who tendered the check, the person on whose account the check was tendered, and/or the person whose name appears on the check.
 8. "Person" means any individual or entity, such as, but not limited to, a partnership, firm, joint venture, limited liability company, corporation, cooperative, association, joint stock company, business trust, trust, estate, or governmental entity; the term also includes such person's legal representatives, agents, and permitted assigns thereof except where the inclusion would create a substantial injustice.
 9. "Tender" includes to deliver, issue, or present for payment; to attempt to deliver, issue, or present for payment; or to knowingly allow to be delivered, issued, or presented for payment.
- B. Arbitrator. The Commissioners shall have the final authority in adjudicating the meaning of the terms in this section.

SECTION IV – ADMINISTRATION

- A. Courts. The Clerk of Courts shall administer this ordinance on behalf of the LaGrange County court system.
- B. County. The Treasurer shall administer this ordinance on behalf of the County, except with respect to the LaGrange County court system.

SECTION V – VIOLATION AND FEE

- A. Violation. No payor shall tender a bad check to the County.
- B. Processing Fee. A payor who violates this ordinance shall be immediately liable for a bad-check processing fee of twenty-five dollars (\$25). The County may require the payor to pay this fee before accepting any further payment from the payor.

SECTION VI – EXEMPTIONS

- A. Good Faith. This ordinance does not apply to a payor who tenders a bad check due to lack of funds if:
 1. the payor reasonably believed that there were sufficient funds in the account to cover the check; *and*
 2. the insufficiency of funds is caused by either:
 - a. the dishonoring of a third-party check that had been deposited into the payor's account; *or*
 - b. the respective financial institution sufficiently lowered the payor's credit line without notice.

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- C. Laches. This ordinance does not apply to any check that was processed by the County after ninety (90) days.
- D. No Harm. This ordinance does not apply to any check to the extent that the check was immediately discovered to be a bad check (such as in the case of a debit card rejection) at the time of the transaction and if no penalty or fee was incurred therefor by the County.
- E. Reasonable Cause. To the extent that a payor has shown reasonable cause for having tendered a bad check to the County, any liability imposed thereby may be waived.

SECTION VII – NOTICE

- A. Notice. In order to impose costs or fines under Section VIII of this ordinance, the administrator must notify the payor of the bad check using one of the following methods:
 - 1. personally delivery, via process server or law enforcement officer; *or*
 - 2. certified mail or an analogous method that provides evidence of delivery.
- B. Timing. Notice of a bad check shall be considered sent when personally delivered or deposited in the mail, if the notice was addressed to one of the following:
 - 1. the address printed on the check;
 - 2. the address for a payor on the County tax rolls; *or*
 - 3. any address provided by the payor to the County at the time the check was tendered.
- C. Notice to Prosecutor. If more than twenty (20), but no more than ninety (90), days have elapsed since the Administrator sent notice of a bad check to the payor, the Administrator shall send notice of the bad check and default to the Prosecutor.

SECTION VIII – COSTS; PENALTIES

- A. Costs. In addition to any processing fee, a payor who tenders a bad check to the County shall be liable for all of the following:
 - 1. interest at the rate of eighteen percent (18%) per annum on the amount of the check from the date of the check's execution until payment is made in full;
 - 2. court costs incurred in prosecuting an action that may be brought by the holder to collect on the check;
 - 3. reasonable attorney's and paralegal fees of not less than one hundred dollars (\$100);
 - 4. actual, direct, and indirect expenses incurred by the County to compensate employees and agents for time used to file papers and attend court proceedings related to the recovery of a judgment under this section; *and*
 - 5. all other reasonable costs of collection related to the bad check.
- B. Fines. Any violation of this ordinance shall be punishable by a fine of up to:
 - 1. if the face amount of the check is not greater than two hundred fifty dollars (\$250), three (3) times the face amount of the check; *or*
 - 2. if the face amount of the check is greater than two hundred fifty dollars (\$250), the face amount of the check plus five hundred dollars (\$500).
- C. Time to Pay. Any fine or cost imposed pursuant to this ordinance shall be paid within sixty (60) days.
- D. Deposits. All fines and costs collected pursuant to this ordinance shall be deposited within a reasonable time into the General Fund within thirty (30) days of collection; provided, however, that the prosecutor's office may be reimbursed for its prosecution costs from any amounts collected and any remainder collected thereon shall be remitted instead to the operating fund of the County that received the bad check.

