

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE TO ESTABLISH THE WAIVER PROCEDURE FOR ITS UNDERGROUND AND BURIED UTILITIES DISTRICT**

**WHEREAS**, the City of Fort Wayne, Indiana ("City"), pursuant to I.C. 36-9-2-7, may regulate the use of public ways; and

**WHEREAS**, pursuant to I.C. 36-4-9-5, the City established the Board of Public Works ("Board") to administer the public utilities and regulate the City's right of way ("ROW"); and

**WHEREAS**, the City, by and through its Board, found that it is in the best interest of the public health, safety and general welfare of its citizens to prohibit the erection of all utility, wireless and other poles, wireless and other support structures, overhead lines and associated overhead structures used or useful in supplying electric, communication or similar and associated services within the City's ROW, and pursuant to the Board's Resolution No. \_\_\_\_\_ established and Underground and Buried Utilities District ("Area") throughout all ROW within the corporate boundaries of the City, now existing, or created in the future through annexation or other means; and

# 104-8-2-17-4

**WHEREAS**, the Board's, Resolution No. \_\_\_\_\_, provides that no person, corporation nor utility shall erect nor construct within the City's ROW, any pole, wireless support structure or other support structure, line, or associated overhead structure used or useful in supplying electronic, communication, other utility or similar associated services without a waiver from the Board; and

**WHEREAS**, the Board now hereby establishes and adopts its waiver procedure and policy for the construction, placement, and use of such structures in the Area; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Public Works of the City of Fort Wayne, Indiana as follows:

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

Section 2. The City prefers collocation on existing structures. Applicants seeking a waiver to construct and place a new structure in the Area must in its application:

a. Certify the applicant cannot use or replace existing structures and state the reasons existing structures cannot accommodate its use;

b. Explain why collocation it's modification or replacement is not viable, technically feasible, or is an economic burden;

c. If the proposed structure and site does not allow at least one additional user, or if the applicant will not allow an additional user on structure, a statement explaining all reasons the structure and site does not allow at least one additional user, and/or why the applicant will not allow an additional user of the structure.

d. Certify the proposed location of the new structure is greater than a 1,000 feet radius from other structures; but if not, the applicant must provide an explanation why such is not viable, technically feasible, or an economic burden.

e. If the proposed structure does not match the City's street light poles, luminaries and specifications, provide a statement explaining why such is not viable, technically feasible, or an economic burden.

f. If the proposed structure is not aesthetically and architecturally comparable with the surrounding environment, and screening has not been provided, the applicant must explain any efforts to make the structure comparable and why such is not viable, technically feasible or an economic burden.

g. The applicant should explain all attempts its structure and any attachments thereto are designed to blend into the surrounding environment through the use of color, camouflage and architectural treatment and the degree which it uses materials compatible with the surrounding environment.

h. The applicant shall state the degree to which it has communicated with and engaged property owners and neighborhood, homeowners and business associations and organizations adjacent to its placement of its structures.

Section 3. An applicant receiving a waiver that is not used for a period of two (2) consecutive years following the grant of the waiver must remove the structure and facilities at the owner's sole cost and expense and said waiver shall expire after two (2) years of non-use. If the applicant, within sixty (60) days of notice from the Board or City fails to remove its structure and facility, the City may do so and the applicant shall reimburse the City for its cost of removal of the structure and facilities, and repair and restoration of the site.

Section 4. When considering each applicant for waiver, the City shall consider the general welfare of its community, including, without limitation input received from adjacent property owners, neighborhood, homeowner and business organizations and associations.

Section 5. The City shall be especially mindful of community input when considering a waiver with any residentially zoned area of the City. The City shall allow a neighborhood association or homeowner's association to register with the permitting authority to receive notice by United States mail of any application filed with the permit authority 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 utility support structures in the Area that is within the jurisdiction of the neighborhood association or homeowner's association. Further, the City shall post notice of applications for waiver on its web site with a statement that said application is available to the public upon request.

Section 6. The permit authority shall provide a written determination of whether the application for waiver has been granted or denied and state clearly the basis for such decision.

Section 7. The permit authority shall adopt and publish an application for waiver.

Section 8. If any portion of this Resolution is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Resolution so long as the enforcement of same can be given the same affect.

SO RESOLVED this 2 day of August, 2017.

CITY OF FORT WAYNE, INDIANA  
By and through its Board of Public Works

By: Robert Kennedy Presiding Officer / Chairman  
~~Absent~~

Date: \_\_\_\_\_

By: [Signature], Member - Kumar Menon

Date: 8/2/17

By: Mike Avila, Member - Mike Avila

Date: 8/2/17

ATTEST:

[Signature] Clerk - Lyndsay Richards

Date: 8/2/17