

ORDINANCE NO. 12-17

AN ORDINANCE RATIFYING ACTIONS OF THE BOARD OF PUBLIC WORKS AND SAFETY DESIGNATING CERTAIN AREAS AS STRICTLY FOR UNDERGROUND OR BURIED UTILITIES AND DELEGATING AUTHORITY RELATED THERETO

WHEREAS, the Indiana General Assembly has conferred to the Common Council and the Board of Public Works and Safety (the “BOW”) powers with respect to public ways in the City, *see e.g.* I.C. §§ 36-9-2-7, 36-9-6-2, and 36-9-6-13;

WHEREAS, Senate Enrolled Act No. 213, 120th Leg., 1st Reg. Sess. (2017) (“SEA 213”) made certain changes to Indiana statutes concerning the local permitting of small cell facilities and wireless support structures;

WHEREAS, SEA 213 permits the City to designate certain areas as strictly for underground or buried utilities and within the designated area to restrict or prohibit the placement of new utility poles or wireless support structure as it relates to the construction, placement, or use of a small cell facility and associated supporting structure subject to certain conditions as set forth in I.C. 8-1-32.3-15(c);

WHEREAS, the City has a longstanding interest in regulating which areas should be designated for underground utilities, *see e.g.* City Code § 101.05.8 (“All utility facilities, including but not limited to gas, electric power, telephone, and CATV cable, shall be located underground throughout the subdivision except where not permitted by the utility”);

WHEREAS, there are certain areas of the City, where substantial investment has been made to improve those areas and enhance or preserve certain aesthetic standards; and

WHEREAS, on April 29, 2017, the BOW designated certain areas for underground or buried utilities by approving Resolution No. BW 2017-1 entitled “A Resolution of the Board of Public Works and Safety of the City of West Lafayette, Indiana to Designate Certain Areas as Strictly for Underground or Buried Utilities,” a copy of which is attached hereto as Attachment “A”; and

WHEREAS, the Common Council, in the interest of public safety and necessity, desires to delegate to the BOW the power to designate certain areas for underground or buried utilities.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE that:

Section 1. The Common Council ratifies and adopts as of the date of BOW passage BOW Resolution No. BW 2017-1, attached hereto as Attachment “A.” The BOW shall have all powers that the Common Council can delegate with respect to designating locations within the City as underground or buried utility areas pursuant to I.C. 8-1-32.3-15(c)(1). The BOW shall have all powers that the Common Council can delegate with respect to enforcing and implementing BOW Resolution No. BW 2017-1, attached hereto as Attachment “A.”

Section 2. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

INTRODUCED ON FIRST READING ON THE 1 DAY OF May, 2017.

MOTION TO ADOPT MADE BY COUNCILOR Keen, AND SECONDED BY COUNCILOR De Boer.

A MOTION TO CONSIDER ON FIRST READING WAS SUSTAINED BY A VOTE OF 8 IN FAVOR AND 0 OPPOSED, PURSUANT TO IC-36-4-6-13.

DULY ORDAINED, PASSED, AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, ON THE 1 DAY OF May, 2017, HAVING BEEN PASSED BY A VOTE OF 8 IN FAVOR AND 0 OPPOSED, THE ROLL CALL VOTE BEING:

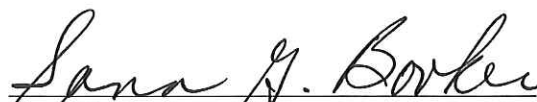
	AYE	NAY	ABSENT	ABSTAIN
Bunder	✓			
DeBoer	✓			
Dietrich	✓			
Jha	✓			
Keen	✓			
Leverenz	✓			
Sanders	✓			
Thomas			✓	
Wang	✓			


Peter Bunder, Presiding Officer

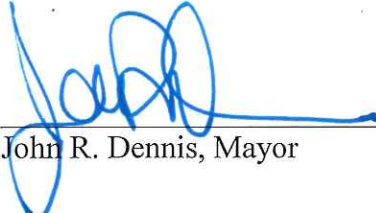
Attest:


Sana G. Booker, Clerk

PRESENTED BY ME TO THE MAYOR OF THE CITY OF WEST LAFAYETTE, INDIANA ON THE 2 DAY OF May, 2017.


Sana G. Booker, Clerk

THIS ORDINANCE APPROVED AND SIGNED BY ME ON THE 4 DAY OF
May, 2017.