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SECTION IX – TAXES AND ASSESSMENTS

Notwithstanding anything else in this ordinance to the contrary, including any notice requirement, pursuant to IC 6-1.1-22-12.1, if a property owner or that person's agent tenders a check to the Office of the Treasurer for the payment of taxes or special assessments levied against any property and if the check is dishonored upon presentation for payment, any costs incurred by the Treasurer because of the bad check are a liability of the taxpayer, which may be entered on the tax duplicate for the property and, if so entered, the amount of the liability is subject to interest, penalty, and collection in the same manner as all other special assessments. If costs or penalties are assessed in this way, no further costs or penalties shall be assessed against the payor under this ordinance.

SECTION X – REPEAL OF PRIOR LAW

- A. Repeal. Ordinance 2020-04-06-A, which was adopted on April 6, 2020, is hereby repealed in its entirety.
- B. Continuance.
 - 1. The express or implied repeal or amendment by this ordinance of any other ordinance or part thereof does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.
 - 2. To the extent that the provisions contained in this ordinance substantially restate the provisions of a prior ordinance or resolution, the provisions shall not be deemed a new enactment, but rather shall be deemed to be the continuation of the original provisions.
- C. Revival Prohibited. The express or implied repeal or amendment by this ordinance of any other ordinance or resolution or part thereof shall not be construed to revive any former ordinance, resolution, section, clause, or provision.

SECTION XI – MISCELLANEOUS

- A. References.
 - 1. Except where a specific version or edition is given, reference to another section of this ordinance or to another law, document, fund, department, board, program, public servant, or public office, shall extend and apply to the same, as may be subsequently amended, revised, recodified, renamed, reappointed, or renumbered from time to time.
 - 2. Reference in this ordinance to a law, document, fund, department, board, program, public servant, or public office, either generally or by title, without reference to another jurisdiction, shall be construed as though it were preceded or followed, as appropriate, by the words "(of) LaGrange County (Indiana)."
 - 3. Should a provision of this ordinance require an act to be done which, by law, an agent or deputy may do instead of the principal, the requirement is satisfied by the performance of the act by an authorized agent or deputy.
- B. Judicial Review. This ordinance is intended only to improve the internal management of the County. Notwithstanding anything in this ordinance to the contrary, nothing in this ordinance shall be construed to create any new legal duty, right, or benefit, whether substantive or procedural, enforceable against the County; nor to waive or diminish any protection that may be applicable to the County or any of its elected or appointed officials, employees, agents, or representatives under any applicable law providing governmental immunity, or any other rights, protections, immunities, defenses, or limitations on liability that the County or such related parties are provided by law.
- C. Conflicts. No part of this ordinance shall be interpreted to conflict with any local, state, or federal laws, and all reasonable efforts should be made to harmonize the same.
- D. Severability. Should any section or part thereof of this ordinance be declared by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of this ordinance as a whole, nor any other portion thereof, and for this purpose the provisions of this ordinance are hereby declared to be severable.

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- E. Promulgation. The Auditor is hereby authorized, empowered, and directed to take all action necessary or proper to authenticate, record, publish, promulgate, and/or otherwise make this ordinance effective.
- F. Codification. To the extent a substantive change in meaning does not result, the codifier of ordinances may omit the Name, Recitals, Repeals, Miscellaneous, and Adoption sections of this ordinance from the official code, may renumber or reorder any section of this ordinance, and may alter references to this ordinance and to exhibits as appropriate.
- G. Effective Date. This ordinance shall take effect upon adoption and promulgation to the extent required by law but no earlier than May 1, 2024.

Mr. Kevin Myers made a motion to approve the Ordinance. Mr. Peter Cook seconded the motion and it carried unanimously. Mr. Peter Cook made a motion to waive the requirement for second reading. Mr. Kevin Myers seconded the motion and it carried unanimously.

BUILDING DEPARTMENT – SALE OF VEHICLE

Mr. Kevin Myers made a motion to sell a 2014 Dodge truck that is in the Building Department's fleet. Mr. Peter Cook seconded the motion and it carried unanimously.

