

COUNTY COMMISSIONER ORDINANCE NO. CO-2026-~~14~~

**AN ORDINANCE ESTABLISHING CONTRACTUAL PROTECTIONS
FOR COUNTY CONTRACTS**

WHEREAS, Indiana Code Chapter 36-1-3 permits 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 governmental or internal affairs which is not prohibited by the Constitution of the United States or the Constitution 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 the County legislative and executive body and is authorized by law to adopt ordinances and resolutions governing the administration of Elkhart County's governmental affairs.

WHEREAS, Indiana Code § 36-2-2.8-4 requires that all contracts entered into by Elkhart County be executed in the name of Elkhart County and any property purchased for public use be titled or documented as owned by Elkhart County.

WHEREAS, Indiana Code § 36-2-2.8-5 authorizes the Elkhart County Board of Commissioners to adopt an ordinance establishing standard contractual language to be used in all contracts entered into by Elkhart County.

WHEREAS, Elkhart County adopted Ordinance No. CO-2025-43 establishing Standard Contractual Language for use in Elkhart County contracts.

WHEREAS, Section 39 of the Standard Contractual Language authorizes supplemental terms so long as they do not conflict with the other terms contained within the Standard Contractual Language and do not limit the rights and protections given to Elkhart County under such terms.

WHEREAS, Contractors are in the best position to avoid their negligent, reckless, willful, and intentional actions and to otherwise maintain insurance or other means to protect against such actions.

WHEREAS, some Contractors attempt to avoid their responsibility by adding contractual limitation of liability clauses to contracts in connection with their negligent, reckless, willful, and intentional actions, despite such actions often being exclusively within the Contractor's control and potentially covered by insurance coverage.

WHEREAS, Elkhart County does not believe the burden and responsibility for covering damages caused by Contractor actions should fall upon Elkhart County.

WHEREAS, the Elkhart County Board of Commissioners has determined that it is in the best interest of Elkhart County and its taxpayers to establish certain contractual protections to preserve the public interest, ensure accountability, and steward Elkhart County resources.

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

1. Amendment of Section 43.001 of the Elkhart County Code. Section 43.001 of the Elkhart County Code is hereby repealed and replaced to read as follows, with all modifications necessary to conform to the formatting of the Elkhart County Code:

43.001. SHORT TITLE.

This Chapter may be referred to as the Elkhart County Contracts.

2. Addition of Subpart (D) to Section 43.002 of the Elkhart County Code. Section 43.002 of the Elkhart County Code is hereby amended to add subpart (D) to the existing language of Section 43.002 as follows, with all modifications necessary to conform to the formatting of the Elkhart County Code:

43.002. DEFINITIONS.

(D). "Limitation of Liability Provision" means any provision that reduces the maximum damages recoverable by Elkhart County from a party to an amount less than what would otherwise be recoverable under Indiana law for tort, breach of contract, or any other cause of action.

3. Addition of Section 43.006 to the Elkhart County Code. Section 43.006. Contractual Protections is hereby added to Chapter 43: County Contracting under Title III of the Elkhart County Code to read as follows:

43.006. CONTRACTUAL PROTECTIONS.

(A). Except to the extent required by state or federal law, a Contract entered into by Elkhart County on or after March 9, 2026, must not include any Limitation of Liability Provision.

(B). If a Contract is entered into by Elkhart County on or after March 9, 2026, that contains a Limitation of Liability Provision in violation of Elkhart County Code § 43.006(A), the provision is void ab initio, and the Contract containing such provision is otherwise enforceable as if it did not contain such provision.

4. Addition of Section 43.007 to the Elkhart County Code. Section 43.007. Exceptions to Contractual Protections is hereby added to Chapter 43: County Contracting under Title III of the Elkhart County Code to read as follows:

43.007. EXCEPTIONS TO CONTRACTUAL PROTECTIONS.

(A). The restrictions in Elkhart County Code § 43.006(A) do not apply when the Contract is (i) for the purpose of naming Elkhart County as a coinsured or additional beneficiary in a contract of insurance or (ii) between Elkhart County and the owner of immovable property when the purpose of the Contract is to grant the public entity a servitude, right-of-way, or other authority to go upon, construct works, perform activities, or otherwise exercise control over or use the owner's property.

(B). A circumstance may exist that requires exception to the contractual protections set forth in Elkhart County Code § 43.006(A). Elkhart County may agree to a Limitation of Liability Provision in a Contract if Elkhart County finds, by written determination of the County Administrator, that such services or products cannot be effectively obtained without such limitation, the risk posed by the limitation does not outweigh the need for the Contract, and proceeding forward with the Contract is in the best interest of Elkhart County. A Contract entered into under this exception must not, without approval by the Board of Commissioners following receipt of the written determination described above, include any Limitation of Liability Provision that (i) limits recovery for losses to Elkhart County resulting from breach of confidentiality obligations, reckless misconduct, or intellectual property violations or (ii) limits the amount of recovery to anything less than the insurance coverage limits required for the Contract. Under no circumstance, may a Contract, entered into under this exception, include a Limitation of Liability Provision that limits recovery for losses to Elkhart County resulting from fraud or other intentional or willful misconduct.

5. Addition of Section 43.008 to the Elkhart County Code. Section 43.008. Reservation of Government Protections is hereby added to Chapter 43: County Contracting under Title III of the Elkhart County Code to read as follows:

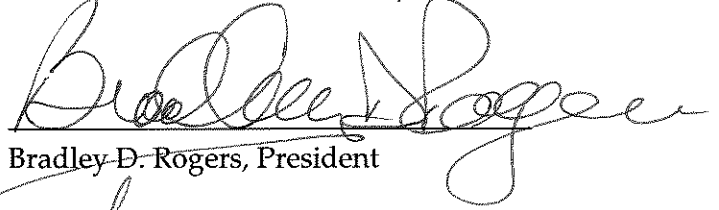
43.008. RESERVATION OF GOVERNMENT PROTECTIONS.

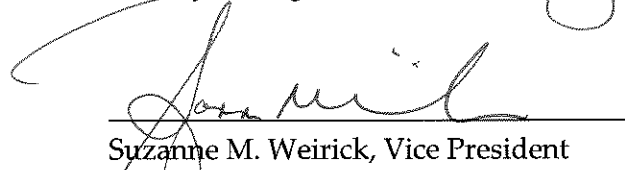
Nothing in Elkhart County Code Chapter 43 limits the protections afforded to Elkhart County under the Tort Claims Act (Indiana Code Chapter 34-13-3) or otherwise waives or is intended to waive any protections that may be applicable to Elkhart County or any of its elected or appointed officials, employees, agents, or representatives under any applicable statutes, rules, or regulations providing governmental immunity, or any other rights, protections, immunities, defenses, or limitations on liability that Elkhart County or such related parties are provided by law.

6. **Effective Date.** This Ordinance will be in full force and effect once adopted and, if applicable, after publication in conformance with Indiana law.

Dated: March 9, 2026.

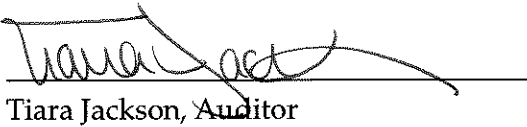
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THE COUNTY OF ELKHART, INDIANA


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ATTEST:


Tiara Jackson, Auditor