

ORDINANCE NO. D-XXXX-25

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA,
AMENDING, CHAPTER 8, ARTICLE 65, SECTION 8-65 OF THE CARMEL CITY CODE**

Synopsis: Ordinance amending excavation and right-of-way disturbance permit, maintenance and restoration requirements, as well as amending penalties for violations

WHEREAS, the City of Carmel (the “City”) within the reasonable exercise of its police power, has the power to regulate the use of public ways and rights-of-way within its jurisdiction; and

WHEREAS, the Common Council previously enacted Ordinances to regulate excavations of the City’s streets, alleys, sidewalks, and other rights-of-way and providing for permits, regulations and restrictions on such excavations; and

WHEREAS, with the City's rapid growth has come a significant increase in excavations, cuts, and other disturbances to public rights-of-way by private owners, contractors, and utilities. This has created a heightened need for right-of-way patching, repair, and restoration. Therefore, the Common Council finds it to be in the best interest of the health, safety, and general welfare of City residents to enact more comprehensive regulations for these activities.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Carmel, Indiana, as follows:

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. The following subsections of Carmel City Code Section 8-65 are hereby amended and shall read as follows:

“§ 8-65 Excavations, Cuts, and Other Disturbances in Streets Rights-of-Way and City Easements—Permits and Regulations.

(a) Permit.

(1) Prior to beginning any work described herein, a Right-of-Way Permit from the City is required for any person, business, or entity wishing to make any cut, excavate, tunnel under, undermine, install a construction entrance or other facility, or in any manner damage or interfere with (collectively "right-of-way disturbance") a roadway, alley, street, sewer, sidewalk, multi-use path, buried facilities, City-owned easement area, swale, drainage system or other right-of-way (collectively "rights-of-way"), or to place equipment or materials that interfere with rights-of-way or other City infrastructure’s free and unobstructed use.

~~Any person wishing to make any cut into the pavement or into any other portion of any street, sidewalk, curb or public place, or to excavate therein, or to excavate beneath the surface for the construction, alteration or repair of any driveway, sewer, sidewalk, or water line or other buried facility, or for the installation of any such work, shall obtain a permit from the City prior to beginning any such work ("Right-of-Way Permit").~~

(2) Permit Application. Right-of-Way Permit application shall be submitted to the City's Engineering Department, signed by a person or an authorized representative of an entity wishing to make a right-

of-way disturbance. The application shall state the name and address of the applicant; the nature, location and purpose of the right-of-way disturbance; the date of requested commencement; date of completion of the work, and the list of contractors/subcontractors hired to perform the work. Additionally, ~~Any person seeking a Right-of-Way Permit~~ the applicant shall provide the following information at the request of the Engineering Department:

- a) Proof of licensure (when applicable);
- b) Proof of insurance;
- c) Proof of participation in Gold Shovel Standard or similar program;
- d) Proof of training for executives, management, and crews;
- e) Indiana Proactive training (or approved equivalent) for executives, managers and Subcontracting principals; and
- f) Indiana 811 Online excavation training for all supervisors, subcontractors and crews.

If, in the opinion of the Engineering Department, the proposed right-of-way disturbance is expected to affect the use of abutting or adjoining properties, the Engineering Department Director or his/her designee may require the applicant, at the applicant's sole expense, to notify the affected property owners or tenants of the proposed work via letter, signs, or other means, as well as provide contact information of a representative to answer questions about the work. The notice issued by the Right-of-Way Permit holder must also identify the utility or entity that hired the Right-of-Way Permit holder to perform the work.

The term "applicant" refers to both the person or entity to whom a permit is issued, as well as the person who owns the facility or installation for which the permit is issued. The applicant is responsible for complying with all current federal, state, and local laws, regulations, and requirements.

The Engineering Department may impose reasonable conditions on the issuance of the Right-of-Way Permit and the performance of the applicant's work. These conditions are put in place to protect public health, safety, and welfare, to ensure the structural integrity of the rights-of-way, and to minimize disruption and inconvenience to the traveling public.