USE OF COURTHOUSE LAWN

Mr. Gary Mast, Maintenance Director, said he has been contacted by an individual wanting to use the lawn on the south side of the Courthouse for a revival on August 9 and 10, 2024. Mr. Peter Cook made a motion to approve the use of the lawn. Mr. Kevin Myers seconded the motion, and it carried unanimously.

AGREEMENT WITH W.A. JONES TRUCK BODIES & EQUIPMENT

Mr. Aaron Fugate, Highway Supervisor, presented an agreement between the Board of Commissioners and W.A. Jones Truck Bodies and Equipment, in the amount of \$359,001 for two Monroe Radius Dump bodies and three one-way snowplows. Mr. Peter Cook made a motion to approve the contract and authorize the President to sign it. Mr. Kevin Myers seconded the motion and it carried unanimously.

PROPOSALS FOR SHIMMING BRIDGES

Mrs. Tharon Morgan, County Engineer, presented proposals for shimming 17 bridges. The lowest proposal is from R. G. Zachrich Construction, Inc, in the amount of \$48,000. Mr. Kevin Myers made a motion to approve the proposal from R. G. Zachrich and authorize the President to sign a contract outside of a public meeting. Mr. Peter Cook seconded the motion and it carried unanimously.

ACCOUNTS PAYABLE VOUCHERS

Mrs. Kathryn Hopper, County Auditor, presented the Accounts Payable Vouchers. Mr. Kevin Myers made a motion to approve the vouchers. Mr. Peter Cook seconded the motion and it carried unanimously.

MINUTES

Mr. Peter Cook made a motion to approve the minutes of the March 4, 2024 regular session meetings. Mr. Kevin Myers seconded the motion and it carried unanimously.

MEMORANDUM

Mr. Kevin Myers made a motion to approve the memorandum for the March 13, 2024 staff meeting. Mr. Peter Cook seconded the motion and it carried unanimously.

MARCH 18, 2024

REGULAR SESSION

PUBLIC HEARING ON THE SALE OF PROPERTY ON 107 WEST SPRING STREET, LAGRANGE, INDIANA

At 9:00 a.m. Mr. Kurt Bachman, County Attorney, opened the public hearing on the proposed sale of real estate by the County of LaGrange. The property is located at 107 W. Spring Street, LaGrange, Indiana. He reviewed the terms of the sale. Written bids will be received from April 3, 2024 until 4:00 p.m. April 15, 2024, after which time no new bidders will be allowed to bid. The sale may continue from day to day thereafter until 9:00 a.m. on May 6, 2024. A bidder may raise their own bid. However, said raised bid will only take effect if, and only after, the Board has given written notice of that raised bid to the other bidders.

Mr. Peter Cook made a motion to retroactively approve the publication of notice that will be published in the newspaper on March 20, 2024 and to have Mr. Terry Martin work with the County Auditor to notice the bidders. Mr. Kevin Myers seconded the motion and it carried unanimously.

Mr. Peter Cook made a motion to close the public hearing. Mr. Kevin Myers seconded the motion and it carried unanimously.

CORRESPONDENCE

LaGrange County Clerk of the Circuit Court – February 2024 report

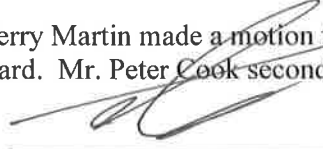
Indiana Department of Environmental Management – Notice of Approval, Scarlet Coatings, 4890 S 950 W, Millersburg, IN 46543, 3925 N 850 W, Permit Number 087-47370-00736

Indiana Department of Environmental Management – Notice of Approval, Artistic Dreams, LLC, 700 East North Village Drive, Shipshewana, IN 46565, Permit Number 087-47276-00735

Indiana Department of Environmental Management – Notice of Approval, Spectrum Finishing, LTD, 700 East North Village Drive, Shipshewana, IN 46565, Permit Number 087-47276-00735

ADJOURNMENT

There being nothing further to come before the Board at this time, Mr. Terry Martin made a motion to adjourn and meet on any subsequent day necessary to carry on the business of the Board. Mr. Peter Cook seconded the motion and it carried unanimously.


Terry A. Martin


Peter A. Cook

ABSENT
Kevin R. Myers

ATTEST:


Kathryn Hopper
LaGrange County Auditor

