



WELLS COUNTY ORDINANCE NO. 2020-04

*An Ordinance Prohibiting the Removal or Modification of Sidewalks
Located Within Public Rights-of-way in Unincorporated Areas of Wells County and
Providing Penalties for the Violation Thereof*

WHEREAS, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI"), prohibits discrimination on the basis of race, color, national origin, disability, religion, sex, sexual orientation, gender identity, age, low income status or limited English proficiency in programs and activities receiving Federal financial assistance; specifically, Title VI provides that "no person in the United States shall, on the ground of race, color, national origin, disability, religion, sex, sexual orientation, gender identity, age, low income status or limited English proficiency be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C. Section 2000d); and

WHEREAS, Wells County, Indiana is committed to ensuring that no person is excluded from participation in, or denied the benefits of its services on the basis of race, color, national origin, disability, religion, sex, sexual orientation, gender identity, age, low income status or limited English proficiency as protected with Title VI; and

WHEREAS, the Board of Commissioners of Wells County, Indiana are responsible for ensuring the implementation of the County's Title VI Implementation Plan ("the Plan"). The Plan was developed to guide Wells County, Indiana in its administration and management of Title VI-related activities; and

WHEREAS, The Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504") prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"), prohibits discrimination on the basis of disability by both public and private entities, whether or not they receive Federal financial assistance. Section 504 applies to agencies receiving Federal funds and Title II of the ADA applies to State and Local agencies and requires all programs, services and facilities to be accessible to and usable by people with disabilities. Pedestrian routes within the public right-of-way link access points and destinations. Within the public right-of-way, sidewalks are considered an important part of the pedestrian access route, as are crosswalks, paths, bridges, railroad crossings and curb ramps. Traffic signals, parking and bus stops and other pedestrian facilities are also important parts of an accessible pedestrian network. Just as minor changes in facilities can greatly improve accessibility, seemingly minor maintenance problems can form a significant barrier to people who are disabled or even able bodied; and

WHEREAS, the Board of Commissioners of the County of Wells also have an ADA Transition Plan in place stating they will improve the non-compliant sidewalks located within public rights-of-way and curb ramps in unincorporated areas of Wells County; however, they are receiving push back from these communities to follow through with this plan; and

WHEREAS, these communities typically have non-compliant sidewalks located within public rights-of-way and curb ramps found sporadically throughout the community. Since these communities are unincorporated the County is responsible for the improvements to sidewalks located within public rights-of-way and curb ramps. The County has reached out to these communities about improvements. On a number of situations, the community/property owners are not interested in improvements, they would prefer that the sidewalks located within public rights-of-way were removed instead of being improved. Some property owners have already removed the sidewalks located within public rights-of-way without notifying the County. Sidewalks located within public rights-of-way should not be removed to avoid ADA compliance, that can result in liability also. Where improvements exist, they should be made accessible (barrier removal per the ADA). There is not an obligation to add NEW facilities where none currently exist, but it is as "illegal" to remove the sidewalks located within public rights-of-way to avoid compliance as it is to leave barriers unaddressed; and

WHEREAS, the County has limited funds for sidewalk and curb ramp improvements and would like to use the funding where it is needed and where it is wanted.

NOW, THEREFORE, be it ordained by The Board of Commissioners of the County of Wells, that a new Chapter of the Wells County Code of Ordinances shall be added and the new Chapter shall read as follows:

Chapter 53. OBSTRUCTION OR ALTERATION OF ROADS, ROAD RIGHTS-OF-WAY, SIDEWALKS OR COUNTY PROPERTY

Sections:

- 53.010 Permit required – Exception.
- 53.020 Unlawful to obstruct.
- 53.030 Wires and banners over roads – Approval required.
- 53.040 Deposit of snow or ice prohibited.
- 53.050 Obstruction of drainage systems prohibited.
- 53.100 Enforcement.
- 53.110 Violations and penalties.
- 53.120 Abatement – Notices – Costs – Fines.

53.010 Permit required – Exception.

It is unlawful for any person to conduct a parade or event, remove, alter, damage or obstruct the free use of or to cause the removal, alteration, damage or obstruction of any County-owned property, public sidewalk, road, or road right-of-way in the County without first having obtained a written permit to do so; provided, temporary obstruction

for the purpose of loading or unloading merchandise or other delivery vehicles shall not be deemed a violation of this section. It is further provided, that a bond with good and sufficient sureties may be demanded of any person who has been granted such a permit.

53.020 Unlawful to obstruct.

It is unlawful for any person to place any goods, wares or merchandise or any signs, advertising matter or thing, instrument or machinery or erect, maintain or cause to be erected any posts or poles, structure, building, facility or anything causing an obstruction of or encroachment on the sidewalk, roads, road rights-of-way, or County property or interfering with the free use thereof, by the side of, over or upon the sidewalk, public roads, road rights-of-way, or property of the County.

53.030 Wires and banners over roads – Approval required.

It is unlawful for any person to place, erect or install, or cause to be placed, erected or installed, any wire, rope, sign, platform or any other thing or substance over any public sidewalk, road, road right-of-way, or property of the County, without first having obtained a permit so to do, after inspection by the appropriate County officer and determination that such erection will not endanger public health and safety.

53.040 Deposit of snow or ice prohibited.

It is unlawful for any person to push, pile or place any snow or ice upon the roads, road rights-of-way, sidewalks, alleys, or property of the County.

53.050 Obstruction of drainage systems prohibited.

It is unlawful to push, pile or place brush, lawn clippings, debris, dirt, gravel or any material into any ditch paralleling County roads that may cause obstruction of the road drainage system.

53.100 Enforcement.

A. The County Executive, County Sheriff or designated representatives are authorized to enforce the provisions of this chapter.

B. Any person may file a complaint under this chapter with the County Executive or County Sheriff and request enforcement of the alleged violation.

53.110 Violations and penalties.

A. Penalty for Violation. A person who violates this ordinance commits a Class C infraction. In addition, a person who violates this ordinance is punishable by a fine of not more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance, and not more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance, and judgment may be entered for such a violation plus costs pursuant to Indiana Code 34-28-5-4.

B. Each day the violation continues constitutes a new violation.

C. Fines for violations are separate from and in addition to all other remedies authorized by law or equity.

53.120 Abatement – Notices – Costs – Fines.

A. The County may file a civil action in Superior Court to abate an obstruction or encroachments and all costs and expenses of such abatement, removal, remediation or other remedy and full actual attorney fees and costs incurred by the County in any legal proceeding to abate the obstruction or encroachment shall be paid by the persons committing, creating, keeping, maintaining or causing such obstruction or encroachment.

53.130 It is further ordained that this ordinance shall become effective upon its adoption by The Board of Commissioners of the County of Wells, and publication as required by law.

53.140 It is further ordained that any other provision of the Wells County Code of Ordinances not specifically amended by this ordinance shall remain in full force and effect.

PASSED AND ADOPTED by the County Commissioners of Wells County, Indiana on this 2nd day of March, 2020, by the following vote:

WELLS COUNTY COMMISSIONERS:

<u>✓</u>	<u> </u>	<u> </u>
Aye	Nay	Blake Gerber, President
<u>✓</u>	<u> </u>	<u> </u>
Aye	Nay	Kevin Woodward, Vice-President
<u>✓</u>	<u> </u>	<u> </u>
Aye	Nay	Tamara Robbins, Member

ATTEST:

Lisa McCormick, Auditor

This instrument was prepared by the Wells County Attorney, Roy R. Johnson, Attorney No. 4937-90, 116 South Main St., Bluffton, IN 46714. *I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.* Lisa McCormick