(3) Permit Commencement and Expiration. Unless an extension has been requested at least 48 hours prior to the requested start date, work outlined in the application must commence on the date indicated on the permit; otherwise, the permit will automatically terminate. Unless an extension is formally obtained, every permit issued will expire at the end of the period specified within the permit. Engineering Department may extend the Permit's commencement or expiration date due to emergencies, severe weather, or other unforeseen circumstances.

(43) Permit Fees. Before issuance of the Right-of-Way Permit, an applicant must pay a non-refundable permit/review fee. The fee will vary depending on the type of right-of-way disturbance as follows:

Application fee:	\$175.00
Street/roadway excavation/cut fee:	\$500.00 per cut

95 Path/Sidewalk excavation/cut fee: \$200.00 per cut

96
97 Utility potholing utilizing the “Utilicor” or other approved process per the City’s standards is exempt from
98 the permit fees outlined herein.

99 ~~Right of Way Permit applicants must pay a fifty dollars (\$50) Right of Way Permit fee to the~~
100 ~~Engineering Department prior to the issuance of said Permit. The City reserves the right to revoke a~~
101 ~~Right of Way Permit for any violation of this section. Right of Way Permit revocations may be~~
102 ~~appealed to the Board of Public Works and Safety upon written request within seven days of the~~
103 ~~revocation.~~

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105 (b) **Permittee’s Liability and Indemnification.** Except in cases of gross negligence by the City, its officers,
106 or its employees, neither the City nor any of its personnel will be held responsible for any damages
107 caused by any work, including but not limited to excavations, in any rights-of-way under the authority
108 of a permit. The permittee shall be solely liable for any damage or loss occasioned by any act or omission
109 connected with the permitted work. The permittee must fully indemnify, hold harmless, and defend the
110 City, its officers, and employees from and against any and all suits, actions, judgments, losses, costs,
111 demands, claims, expenses (including attorney’s fees), damages, and liabilities of every kind. This
112 includes any and all claims to which the City, its officers, or employees may be subjected for any type
113 of personal injury, death, or property damage arising from or connected with any such act or omission.

114 (c) ~~Any person performing any work described in this section and pursuant to a permit from the City, shall~~
115 ~~agree to indemnify the City and any other party interested in such work or its performance against all~~
116 ~~claims, demands, actions, judgments, losses and expenses which may arise from any injuries to any~~
117 ~~person or damage to any property resulting from such work, or from any conditions created by such~~
118 ~~work in the street or any public place.~~

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120 (d) **Bond and Insurance.** The following shall be required of each applicant to obtain a Right-of-Way Permit:

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122 (1) Before a permit is issued, every applicant must post a performance security with the Engineering
123 Department. This security may be either an individual or blanket bond, naming the City as the obligee,
124 or an irrevocable letter of credit from a bank, naming the City as the sole beneficiary, to be honored
125 upon presentment. The required security amount is as follows:

- 126 a) Blanket Bond – public utility work (\$25,000)
- 127 b) Individual permit Bond - all other disturbances (\$5,000)
- 128 c) Custom amount - Special circumstances based on project scope

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131 The effective term of the security shall be as follows, depending on the type of work:

- 132 a) Three (3) years for right-of-way excavations, cuts, or push/bores, starting from the date of
133 work approval.
- 134 b) One (1) year for all other types of right-of-way disturbances.

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137 The maintenance security will be released by the Engineering Department at the end of the required
138 period upon the permittee's request.

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141 The security will only be released after the work is completed, inspected, and accepted by the
142 Engineering Department, at the expiration of the required term. The approval is contingent upon the
143 City's disturbed property being restored to a condition that is as good as or better than its state prior to

144 work commencement, in compliance with all City standards and the conditions of the Right-of-Way
145 Permit. Additionally, any subcontractors used to complete the work must meet these same security
146 requirements.

