

ORDINANCE NO. 2011- 55

**AN ORDINANCE REGULATING RIGHT-OF-WAY ACTIVITIES AND ESTABLISHING  
MAXIMUM SPEED LIMITS AT WORKSITES IN ELKHART COUNTY, INDIANA**

WHEREAS Indiana Code Sections 36-1-3-1 et. seq. permit any county in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its county or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana is authorized to adopt ordinances and regulations for traffic control in Elkhart County, Indiana;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana is the local authority under Indiana Code §9-21-5-11 with the authority to adopt local police regulations under the laws and the Constitution of the State of Indiana;

WHEREAS Indiana Code §9-21-5-11 provides that a local authority may establish temporary maximum speed limits in their respective jurisdictions and in the vicinity of a worksite without conducting an engineering study and investigation;

WHEREAS the Highway Engineering Division and the Maintenance Division of the Elkhart County Highway Department have recommended to the Board of Commissioners of the County of Elkhart, Indiana that temporary maximum speed limits be established in Elkhart County, Indiana in the vicinity of worksites pursuant to Indiana Code §9-21-5-11;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana find and determine that it is reasonable and appropriate and in the interest of public safety to establish

temporary maximum speed limits in Elkhart County, Indiana in the vicinity of worksites pursuant to Indiana Code §9-21-5-11;

WHEREAS the Highway Engineering Division and the Maintenance Division of the Elkhart County Highway Department have recommended to the Board of Commissioners of the County of Elkhart, Indiana that certain activities within the public right-of-way of the County of Elkhart, Indiana be regulated in the vicinity of worksites;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana further find and determine that it is reasonable and appropriate and in the interest of public safety to regulate certain activities within the public right-of-way of Elkhart County, Indiana in the vicinity of work sites;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana further find and determine that worksites present unique safety considerations, traffic issues, visibility limitations, and driver distractions that warrant special regulation;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana further find and determine after considering other regulatory and non-regulatory approaches, the rights of the traveling public, the interests of public safety, and the economic implications of public work projects that the regulations established by this Ordinance are reasonable, appropriate, and justified in weighing and balancing the interests involved;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Elkhart, Indiana as follows:

1. Establishment of Speed Limits at Worksites. Pursuant to Indiana Code §9-21-5-11, as amended, the Board of Commissioners of the County of Elkhart, Indiana hereby establish

temporary speed limits upon the roads and bridges in Elkhart County, Indiana subject to its jurisdiction within the area encompassed by any worksite.

2. Definition of Worksite. For purposes of this Ordinance, a “worksite” shall be defined as provided in Indiana Code §9-13-2-200, as amended.

3. Worksite Speed Limits. The worksite speed limits established under this Ordinance shall be ten (10) miles per hour below the maximum established speed limit; provided, however, worksite speed limits may be established at a lower speed limit in accordance with Indiana Code § 9-21-5 et seq., as amended, based upon an engineering and traffic investigation.

4. Posting of Worksite Speed Limits. Signs shall be posted notifying the traveling public of the temporary worksite speed limits established under this Ordinance in accordance with the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways. The Board of Commissioners of the County of Elkhart, Indiana hereby authorizes and directs the Elkhart County Highway Department to post such signs for worksites governed by this Ordinance in Elkhart County, Indiana.

5. Prohibited Activities in Worksites.

A. The following activities are hereby prohibited in any worksite established by Elkhart County, Indiana as well as and including the public right-of-way extending from the “ROAD WORK AHEAD” sign for the worksite to the “END ROAD WORK” sign for the worksite:

- i. Conducting sales or other transactions by food and other vendors or suppliers;
- ii. Distributing, marketing, or other displaying of products or services;

- iii. "Tailgating" or other parties and social gatherings;
- iv. Vehicle parking, except in designated construction parking areas or parking zones and parking lots created prior to the worksite being established; or
- v. Any other activity or conduct disrupting or interfering with the worksite operations.

