

ADAMS COUNTY ORDINANCE 2020 - 3

SHORT TITLE: AN ORDINANCE TO ASSESS DAMAGE TO PUBLIC ROADWAYS IN THE COUNTY OF ADAMS, STATE OF INDIANA, AND TO ESTABLISH PROCEDURES FOR ASSERTING ASSESSMENTS FOR DAMAGES TO ROADWAY WITHIN THE COUNTY OF ADAMS, STATE OF INDIANA.

WHEREAS, the County of Adams, State of Indiana, is a unit of local government, pursuant to Ind. Code § 36-1-2-23;

WHEREAS, Indiana Code § 36-1-3 et seq. confers upon local units of government within the State of Indiana such powers as necessary or desirable to conduct the affairs of local government;

WHEREAS, as a unit, the County of Adams may adopt, codify and enforce ordinances, pursuant to Ind. Code § 36-1-4-11.

WHEREAS, Indiana Code § 9-21-1-2 authorizes the County of Adams, State of Indiana, to adopt by Ordinance traffic regulations with respect to streets and highways under the County's jurisdiction; and

WHEREAS, the Board of Commissioners for the County of Adams, State of Indiana (hereinafter referred to as the "Board of Commissioners") is the legislative body for the County of Adams, State of Indiana, pursuant to md. § 36-1-2-9;

WHEREAS, the Board of Commissioners desires to protect the public safety and health on the streets and highways under the County's jurisdiction of the County of Adams, State of Indiana;

WHEREAS, the Board of Commissioners and the County of Adams, State of Indiana, highway department (hereinafter referred to as the "Adams County Highway Department") has observed damage to streets and highways under the County's jurisdiction as a result of heavy equipment traveling onto the public roadways causing damage to the public roadways;

WHEREAS, the Board of Commissioners and the Adams County Highway Department are responsible for maintaining streets and highways under the County's jurisdiction;

WHEREAS, the Board of Commissioners and the Adams County Highway Department expend public resources to make repairs to the streets and highways under the County's jurisdiction that are caused due to heavy equipment and machinery entering onto and off of streets and highways under the County's jurisdiction and traveling thereon;

WHEREAS, the Board of Commissioners and the Adams County Highway Department desire to assess repair costs and expenses of repairing the streets and highways under the County's jurisdiction to the heavy equipment and machinery operators and owners who enter onto and off of streets and highways under the County's jurisdiction and causing damage to the streets and highways under the County's jurisdiction;

WHEREAS, the Board of Commissioners and the Adams County Highway Department desire to establish procedures to investigate damage caused by heavy equipment and machinery damage to the streets and highways under the County's jurisdiction;

WHEREAS, the Board of Commissioners and the Adams County Highway Department desire to establish procedures to assess the costs and expenses of repairing streets and highways under the County's jurisdiction to the operators and owners of the heavy equipment and machinery causing damage to the streets and highways under the County's jurisdiction

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF ADAMS, STATE OF INDIANA AS FOLLOWS:

Section 1. Definitions. The terms and definitions referenced in this ordinance are specific to this ordinance. The terms and definitions shall not have universal meaning in any other ordinance unless specific reference has been made to this ordinance and the term to be incorporated into another ordinance.

A. "Costs and Expenses" shall mean the monetary value of the material and labor incurred by the Adams County Highway Department to make necessary repairs to the damage of the streets and highways under the County's jurisdiction due to the operation of Heavy Equipment and Machinery upon the streets and highways under the County's jurisdiction.

B. "Damage" shall mean any material change to the surface of a public roadway that creates or has the potential to create an unsafe surface to the roadway resulting from Heavy Equipment and Machinery entering on to or off of and traveling upon streets and highways under the County's jurisdiction, including, but not limited to:

- (1) Ruts, tracks or damaged caused upon the grade, pavement or surface of the streets and highways under the County's jurisdiction; and,
(2) Alterations in the grade or damage to the side ditches, culverts or drainage due to streets and highways under the County's jurisdiction; and,
(3) Other damages that are observable due to Heavy Equipment and Machinery Use upon the streets, highways and rights of way under the County's jurisdiction.

C. "Heavy Equipment and Machinery" shall mean:

- (1) any equipment or machinery used to move earth, including, but not limited to:
(a) Bulldozers; and,
(b) Backhoes; and,
(c) Dump trucks; and,
(d) Skid loaders; and,
(e) Similar such equipment or machinery; and,
(2) any machinery or equipment used for agricultural purposes, including, but not limited to:
(a) Combines; and,
(b) Planters; and,
(c) Grain trucks, including semis tractor trailers; and,

- (d) Tractors; and,
(e) Implements; and,
(f) Similar such machinery or equipment.