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148 (2) Insurance. Prior to beginning work, an applicant must obtain and maintain general liability insurance
149 with a minimum coverage amount of Five Hundred Thousand Dollars (\$500,000.00). This coverage
150 must be in effect for the entire "Coverage Period," which begins on the effective date of the Permit and
151 extends until the applicable statute of limitations has run. Proof of this insurance must be filed with the
152 Engineering Department with the Permit application.

153
154 ~~(1) In the event that a cut runs lengthwise along right-of-way, the applicant wishing to proceed with such~~
155 ~~work shall be required to post a bond on the basis of \$20 per lineal foot; provided however that said~~
156 ~~bond shall be in an amount of not less than \$2,000.~~

157
158 (e) Worksite Maintenance and Inspection. The permittee is required to post a clearly visible sign, barricade,
159 or other device that includes the permittee's name and contact information. A copy of the approved
160 permit must be on site and able to be presented during all active work. During all work, the permittee
161 must maintain a clean worksite and ensure that no debris or construction materials affect surrounding
162 areas. The permittee is also required to post a clearly visible sign, barricade, or other device that includes
163 the permittee's name and contact information. If traffic control is necessary, the permittee must maintain
164 it in accordance with the latest edition of the Indiana Manual on Uniform Traffic Control Devices and
165 all other applicable local, state, and federal laws. An alternate route for pedestrians must be provided
166 and must comply with the Americans with Disabilities Act (ADA). The permittee shall secure all open
167 right-of-way disturbances and at a minimum shall implement the following measures:

168
169 (1) All soft surface right-of-way disturbances shall be covered or fenced.

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171 (2) Roadway, alley, and street pavement disturbances shall be steel plated and secured.

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173 (3) All sidewalk and multiuse path disturbances shall be temporarily compacted with stone backfill.

174
175 The City reserves the right to actively monitor and inspect work performed pursuant to the Right-of-
176 Way Permit ~~excavation activities located within public right-of-way~~. Such inspection may include, but
177 is not limited to, spot inspections, ~~regular~~ documentation review, ~~random~~ verification with vacuum
178 excavation of projects, and all such other investigations as are appropriate for the work performed
179 project.

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181 (f) Underground Utility Location. All underground utility locates must be examined and crossings
182 confirmed (pursuant to I.C. 8-1-26), via hand digging, vacuum excavation, or any such method
183 contemplated by the statute. ~~Right-of-Way Permit holders excavating in developed areas shall spot~~
184 ~~existing underground utility facilities with hand digging, vacuum excavation, or similar means to~~
185 ~~confirm drill head location for boring at a regular interval no more than every fifty (50) feet.~~

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187 (g) Restoration of Right-of-Way.

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189 (1) Restoration of surface. All work and right-of-way restoration must be completed within the dates
190 specified on the permit. For work performed between November 1st and March 1st, the restoration of
191 vegetation may be delayed until weather conditions are favorable, but it must begin no later than April
192 1st. Subject to adverse weather conditions, all restoration work shall be completed within 14 business

193 days after the work pursuant to the Permit is complete; however, excavation backfill after any below
 194 surface work shall be completed within 24 hours. The permittee shall not leave any open holes or
 195 trenches after excavation backfill. The permittee is responsible for restoring the work area and
 196 surrounding right-of-way, including trench backfill and paving, to a condition that is as good as, or
 197 better than, the original state. Following completion, the permittee must inspect the work area and
 198 maintain this condition for an applicable maintenance guarantee period, with the exception of natural
 199 wear. All materials and restoration methods must comply with current Indiana Department of
 200 Transportation Standard Specifications, as well as any applicable City ordinances, policies, or
 201 regulations. All waste generated during the work must be disposed of in accordance with all relevant
 202 City, federal, and state statutes, rules and regulations. Under no circumstances is any debris to be left in
 203 the right-of-way.

