

## ORDINANCE NO. 2020-26

### AN ORDINANCE REGULATING STREET CUTS

WHEREAS, the Town Council for the Town of Whitestown, Indiana ("Town Council") is the legislative body for the Town of Whitestown, Indiana ("Town"); and

WHEREAS, the Town has the authority to regulate the use of roads, streets, and right of way within the corporate boundaries of the Town, and provide for the health, safety, and welfare of the Town; and

WHEREAS, every driveway or access point from property to a street, road, or right of way under the jurisdiction or control of the Town ("Street Cut") creates a potential conflict between vehicles accessing the street, pedestrians, bicyclists, and vehicles driving on the right of way; and

WHEREAS, to help provide for the safety of all users of streets and sidewalks, the Town must regulate and manage Street Cuts; and

WHEREAS, the Town, by managing and regulating Street Cuts, seeks to better provide for pedestrian and bicycle safety, operating efficiency, and safety for users of streets, balanced with orderly and efficient ingress and egress of adjacent property; and

WHEREAS, the Town Council now desires to clarify and confirm the Town's regulation of Street Cuts on all public streets, roads, alleys, right of way, and thoroughfares within the Town.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

**1. Definition.** "Street Cut" means any vehicular access point from a public or private road, street, driveway, or property onto a street, road, or right of way owned, operated, controlled, and/or maintained by the Town.

**2. Permit Required.** Formal approval of the Whitestown Public Works Director or his/her designee shall be required ("Permit") prior to beginning construction or connection of any Street Cut. No person shall alter or modify existing Town, public, or other improvements within easements or rights-of-way at any time without a Permit issued by the Town. The following activities require a Permit: (1) constructing a Street Cut; (2) adding an additional Street Cut; (2) modifying existing commercial or residential driveways, drive aprons, or Street Cuts within the right-of-way; (3) creating any open cuts or excavations into existing pavement or curbs for any reason; (4) closing any lanes of travel of the public street necessary for completion of the work; (5) removing or relocating existing driveways or Street Cuts; (6) installing temporary construction entrances or other type of temporary access if not located at the existing driveway or Street Cut; and (7) constructing a new driveway, street, or road across an existing sidewalk.

**3. Street Cut Standards.** A Street Cut must comply with the following requirements, when applicable:

- a. All installation of new, or maintenance of existing, Street Cuts shall be in accordance with the current Town standards and current federal or state laws, regulations, or standards for driveway, road, or Street Cut construction.
- b. Street Cuts shall be consistent with the Comprehensive Plan, Thoroughfare Plan, and Unified Development Ordinance for the Town.
- c. A Street Cut may be denied to a property where other access is available, including but not limited to the availability of a new or existing Street Cut through access at another public or private driveway, street, or road.

- d. Street Cuts will only be approved if the Public Works Director determines, in his or her sole discretion, that an additional Street Cut is safe and in the public's best interest and is consistent with the orderly development of the Town. The Town reserves the right to require a Street Cut to be removed, eliminated, or moved at the property owner's sole expense.
- e. All Street Cuts shall comply with the minimum spacing requirements set forth in the current Town Unified Development Ordinance.
- f. The visibility to or from the proposed Street Cut must not be impaired, as determined by the Town Public Works Director.
- g. The proposed Street Cut must otherwise be safe, as determined by the Town Public Works Director.
- h. The Public Works Director should consider and account for the future growth and development of the Town and community, including the potential impact of increased traffic, in determining whether to approve a Street Cut.
- i. In denying a Street Cut, the Public Works Director may approve access to the property at a different point or location.
- j. If removal of the existing sidewalk or multi-use path is required to facilitate the installation of the Street Cut or a new driveway or modifications to an existing Street Cut or driveway, the sidewalk shall be reconstructed of concrete and a multi-use path of asphalt in accordance with the current Town standards.
- k. In areas where the existing roadway is not curbed, new Street Cuts shall be constructed such that the existing roadside drainage is maintained. This shall include, if required by the Town, the installation of equal or larger diameter pipes, installed so that the pipe inverts match the existing roadside ditch elevations.

