

ORDINANCE NO. 2023- 02

**AN ORDINANCE PERTAINING TO PUBLIC
RIGHT-OF-WAY OCCUPATION PERMIT FEES**

WHEREAS, Cass County (the “*County*”) receives requests for its consent to install underground cables, conduits, pipelines and above-ground structures and associated equipment within public of rights-of-way within the County; and,

WHEREAS, the ability of the County to continue to provide access to its public rights-of-way requires implementation of effective and efficient management of County rights-of-way; and,

WHEREAS, the County may operate and maintain its streets, highways, and other public property in Cass County for the safety of the traveling public, and the Cass County Board of Commissioners (the “*Board*”) may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of a county public right-of-way on a nondiscriminatory basis; and,

WHEREAS, the County is authorized by law to recover fair compensation for its direct, actual, and reasonable incurred costs in managing the public right-of-way caused by occupation and use of a public rights-of-way, including but not limited to, the costs of (1) registering occupants, (2) verifying public right-of-way occupation, and use (3) inspecting job sites and restoration projects, (4) restoring work inadequately performed after providing notice and the opportunity to correct the work use of county owned property, (5) administering and ensuring adequate restoration of County public rights-of-way as near as reasonably possible to the right-of-way’s original condition, and (6) management costs associated with the implementation of this ordinance and continued monitoring of the right of way to protect the citizens of the County. In addition, the County also considers the degradation costs caused by cuts and intrusions in rights-of-way, and obstructions of a right-a-way when installing or repairing its facilities in a right-of-way; and,

WHEREAS, after review of the Cass County Highway Superintendent’s estimated management costs set forth above due to such above ground and underground occupation, the Board desires the amend its provisions for occupation of County rights-of-way and to adopt amended user fees and bond requirements for the use of the same from those directly benefitting therefrom and reducing accompanying financial burdens upon County taxpayers.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Cass County Board of Commissioners as follows:

Section 1. PERMIT FEES. Right-of-Way Occupancy Permit fees shall be amended as follows:

Road Excavations/Cuts:

Gravel: \$25.00 per linear foot, except farm subsurface drain, with a minimum \$200 fee.

Hard Surface: \$100.00 per linear foot, with a minimum \$500 fee.

Plowing in Cable or Pipe: \$5.00 per linear foot with a \$100.00 minimum fee.

Directional Boring: \$5.00 per linear foot with a \$100.00 minimum fee.

Trenching/Excavating (adjacent to Roadway): \$5.00 per linear foot with a \$100.00 minimum fee.

Boring or Pushing Under Roadway: Total cost per location - \$500.00 per bore.

Pole Lines: \$1,000.00 per mile, or minimum of \$100.00 per pole.

Setting individual and below ground structures (other than poles) including pedestals, splicer box, junction box and transformers: \$500.00 per structure.

Temporary Construction of Access Roads: \$500.00 each

Overweight Permit: Fees based upon routes of travel, condition of requested travel roads, frequency of travel, and weight. \$100.00 minimum plus County costs of engineering or other consultants.

Frost Law exception permit: Fees based upon routes of travel, condition of requested travel roads, frequency of travel, and weight. \$100.00 minimum plus County costs of engineering or other consultants.

Testing permits: Fees based upon road conditions, and number of test sites. \$100.00 minimum plus County's costs of any repairs.

SECTION 2. BOND. No permit shall be issued unless the applicant has also filed with the Cass County Highway Superintendent a bond, with lawful corporate surety or an indemnity insurance policy, in the sum of not less than One Hundred Thousand Dollars (\$100,000.00) payable to the Cass County Board of Commissioners conditioned to indemnify and hold the County harmless against any and all claims or injury or damage to persons or property resulting from the performance of work contemplated or any act done pursuant thereto, or against any loss or liability

resulting from the maintenance of any such cable, wire, or conduit or other attachments or equipment so installed, or against any costs of repairing or remediating any work performed by the applicant. Such bond shall be a continuing blanket bond for a period of five (5) years from the time work is completed. However, the Cass County Highway Superintendent shall have discretion of requiring a specific larger bond for larger projects on a per project basis.

SECTION 3. PENALTY FOR VIOLATION. Any person or entity performing any above or underground occupation of County right-of-way without first procuring a permit required under this Ordinance, or in any other way violating any provision of this Ordinance shall be subject to a civil penalty in the sum of the One Thousand Five Hundred Dollars (\$1,500.00), per violation, per day.

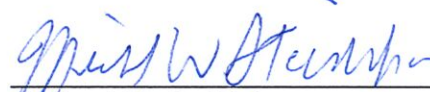
SECTION 4. EFFECTIVENESS. This Ordinance shall be in full force and effect from and after its passage, and shall repeal or amend all other ordinance or portions thereof in conflict herewith.

PASSED AND ORDAINED by the Cass County Board of Commissioners this 6th
day of March 2023.

CASS COUNTY BOARD OF COMMISSIONERS:



Ruth Baker, President



Michael W. Stajduhar



Michael Deitrich

Attest:



Cheryl Alcorn, Auditor