John R. Dennis, Mayor

Attest:



Sana G. Booker, Clerk

ATTACHMENT A
RESOLUTION NO. BW 2017-1

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY
OF WEST LAFAYETTE, INDIANA TO DESIGNATE CERTAIN AREAS AS
STRICTLY FOR UNDERGROUND OR BURIED UTILITIES**

WHEREAS, the City of West Lafayette Board of Public Works and Safety (the “BOW”) has jurisdiction over street rights-of-way within the City of West Lafayette (the “City”);

WHEREAS, Section 101.05.8 of the City’s Uniform Subdivision Ordinance requires “all utility facilities, including but not limited to gas, electric power, telephone, and CATV cable, shall be located underground throughout the subdivision except where not permitted by the utility;”

WHEREAS, Senate Enrolled Act 213 made certain changes to Indiana statutes concerning the local permitting of small cell facilities and wireless support structures;

WHEREAS, SEA 213 has been enacted into law and permits the City to designate certain areas as strictly for underground or buried utilities and within the designated area to restrict or prohibit the placement of new utility poles or wireless support structure as it relates to the construction, placement, or use of a small cell facility and associated supporting structure subject to certain conditions as set forth in I.C. 8-1-32.3-15(c);

WHEREAS, there are certain areas of the City, where substantial investment has been made to improve those areas and enhance or preserve certain aesthetic standards; and

WHEREAS, The City, through its BOW, and in the interest of public safety, necessity, and health, desires to designate certain areas within the City as strictly for underground or buried utilities;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WEST
LAFAYETTE BOARD OF PUBLIC WORKS AND SAFETY AS FOLLOWS:**

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

Section 2. The purpose of this Resolution is to adopt a policy regarding the designation of locations within the City as underground or buried utility areas pursuant to I.C. 8-1-32.3-15(c)(1).

Section 3. The City hereby designates the following areas as strictly underground or buried utility areas:

- a. The New Chauncey Local Historic District and any future historic districts as approved by the West Lafayette City Council.

- b. The following streets and highways: State Street, Northwestern Avenue, Sagamore Parkway, U.S. 52, Harrison Street, Cherry Lane, Stadium Avenue, River Road, Happy Hollow Road, Lindberg Road, Cumberland Avenue, West Fowler Avenue, Wiggins Street, Wood Street, Grant Street, Tapawingo Drive, Brown Street, Howard Avenue, Salisbury Street, Chauncey Avenue, Russell Street, Waldron Street, University Street, Marsteller Street, McCormick Road, Soldiers Home Road, Williams Street, and Yeager Road;
- c. All areas of the City where no overhead or aboveground utilities, utility facilities, overhead lines, or associated overhead structures used or useful in supply electric, communication, or similar or associated services currently exist;
- d. All rights-of-way within or adjacent to areas zoned for residential use.
- e. All areas of the City where planned road projects, redevelopment areas, or economic development areas provide for and require underground buried utilities and utility facilities, including but not limited to electric, communication, or similar or associated services;
- f. All other rights-of-way throughout the City, whether or not aboveground utilities or utility facilities currently exist;
- g. Notwithstanding subsections (a) through (f) above and in accordance with I.C. 8-1-32.3-15, the City shall allow collocation of small cell facilities on existing utility poles and wireless support structures and the replacement of existing utility poles and wireless support structures within the designated areas;
- h. Notwithstanding subsections (a) through (f) above and as required by I.C. 8-1-32.3-15(c)(2)(C), any utility requesting construction, placement, or use of a small cell facility in an area designated as strictly underground or as a buried utility area may submit an application to the city engineer requesting a waiver to install new utility poles or wireless support structures within an area designated solely for buried or underground utilities. Any prohibition or restriction with respect to the placement of new utility poles or new wireless support structures within a designated area shall be applied in a nondiscriminatory manner; and
- i. As used in subsections (b) through (f) above, the term "City" includes all area within the corporate boundaries of the City of

West Lafayette, as of the effective date of this Resolution, all area within any territory that is subsequently annexed into the corporate boundaries of the City of West Lafayette, and any later-acquired right-of-way.

Section 4. Any utility structure or portion thereof located on an existing right-of-way or later-acquired right-of-way that can by its nature be placed underground shall be placed underground. Nothing in this Resolution shall prohibit:

- a. The temporary aboveground location of utility lines during construction or emergency conditions;
- b. Renewal, reinstallation, relocation, replacement, repair or maintenance of aboveground utilities existing as of the effective date of this Resolution; and
- c. Above ground utilities and utility lines as determined appropriate and authorized by the city engineer.

Section 5. If any portion of this resolution is for any reason declared unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Resolution.

Section 6. This Resolution shall be in full force and effect immediately upon its adoption.

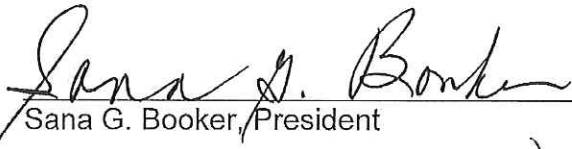
RESOLUTION BW 2017-1

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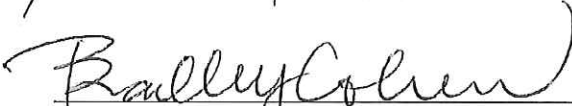
APPROVED:

DATE: 04/29/2017

CITY OF WEST LAFAYETTE
BOARD OF PUBLIC WORKS AND SAFETY



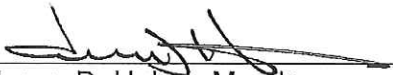
Sana G. Booker, President




Bradley L. Cohen, Member



Brooke E. Folkers, Member



Jason D. Huber, Member



Thomas J. Kent, Member

Attest:



Nichole A. Foster, First Deputy Clerk