B. Except for within a designated and established "OBSERVATION AND DEMONSTRATION AREA," the following activities are hereby prohibited in any worksite established by Elkhart County, Indiana as well as and including the public right-of-way extending from the "START ACTIVITY AREA" sign for the worksite to the "END ACTIVITY AREA" sign for the worksite:

- i. Constructing, installing, placing, or displaying temporary or permanent signage, except for highway safety and directional signs in compliance with the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways;
- ii. Secular or religious services, ceremonies, memorials, revivals, or other related activities;
- iii. Soliciting funds or other donations or contributions;
- iv. Speeches, picketing, protests, rallies, or other demonstrations regardless of subject matter; or
- v. Visual or auditory shows, attractions, displays, concerts, skits, or other programs or presentations, whether live or recorded.

"Observation and Demonstration Areas" will be designated and established for road and bridge projects subject to the jurisdiction of Elkhart County, Indiana where feasible with the "Observation and Demonstration Areas" located at a worksite as shown and reflected on the plans and specifications approved for the project. Signage, safety precautions, accessibility, and availability of the "Observation and Demonstration Areas" shall be provided in accordance with the plans and specifications for the project. To the extent governed thereby, signage shall be in accordance with the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways.

C. The above and foregoing prohibitions shall not be construed nor interpreted to limit or restrict the reasonable, appropriate, and necessary activities and operations of the public or private purpose construction and maintenance activity being performed on the highway or right-of-way for which the worksite was established.

6. Temporary Regulations.

A. The regulations of this Ordinance shall be temporary and shall come into effect upon commencement of the construction or maintenance activity which shall be determined by the posting of the worksite signage and shall remain in effect only until the construction or maintenance activity is fully completed which shall be determined by the removal of the posted worksite signage.

B. The worksite speed limits established by this Ordinance shall be enforceable only:

- i. During the hours or at the times designated by the posted signage for the worksite;

- ii. When the posted signage for the worksite is activated denoting the applicability of the worksite speed limit; or
- iii. If the posted signage for the worksite does not designate hours or times or is not activated for the worksite speed limit to be enforceable, then the worksite speed limit shall be enforceable at all times until the construction or maintenance activity is fully completed which shall be determined by the removal of the posted worksite signage.

The Board of Commissioners of the County of Elkhart, Indiana hereby determines that the safety of the traveling public requires enforcement of the worksite speed limits in accordance with the terms and provisions of this paragraph.

C. The activities prohibited by Section 5 of this Ordinance shall be enforceable at all times until the construction or maintenance activity is fully completed which shall be determined by the removal of the posted work site signage.

7. Enforcement.

A. Persons disobeying the regulations contained within this Ordinance with respect to worksite speed limits shall be subject to the penalties and forfeitures specified by the Indiana Code.

B. Persons disobeying the regulations contained within this Ordinance with respect to prohibited activities in worksites shall be subject to a civil penalty in an amount of up to Five Hundred Dollars (\$500.00) for each violation and with each day in violation constituting a separate violation.

C. Citations may be prepared and issued in accordance with Indiana Code § 34-28-5 et seq., as amended, and Indiana Code § 9-30-3-6, as amended, by the Elkhart County Sheriff's Department or other police agency and prosecuted in accordance with Indiana Code § 34-28-5 et seq., as amended.

8. Effective Date. This Ordinance shall become effective on March 1, 2011 following publication in accordance with the requirements of Indiana law. Upon the effective date of this Ordinance, Ordinance No. 2008-230 shall be repealed and of no further force nor effect except with respect to any pending citations or legal actions with respect thereto which shall continue to be governed thereby.

ORDAINED AND ADOPTED this 7 day of <sup>February</sup> ~~January~~, 2011.

BOARD OF COMMISSIONERS OF THE  
COUNTY OF ELKHART, INDIANA

By Terry Rodino  
Terry Rodino, President

By Mike Yoder  
Mike Yoder, Vice-President

By Frank Lucchese  
Frank Lucchese, Member

ATTEST:

Pauline E. Graff  
Pauline E. Graff  
Elkhart County Auditor