204
 205 (2) Failure to Restore. If the permittee fails to restore the right-of-way as required, the City Engineer or
 206 his/her designee will notify the permittee of any such deficiencies. The permittee must then correct the
 207 restoration work within a reasonable timeframe, not to exceed thirty (30) days. Should the permittee fail
 208 to meet this standard or timeframe, the Board of Public Works and Safety may authorize the Street
 209 Department or an independent contractor to perform the necessary restoration. In this instance, the
 210 permittee will be billed for all costs incurred by the City and must reimburse the City within thirty (30)
 211 days of receiving the invoice. The City may pursue legal action in a court of competent jurisdiction to
 212 collect any unreimbursed amount and reasonable attorney fees, court costs, and other costs of collection.

213
 214 (3) The City, through its Code Enforcement Department, and at the direction of the City Engineer or
 215 their authorized representative, has the authority to order an immediate stoppage of work. This may
 216 occur if the permittee is found to be deviating from the permit conditions or if the continuation of work
 217 poses a serious threat to the life, health, safety, or well-being of the public. All work must cease
 218 immediately upon a work stoppage order and cannot resume until the specified issues are resolved and
 219 the City provides explicit permission to proceed.

220
 221 (4) Steel Plates Requirements. Steel plates may only be used for temporary pavement cuts during
 222 emergency repairs or for excavations in paved areas expected to last more than one workday week.
 223 When a plate is used, the City's Engineering Streets Department must be notified. Each plate must be
 224 clearly marked with the owner's name or another visible identifier. Plates must be tacked down on all
 225 four corners with hot mix asphalt, and a one-foot-long asphalt ramp must be provided to reduce the
 226 transition from the pavement. Any plate remaining in the roadway for more than seven (7) days must
 227 be countersunk to allow for a smooth transition. However, from December 1st to April 1st, all plates
 228 must be countersunk regardless of the duration of the work.

229 (h) ~~Said bond shall be cancelled only after the completion of the work and inspection and approval by the~~
 230 ~~City Engineer. Such approval shall be based on the requirement that the public property disturbed be~~
 231 ~~replaced in as good or better condition that was its condition prior to the beginning of said work, and~~
 232 ~~upon the further requirement that the work shall be in conformance with the stated conditions of the~~
 233 ~~work permit. In the event that the public property has not been restored to a condition as good or better~~
 234 ~~than it had existed prior to the beginning of the work, the City may call upon the bonding company to~~
 235 ~~perform such work or perform the restoration work itself and bill the Right-of-Way Permit Holder for~~
 236 ~~the work performed.~~

237
 238 (i) Public utilities. Utilities owned and operated by the City of Carmel shall not be required to post bond or
 239 other security pursuant to this section, ~~b~~But are required to comply with all other requirements of this
 240 section. The City may require public utilities performing work ~~exeavation~~ within the ~~public~~ right-of-
 241 way to provide ~~active~~ supervision of such work ~~excavation or construction~~ if it is located within densely

242 populated or urban environments, or near transmission or distribution facilities of public ~~for the involved~~
 243 utilities. (Ord. D-107, 1-17-77)

