

**WHITELAND TOWN COUNCIL**

**RESOLUTION NO. 2017-03**

**A RESOLUTION DESIGNATING AREAS FOR STRICTLY UNDERGROUND AND BURIED UTILITIES**

WHEREAS, the Town of Whiteland, Indiana ("Town"), pursuant to Ind. Code § 36-9-2-7 may regulate the use of public ways;

WHEREAS, pursuant to Indiana Code Section 36-1-2-24, the Town Council (the "Council") is the Works Board for the Town and as such has the power to regulate the Town's rights-of-way ("ROW");

WHEREAS, to further the public interest, and to comply with the provisions required under Ind. Code § 8-1-32.3-15, the Council has concluded that a Strictly Underground and Buried Utilities Area ("SUBU Area") needs to be established within the Town's corporate boundaries;

WHEREAS, the Council finds that it is in the best interests of public health, safety, property values, and the general welfare of the Town's citizens to strictly require that all new utility facilities located within the SUBU Areas of the Town shall be placed underground or buried; and

WHEREAS, the Council finds that it is in the best interests of public health, safety, property values, and the general welfare of the Town's citizens to strictly prohibit erection or installation of above ground and overhead utilities and utility structures, fixtures, poles, devices, equipment, lines, and related above ground and overhead facilities, including, without limitation, "micro wireless facilities," as that term is defined in Indiana Code Section 8-1-32.3-7.5 and "wireless support structures," as that term is defined in Indiana Code Section 8-1-32.3-14, (all collectively referred to herein as "Above Ground Facilities"), within the SUBU Areas of the Town, unless a waiver is granted by the Council.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WHITELAND, INDIANA THAT:

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

Section 2. A Strictly Underground and Buried Utilities Area (SUBU Area) is hereby established effective April 29, 2017, and continuing into perpetuity unless otherwise acted upon by this Council, and all of the following described areas of the Town's current and future corporate boundaries are designated as SUBU Areas:

- A. All areas and parcels of property within the Town where no Above Ground Facilities currently exist;

- B. All undeveloped areas and parcels of property within the Town where no Above Ground Facilities currently exist;
- C. All areas and parcels of property within the Town where planned road projects, redevelopment areas, and/or economic development areas provide for and require underground buried utilities and utility facilities, including, but not limited to, electric, communication, or similar and associated services;
- D. All areas and parcels of property within the Town zoned residential;
- E. All areas and parcels of property within the Town zoned for apartments;
- F. All areas and parcels of property within the Town zoned for park or open space;
- G. All areas and parcels of property within the Town zoned agricultural;
- H. All areas and parcels of property within the Town zoned commercial or business;
- I. All areas and parcels of property within the Town zoned industrial;
- J. All areas and parcels of property within the Town zoned institutional;
- K. All areas and parcels of property within the Town zoned for planned unit development;
- L. All areas and parcels of property containing rights-of-way or proposed rights-of way, where no Above Ground Facilities currently exist;
- M. All areas and parcels of property containing rights-of-way or proposed rights-of way, whether or not Above Ground Facilities currently exist therein;
- N. All areas and parcels of property containing platted or granted utility easements, where no Above Ground Facilities currently exist; and
- O. All areas and parcels of property containing platted or granted utility easements, whether or not Above Ground Facilities currently exist therein.

Section 3. Notwithstanding Section 2 above, any utility, or other person or entity, that requires construction, placement, or use of Above Ground Facilities within a SUBU Area, may submit an application to the Council requesting a waiver to install new Above Ground Facilities within the SUBU Area, which waivers shall be considered in the Council's sole discretion.

Section 4. Unless otherwise expressly authorized by the Council, from and after the Effective Date of this Resolution, no person, corporation, or utility shall erect or install within a SUBU Area, any Above Ground Facilities.

Section 5. Unless otherwise expressly authorized by the Council, from and after the Effective Date of this Resolution all utilities and utility devices, equipment, lines, conduits, and related facilities to be placed within the Town's ROW shall be placed underground.

Section 6. With the exception of utility poles and wireless support structures, all Above Ground Facilities located within the Town's ROW or another location within a SUBU Area as of the Effective Date of this Resolution, may remain but may not be replaced or relocated without prior written authorization of the Council; existing utility poles and existing wireless support structures within SUBU Areas may be replaced but not relocated. The collocation of small cell facilities shall be permitted on existing utility poles and wireless support structures within SUBU Areas.

Section 7. Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in SUBU Area, the Town shall post notice of the application on the Town's Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

Section 8. The prohibition and other restrictions with respect to the placement of new utility poles or new wireless support structures within the SUBU Areas shall be applied in a nondiscriminatory manner.

Section 9. Neighborhood associations and a homeowners association may register with the Town to receive notice by United States mail of any application filed with the Town for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area within the jurisdiction of the neighborhood association or homeowners association. The Town shall post on the Town's Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this section.

Section 10. If any portion of this Resolution is for any reason declared to be unenforceable, unconstitutional, or invalid, such decision shall not affect the validity of the remaining portions of this Resolution or this Resolution as a whole.

Section 11. This Resolution shall be in full force and effect from and after April 29, 2017 (the "Effective Date").

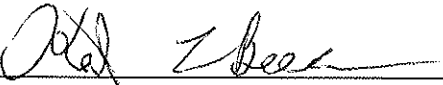
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Adopted by the Town Council of the Town of Whiteland, Indiana on the 29th day of April, 2017.

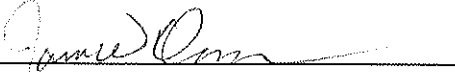
TOWN OF WHITELAND, INDIANA, TOWN COUNCIL

YES

NO

  
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Kent Beeson, President

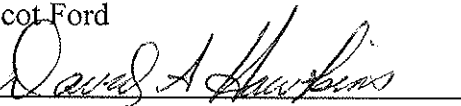
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Kent Beeson, President

  
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James Klenner, Vice-President

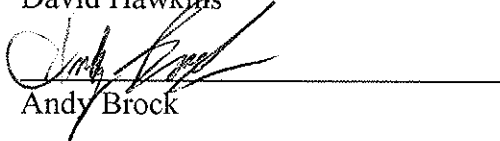
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James Klenner, Vice-President

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ATTEST:

  
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Debra L. Hendrickson, Clerk-Treasurer