**4. Permit Application.** Permit applications shall be submitted to the Town Public Works Director. A Permit application must include the following, when applicable:

- a. A plan or description of any proposed Street Cut showing the location, grade, dimensions, and materials used. The Town Public Works Director may require the submission of any additional information deemed necessary to determine the desirability of the proposed Street Cut.
- b. Proof that the proposed Street Cut complies with all current Town standards that govern the work associated with the installation or maintenance of such improvements.
- c. The Permit application fee of \$50.00, for a residential Street Cut, or \$100.00, for a commercial or industrial Street Cut.
- d. Proof of insurance.
- e. Proof of sufficient performance guarantees or bonds for performance of the work.
- f. Proof that all other permits from other federal, state, or local government agencies having jurisdiction over such installation and construction have been obtained.
- g. Proof that the home owners association has approved the work, if such approval is required.
- h. An acceptable traffic control plan for the work within the right-of-way.

**5. Permit Approval, Denial, and Appeal.** The Town Public Works Director may approve a Permit application that complies with the requirements described in Sections 3 and 4. The Town Public Works Director may deny any Permit application that does not comply with the requirements described in Sections 3 and 4. Any appeal of the denial of Permit shall be taken within thirty (30) days of the decision to the Town Board of Zoning Appeals, as provided in I.C. § 36-7-4-918.1.

**6. Construction of the Curb-Cut.** The property owner or responsible party must notify the Public Works Department at least 24 hours in advance of the start of construction within the right-of-way. The owner or responsible party must post traffic control devices at the locations provided in the approved traffic control plan. Improvements installed under a Permit must be done in strict conformity with Permit application and in strict accordance with the current Town standards that govern the work associated with the installation or maintenance of such improvements. The owner or responsible party must restore the right-of-way as requested by the Town during and at the completion of construction. This shall include, but not be limited to repair and/or complete removal and replacement to current Town standards of damaged curbing, pavement, sidewalk, sod, grass, trees, or other vegetation. Determination of damaged public improvements shall be the sole discretion of the Town and all repairs or modifications shall be at the owner's sole cost. All work in the right-of-way is subject to inspection and acceptance or rejection by the Town. In all cases where an existing driveway, Street Cut or main property access is utilized as a construction entrance or other type of temporary access, the existing improvements within the right-of-way shall be restored when the work is complete.

**7. Removal of an Existing Street Cut.** In the event that an existing Street Cut is proposed to be removed, removal work shall be in accordance with the following:

- a. The existing Street Cut and driveway material and any underlying aggregate shall be completely removed within the limits of the right-of-way or as directed by the Public Works Director.
- b. The existing roadside drainage system shall be restored across the former driveway to match or improve upon the existing swale configurations upstream and downstream of the existing driveway.
- c. The area of the removed driveway within the limits of the right-of-way shall be backfilled and topdressed with six inches minimum of topsoil such that the area is level with the undisturbed area.
- d. Grass shall be planted within the area of the removed driveway within the limits of the right-of-way.

**8. Notice of Violation & Penalty.** Any person, firm, or entity found to be violating any provision of this Ordinance may be served by the Town with a written order stating the nature of the violation and providing a time limit for the satisfactory correction thereof, but not greater than ten (10) days will be provided to remove the violation without approval of the Public Works Director. In addition to any other enforcement mechanisms available to the Town, any property owner, person, firm, or entity who violates this Ordinance shall be subject to a civil penalty determined by the Public Works Director up to the maximum amount permitted by I.C. 36-1-3-8, each day of violation (and each separate connection) being deemed a separate violation, and shall be responsible for reimbursing the Town for its costs and reasonable attorneys' fees in all actions brought to enforce this Ordinance.

**9. Severability of Provisions.** In the event any one or more of the provisions contained in this Ordinance should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired and shall remain in full force and effect, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as a part of this Ordinance that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**10. Effective Date.** This Ordinance shall take effect on the date of its adoption.

Adopted by the Town Council of the Town of Whitestown, Indiana, on \_\_\_\_\_,  
2020 by a vote of \_\_\_ in favor and \_\_\_ against.

THE TOWN COUNCIL OF THE TOWN  
OF WHITESTOWN, INDIANA

\_\_\_\_\_  
Clinton Bohm, President

**ATTEST:**

\_\_\_\_\_  
Matthew Sumner, Clerk-Treasurer  
Town of Whitestown, Indiana

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