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- 245 (j) Street damage addressed. Section 6-51 of this Code addresses damage to streets.
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- 247 (k) **Adverse Weather Conditions.** Except in cases of an emergency as outlined in this section or with explicit
 248 approval from the Engineering Department, no work shall be performed when adverse weather
 249 conditions exist. This includes any conditions that would make the work unsafe for any person or would
 250 cause damage or degradation to the right-of-way or surrounding property that would not normally occur
 251 under typical conditions. The permittee is responsible for assessing and halting work when such
 252 conditions, including but not limited to, heavy rain, deep freezing temperatures, or high winds, are
 253 present.
- 254
- 255 (l) **Noise, Dust, Trash and Debris.** Each permittee must conduct work in a manner that avoids unnecessary
 256 inconvenience and annoyance to the general public and property occupants. The permittee must take all
 257 appropriate measures to reduce noise, dust, and debris to the fullest extent possible. All work must be
 258 carried out in compliance with applicable noise and nuisance ordinances. Except in emergency
 259 situations, work is not permitted between the hours of 9:00 p.m. and 7:00 a.m. during weekdays and
 260 8:00 p.m. and 8:00 a.m. during weekends and City-recognized holidays unless express written
 261 permission has been obtained from the Board of Public Works and Safety. All trash, debris, and waste
 262 materials must be properly disposed of and in accordance with all relevant City, federal, and state
 263 statutes.
- 264
- 265 (m) **Emergency Conditions.** In the event of an emergency, such as a burst pipe, broken conduit, failure of
 266 transmission, or distribution facilities or other critical utility infrastructure that immediately endangers
 267 the public, the facility owner may take immediate, proper measures to remedy the situation without first
 268 obtaining a Right-of-Way Permit. Such persons or entities must, however, retroactively apply for a
 269 permit and comply with all other requirements no later than the end of the next business day.
 270 Furthermore, the facility owner must notify an authorized City representative as soon as practicable,
 271 leaving a voicemail if the representative is unavailable or if the emergency occurs outside of regular
 272 business hours. This notification must include the caller's name and contact information, the nature and
 273 exact location of the emergency, details on any necessary street closures or affected traffic, the scope of
 274 expected repairs, contact information for the facility owner, and contact information for the contractor
 275 hired to fix the issue, as well as the approximate time required for repairs. The City reserves the right to
 276 take any action it deems necessary to respond to the emergency, and the cost of such action will be borne
 277 by the owner of the facilities that caused the emergency.
- 278
- 279 (n) **Denial of Right-of-Way Permit.** Except in cases of an emergency or when required by law, the
 280 Engineering Department may deny a permit if the applicant has failed to comply with the requirements
 281 of this chapter in the past twelve (12) months or is currently not in full compliance. A permit may also
 282 be denied if there are existing grounds for its revocation, or if its issuance for the particular date or time
 283 would cause a conflict or interfere with other work being performed or a scheduled public event. In
 284 making this determination, the Engineering Department will be guided by the safety and convenience
 285 of ordinary public travel over the rights-of-way, along with considerations for public health, safety, and
 286 welfare. The department may also deny a permit to protect the public health, safety, and welfare; to
 287 prevent interference with travel; or to protect the rights-of-way or its users. In its discretion, the
 288 Engineering Department may consider various factors, including the capacity of the rights-of-way, the
 289 availability of other locations, the degree of disruption to surrounding property and businesses, the

290 condition and age of the rights-of-way, and whether the area is scheduled for reconstruction or
291 replacement.

292
293 (o) Right-of-Way Permit Revocation. The City reserves the right to revoke any permit without a refund of
294 the permit fee in the event of a substantial breach of its terms and conditions. A substantial breach is not
295 limited to, but includes, any of the following:

296
297 (1) Failure to Adhere to Work Plan: The permittee performs work that is outside the scope of the
298 approved permit, including unapproved locations, methods, or materials.

299
300 (2) Restoration Deficiencies: The permittee fails to restore the right-of-way to the specified standards
301 or within the required timeframe after a notification of non-compliance.

302
303 (3) Safety Violations: The permittee fails to establish and maintain adequate traffic control and worksite
304 safety standards, posing a risk to the public.

305
306 (4) Misrepresentation: The permittee provides false or misleading information in the permit application,
307 either intentionally or unintentionally.

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309 (5) Financial Non-Compliance: The permittee fails to pay any fees, provide required security, or
310 penalties due to the City in a timely manner.

311
312 (6) Immediate Threat to Public Safety: The work is determined by the City Engineer to pose a significant
313 and immediate threat to public safety, health, or welfare.

314
315 If the Engineering Department determines a substantial breach has occurred, it will issue a written
316 demand to the permittee to remedy the violation. This demand, which may be sent via email or other
317 electronic communication, will state that continued violations could lead to permit revocation. The
318 Department may also place additional or revised conditions on the permit. The permittee must contact
319 the Department with an acceptable plan for correction within forty-eight (48) hours of receiving the
320 notification. Failure to submit or implement an acceptable plan will be cause for immediate revocation.
321 If a permit is revoked, the permittee will be responsible for reimbursing the City for all reasonable costs
322 incurred in connection with the revocation, including restoration costs, collection costs, and, if
323 authorized by law, attorney's fees.

