

## Action Item #3 – Public Rights of Way Ordinance

### UTILITIES

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#### **Sec. 645-701. - Scope of utility's rights.**

(a)

Any public utility having a right pursuant to any statute, ordinance, franchise, contract, easement or other document to lay, install, maintain, repair and operate its facilities in, under, along, through or over the streets, avenues, alleys, public grounds and public rights-of-way of the city shall exercise such right in accordance with the terms of such statute, ordinance, franchise, contract, easement or other document and the city or state law applicable thereto. Nothing in this article and no action of the city pursuant to this article shall be construed as relieving any public utility from the control of the city under its police powers, or as vesting, extending or increasing the utility's rights in or to the use of any streets, avenues, alleys, public grounds and public rights-of-way, other than under and by the provisions of any statutes, ordinances, franchises, contracts, easements or other documents granting the utility any such rights and as limited therein by law.

(b)

Whenever the department of public works shall deem the condition or location of any public utility pole, wire, main, cable, conduit, pipe or other facility in any street or public place to be dangerous or injurious to life or property, it shall order, in writing, the facility to be made safe or to be removed. If the utility fails to repair or remove the facility, the city may cause the repair or removal thereof, and the utility shall pay all costs incurred by the city in connection therewith. It shall constitute a violation of this Code for any public utility to fail to comply with a written order of the city to repair, remove or relocate any of its facilities located in, on or above any public grounds or rights-of-

way whenever the uses of the city for any such ground or right-of-way so requires or where the access to and use of any private premises are interfered with.

(c)

Whenever any electric, water, gas or other public service utility has been ordered by the city to do anything pursuant to this article regarding its facilities located in any public right-of-way or place, or to provide service for the public in any location within the city, and where no statute or regulation of the state permits the utility to refuse such service, it shall be a violation of this Code for any such utility to fail to do so, after being so ordered in writing by any competent municipal authority. Whenever any public utility shall fail or refuse to comply with orders by the city, or shall fail to comply with any of the provisions of this Code or of state law, the city-county council may suspend the franchises, grants, contracts, permits, privileges, easements or rights of such utility to use thereafter any of the streets or public places of the city, and no such uses shall be resumed without obtaining from the city its new approval as originally required, or as may be then authorized by statute, or unless so ordered by a court or the Public Service Commission of Indiana.

#### **Sec. 645-702. - Location and relocation of facilities.**

(a)

The department of public works may designate the sides of the streets and the locations thereon along which any of the poles, wires, mains or conduits used by telegraph, telephone, transportation, television, electric light, gas and water utilities, either separately or jointly, shall be placed, strung or laid. The department of public works may refuse to permit the same utility to erect or maintain poles, or string wires or lay cables, mains or conduits along both sides of, or in more than one (1) part of any streets, except in cases of emergency or cases of clear necessity.

(b)

Whenever the department of public works shall deem it necessary that the location of any pole, wire, cable, main, conduit or other public utility facility in any public right-of-way or public place shall be changed, the department shall order in writing the change of location thereof, designating the proper location therefor, and provide a reasonable time for compliance

by the affected utility or utilities. Changes in location of utility facilities in, over or through public rights-of-way or public grounds necessitated by work initiated by or financed by the department of and public works shall be at the expense of the utility. However, in their project plans, the department of public works shall coordinate with the utilities to insure the utility relocation costs are limited to the maximum extent possible. Changes in location of utility facilities in, over or through public rights-of-way or public grounds necessitated by work initiated by or financed by any party other than the department of public works shall be at the expense of such other party.

### **Sec. 645-703. - Work in public rights-of-way.**

(a)

All utilities desiring to work in, on, under or over the public right-of-way shall obtain all applicable permits as required in this article. In performing such work, the utilities shall be bound by the standards, regulations, procedures and guidelines set forth in this article except that:

(1)

A public utility shall not be required to file a performance bond with an application for a permit if the utility has on file with the permit section of the department of public works a statement signed by an officer of the utility wherein the utility agrees to indemnify the city against, and hold the city harmless from, any claim for damages arising out of the work of the utility (or persons, corporations or firms authorized by the utility) in a public right-of-way pursuant to any permit issued by the permit section of the department of public works.

(2)

A public utility shall not be required to file a written statement of insurance with an application for a permit if the utility has on file with the permit section of the department of public works the indemnification agreement specified in subsection (1) above.

(3)

A public utility shall not be required to obtain in advance any permit or permits to excavate within the public right-of-way or block or alter traffic patterns on any thoroughfare or street where such action:

- a. Is required in connection with making emergency repairs to underground, overhead or surface facilities;
- b. Is necessary because service to one (1) or more customers has been interrupted or is in danger of being interrupted and the interruption may result in personal injury or property damage to the customer, utility or some third party; or
- c. Is required to comply immediately with an order of a court or an agency having jurisdiction over the utility.

Whenever a utility performs work in accordance with this exception, it shall notify the department of public works maintenance section by telephone during normal duty hours or, if after normal duty hours or on holidays or weekends, the permit section of the department of public works where such notification will be recorded by a telephone recording device.

(4)

A public utility shall not be required to obtain a right-of-way excavation permit to perform work, including excavating, in a public right-of-way unless the utility will make an excavation in or under the paved surface within the right-of-way.

(5)

A public utility shall not be required to obtain parking meter block out and removal permits, provided the utility reports all blockages to the parking meter section of the department of public works and pays, on a monthly basis, the blockage charges due.

(b)

All work including, but not limited to, the restoration of pavement, sidewalks or grass areas, shall be done by the utility at the expense of the utility, unless the city shall elect to do the work and charge the cost thereof to the utility. Such work shall be subject to the supervision and approval of the department of public works.

## **Sec. 645-704. - Utility poles.**

The department of public works may prescribe or approve the locations for installation and the approximate height, dimensions and character of telephone, telegraph, electric or any other poles used by a utility. The height, dimensions and character of all structures used to support aerial utility or public-owned lines shall be of a diameter, height and character that will provide safe clearances as specified in the prevailing governing federal, state or local codes. The department of public works shall require the removal or relocation of any such structures and appurtenances of such structures which do not comply with the reasonable requirements as set out or approved in accordance with the provisions of this Code.

All poles shall be removed according to the following standards unless otherwise authorized or directed by the department of public works:

(1)

Any pole located in nonpavement areas shall either be removed in its entirety or cut off one (1) foot below the ground surface level.

(2)

Any pole located in pavement areas shall either be removed in its entirety or cut off below the full depth of the pavement.

## **Sec. 645-705. - Records.**

(a)

Each utility having the right to install and locate poles, service lines, conduits or other utility facilities of any kind in the public rights-of-way and places of the city shall at all times maintain a record of the same, their locations in the public streets or public places of the city, and a record of the location and dates of repairs made to those facilities within the last eight (8) years. Such records and copies thereof shall be made available, on demand, to the mayor, the director of public works, the chiefs of the fire department and Indianapolis Metropolitan Police Department, or any board or other city official requiring and requesting such information. All records of all abandoned lines and of the removal of all utility poles, conduits, pipes, lines and other facilities shall be kept by the utility for a period of at least

three (3) years and be available to the city authorities, or copies of such records be furnished on demand.

(b)

It shall be unlawful for any utility required to keep records by this section to fail to keep such records, or to fail to produce and make them available to the city authorities on written demand.

**Sec. 645-706. - Interpretation of "public utilities."**

For purposes of this article, the term "public utilities" includes companies which are subject to the jurisdiction of the Federal Communications Commission as persons engaged in interstate commerce in communications by wire.