D. "Investigation" shall mean the visual inspection of the Damage by the Adams County Highway Department to Damage to the streets and highways under the County's jurisdiction and estimate of the Costs and Expenses to Repair the damage caused by Heavy Equipment or Machinery.

E. "Person(s)" shall mean the individual, company, limited liability company or other such entity who owns and/or operated the Heavy Equipment and Machinery that resulted in the Damage to streets and highways under the County's jurisdiction and who are identified in the Written Report.

F. "Repairs" shall mean the restoring of Damage to the streets and highways under the County's jurisdiction to the standards required by law by the Adams County Highway Department.

F. "Written Report" shall mean the written findings of the Adams County Highway Department after Investigation of Damage to the streets and highways under the County's jurisdiction including an estimate of the Costs and Expenses to make Repairs to the Damage to the streets and highways under the County's jurisdiction.

Section 2. Investigation and Written Report. The Adams County Highway Department shall conduct a site inspection of any Damage to the streets and highways under the County's jurisdiction and include in a written report the following information:

- A. Date of Inspection; and,
B. Location of Inspection; and,
C. The observed Damage to the streets and highways under the County's jurisdiction;
D. The facts surrounding the Damage to the streets and highways under the County's jurisdiction; and,
E. Identify the Person(s) allegedly responsible for the Damage to the streets and highways under the County's jurisdiction, and the person(s) address; and,
F. Estimate(s) of the Costs and Expenses to make Repairs to the streets and highways under the County's jurisdiction as a result of the Damage; and,
G. Names of any witnesses who provided information regarding the Damage to the streets and highways under the County's jurisdiction; and,
H. The name of the Adams County Highway Department personnel who completed the Investigation.

Section 3. Serve Written Report and Procedures.

A. Serve Report. The Adams County Highway Department shall serve a copy of the Written Report to the Person(s) it identifies as operating Heavy Equipment and Machinery at the location where the Damage to streets and highways under the County's jurisdiction occurred.

B. Response. The Person who is alleged to have caused Damage to the streets and highways under the County's jurisdiction shall have ten (10) days to respond, in writing, to the Written Report by submitting its response to the:

Adams County Highway Department
201 North Polk Street
Monroe, Indiana 46772

C. Informal Resolution. The Adams County Highway Department and the Person(s) identified in the Written Report shall have five (5) days to enter into a settlement of the Costs and Expenses associated with the findings in the Written Report.

D. Written Settlement. If the Adams County Highway Department and the Person(s) identified in the Written Report agree to informal settlement, then the Informal Settlement shall be in writing and signed by the Adams County Highway Superintendent and the Person(s) within five (5) days of the informal settlement.

Section 4. Repairs to Damage. The Adams County Highway Department shall make repairs to Damage to streets and highways under the County's jurisdiction at the conclusion of the Investigation and during settlement negotiations with the Person(s) in order to ensure the safety of public use of the streets and highways under the County's jurisdiction.

Section 5. Court Proceedings and Damages.

A. Court Proceedings. In the event the Adams County Highway Department and the Person(s) are unable to informally settle, as described in Section 3, then the Board of Commissioners may initiate legal proceedings against the Person(s) to obtain a judgment as to the Costs and Expenses associated with the Repairs made to the damage to streets and highways under the County's jurisdiction caused by the person(s).

B. Damages. In the event that the Board of Commissioners is awarded a judgment for the Costs and Expenses of the Repairs by a court of competent jurisdiction against the Person(s), then the Board of Commissioners shall be entitled to costs of the proceedings, pre-judgment interest at the statutory rate, and reasonable attorney fees.

Section 6. Effective Date. This ordinance shall become effective upon its adoption and publication as required by law.

ADOPTED, by the Board of Commissioners, County of Adams, State of Indiana, this 10th day of March, 2020 AM, by a vote of 2 ayes and 0 nays.

BOARD OF COMMISSIONERS
COUNTY OF ADAMS
Kim Fruechte, Commissioner, District #1
Rex Moore, Commissioner, District #2
Doug Bauman, Commissioner, District #3

ATTESTED BY:
Mary Beery, Auditor of the
County of Adams, State of Indiana