324
325 (p) Penalties for non-compliance. Any permit holder or authorized subcontractor shall be subject to
326 applicable penalties for the following violations:

- 327 (1) Failure to provide 24-hour advanced notice of starting permitted work
- 328 (2) Closure or restriction of traffic without advanced notification to Carmel Engineering Dept.
- 329 (3) Failure to provide proper traffic control
- 330 (4) Work completed without required inspections
- 331 (5) Failure to secure open right-of-way disturbances
- 332 (6) Failure to restore right-of-way

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334 Fine schedule for non-compliance

335	First violation:	\$250.00
336	Second violation:	\$500.00
337	Third and any subsequent violation:	\$1,000.00

338 Each day of noncompliance constitutes a separate violation.

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(q) Penalties for Work Done Without a Permit or Notification to the City. Any person, business, or entity that performs work in a right-of-way without first obtaining a valid Right-of-Way Permit or, in case of emergencies, notifying the City, will be in violation of this chapter. Such a party will be required to take the following actions to come into compliance and will be subject to applicable penalties:

- (1) Retroactively Obtain a Permit: Immediately apply for and secure the required Right-of-Way Permit.
- (2) Pay Fees and Fines: Pay all applicable permit fees as well as any fines as outlined in City ordinances.
- (3) Restore Damage: Correct any damage to the right-of-way in accordance with the standards for work completion and restoration detailed in this document.
- (4) Provide Security: Post all required maintenance bonds or other acceptable forms of security.
- (5) Comply with Regulations: Adhere to all other requirements and conditions specified in this document and other applicable City regulations.

Fine schedule for performing work without a permit per day:

First violation:	\$250.00 200
Second violation:	\$500.00
Third and any subsequent violation:	\$1,000.00

Each day constitutes a separate violation.

~~(r) Penalties. Any person found to be in violation of this section shall be subject to a fine of not less than \$100 per day first the first such violation; to a fine of not less than \$500 per day for the second violation; and subject to a fine of not less than \$1,000 per day for the third and all subsequent violations. Each day constitutes a separate violation.~~

(s) Appeal Process for Violations. Any person or entity found to be in violation of the provisions of this section has the right to appeal that determination. The appeal must be submitted to the Board of Public Works and Safety, which will hear all such appeals at its next regularly scheduled meeting. After the hearing, the Board may confirm, reverse, or modify the original decision or action. The order issued by the Board will be considered final, and any further appeal must be made to a court of competent jurisdiction within thirty (30) days from the date the Board's order is issued.

Section 5. All prior ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed, to the extent of such inconsistency only, as of the effective date of this Ordinance, such repeal to have prospective effect only. However, the repeal or amendment by this Ordinance of any other ordinance 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 such repealed or amended ordinance as if this Ordinance had not been adopted.

Section 6. If any portion of this Ordinance is for any reason declared to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

Section 7. The remaining portions of Carmel City Code Section 8-65 are not affected by this Ordinance upon its passage.

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Section 8. This Ordinance shall be in full force and effect from January 1, 2026 and signing by the Mayor and such publication as required by law.

PASSED by the Common Council of the City of Carmel, Indiana, this _____ day of _____, 2025, by a vote of _____ ayes and _____ nays.

COMMON COUNCIL FOR THE CITY OF CARMEL

Adam Aasen, President

Matt Snyder, Vice-President

Rich Taylor

Anthony Green

Jeff Worrell

Teresa Ayers

Shannon Minnaar

Ryan Locke

Anita Joshi

ATTEST:

Jacob Quinn, Clerk

Presented by me to the Mayor of the City of Carmel, Indiana this _____ day of _____ 2025, at _____ .M.

Jacob Quinn, Clerk

Approved by me, Mayor of the City of Carmel, Indiana, this _____ day of _____ 2025, at _____ .M.

Sue Finkam, Mayor

ATTEST:

Jacob Quinn, Clerk