

RESOLUTION NO. 2017 – 03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF NASHVILLE, INDIANA, DESIGNATING CERTAIN RIGHT-OF-WAY STRICTLY FOR UNDERGROUND OR BURIED UTILITIES

WHEREAS, on or around April 25, 2017, the Indiana General Assembly passed Senate Enrolled Act 213, effective April 30, 2017, which is codified, in part, at Ind. Code §8-1-32.5-15 (the “Act”); and

WHEREAS, The Town seeks to promote private investment in broadband infrastructure: and

WHEREAS, The Town of Nashville having been designated as the first Broadband Ready Community by the State of Indiana by having established procedures to expedite and encourage the investment of broadband in the town as follows:

- a. Appointed a single point of contact for all matters related to a project;
- b. Established procedures to allow all forms, applications, and documentation related to a project to be filed or submitted and signed by electronic means;
- c. Committed to review and approve or reject all applications for a permit related to a project within ten (10) business days after an application is filed or submitted;
- d. Assured that after an application is approved pursuant to subsection (a)(3) of the Broadband Readiness Designation, any inspections, including any additional necessary approvals, related to a project will occur in a timely and expeditious manner.

WHEREAS, the Town, as a broadband ready community, has also committed to processes and procedures that do not:

- a. Require an applicant to designate a final contractor to complete a project;
- b. Impose a seasonal moratorium on the issuance of permits for a project;
- c. Discriminate among communications service providers or utilities with respect to any action described in this section or otherwise related to a project, including granting access to public rights-of-way, infrastructure and poles, river and bridge crossings, and any other physical assets owned or controlled by the Town of Nashville.

WHEREAS, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure, the Act allows the permit authority to prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities if certain requirements of the Act are met; and

WHEREAS, 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 an area that is designated strictly underground or buried utilities, the permit authority shall post notice of the application on the Town’s website and make the application available to the public upon request; and

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WHEREAS, the Act requires a permit authority to allow a neighborhood association or a homeowners association to register with the permit authority to receive notice 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 wireless support structures in an area within the jurisdiction of the neighborhood or homeowners association; and

WHEREAS, in accordance with the Act, the permit authority now desires to designate right-of-way within the Town of Nashville strictly for underground or buried utilities and adopt a procedure governing requests to install new wireless poles or support structures within the area.

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Nashville, Brown County, Indiana as follows:

Section 1. Designated Underground Utility Area. The Town of Nashville hereby designates town right-of-way located on or about all Local Roads, Arterial-Primary Roads, Arterial-Secondary roads, Collector roads, alleys/streets, and roundabouts within the town boundaries, are designated strictly for underground or buried utilities (individually or collectively, "Underground Utility Area") and prohibits the placement of a new wireless poles or support structures within the Underground Utility Area. To the extent new wireless support structures are not required, this prohibition does not restrict the collocation of small cell facilities on existing utility poles and wireless poles and support structures within the Underground Utility Area or the replacement of existing utility poles or wireless poles and support structures within the Underground Utility Area.


Section 2. Waiver Procedure. Any request to install new wireless poles or new wireless support structures within the Underground Utility Area shall adhere to the Town's Waiver Procedure, attached hereto and incorporated herein as Exhibit A.

Section 3. Permit Authority. The Town hereby (a) designates the Town Utility Department as the Permit Authority; and (b) requests that the Town Manager & Economic Development Director act as a single point of contact and the Town Utility Department implement and facilitate the waiver procedure.

Section 4. Severability. If any of the terms of this Resolution are held by a court of competent jurisdiction to be null, void or inoperative for any reason, or if any provision or term of this Resolution is in violation of any applicable federal, state or local law, guideline, rule or regulation, all such provisions are severable and the remaining provisions shall remain in full force and effect.

Section 5. Effective Date. This Resolution shall be in full force and effect on April 28, 2017.

PASSED AND ADOPTED by the Nashville Town Council this 28th day of APRIL, 2017.



Council President Charles B. King

☒ (yea ☐ nay ☐ abstain

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Jane Gore (yea) nay abstain
Council Vice-President Jane Gore

Alisha Jacoba (yea) nay abstain
Councilmember Alisha Jacoba

Arthur Omberg yea nay abstain
Councilmember Arthur Omberg

David Rudd (yea) nay abstain
Councilmember David Rudd

ATTEST:

Brenda K. Young
Brenda K. Young, Clerk-Treasurer

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EXHIBIT A

TOWN OF NASHVILLE
WAIVER PROCEDURE TO CONSTRUCT, PLACE, OR USE SMALL
CELL FACILITIES & ASSOCIATED SUPPORTING STRUCTURES
WITHIN TOWN RIGHT-OF-WAY DESIGNATED STRICTLY FOR
UNDERGROUND OR BURIED UTILITIES

Statement of Purpose: Underground Utility Area

The purpose of this Section is to provide the procedure governing requests to install new utility poles or new wireless support structures or substantially modify an existing wireless support structure in Town right-of-way within areas designated strictly for underground or buried utilities.

- A. **Designated Underground Utility Area:** The Town of Nashville has designated Town right-of-way located on or about all Local Roads, Arterial-Primary Roads, Arterial-Secondary roads, Collector roads, and roundabouts all town right of ways and incorporated herein as designated strictly for underground or buried utilities (individually or collectively, “Underground Utility Area”) and prohibits the construction, placement or use of a new utility pole or new wireless support structure within the Underground Utility Area. This prohibition does not restrict the collocation of small cell facilities on existing utility poles and wireless support structures within the Underground Utility Area or the replacement of existing utility poles and wireless support structures within the Underground Utility Area.
- B. **Waivers- General Standards:** A person that provides wireless communications service or otherwise makes available infrastructure for wireless communications services may apply for a waiver to install new utility poles or new wireless support structures within the Underground Utility Area. All confidential information submitted by an applicant shall be maintained to the extent authorized by Ind. Code § 5-14-3 *et. seq.* When considering a proposed waiver, the permit authority shall consider, in addition to whether the applicant can demonstrate that it can satisfy most of the applicable construction requirements included in Section G the following, among other applicable factors:
1. **Collocation Preference.** Applicants seeking a waiver to install a new wireless pole or support structures within the Underground Utility Area shall consider the Town’s preference for collocation on existing facilities and shall endeavor to demonstrate the following:
 - (a) At a minimum, new wireless facilities shall be a monopole constructed to support the initial user plus loading of at least one (1) potential, additional, user.
 - (b) The site of the initial wireless facility at any location shall be of sufficient area to allow for the location of one (1) potential, additional wireless facility.

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- (c) Any proposed wireless support structure shall be designed, and engineered structurally, electrically and in all other respects, to accommodate both the initial wireless facility and one potential, additional wireless facility support structure shall be designed to allow for future rearrangement of cellular communication equipment and antennas upon the structure and to accept cellular communication equipment and antennas mounted at varying heights.
- (d) Typically, a waiver for a new wireless support structure will not be approved unless the person submits verification that the wireless equipment planned for the proposed wireless support structure cannot be accommodated on an existing or approved utility pole or electrical transmission tower or other structure due to one (1) or more of the following reasons:
 - (1) The planned wireless equipment would exceed the structural capacity of the existing or approved utility pole or electrical transmission tower, buildings, or structures as documented by a qualified and licensed professional engineer, and the existing or approved utility pole or electrical transmission tower, buildings or structures cannot be reinforced, modified, or replaced to accommodate the planned wireless equipment at a reasonable cost, or
 - (2) The planned wireless equipment would cause interference impacting the usability of other existing telecommunication equipment at the site if placed on existing structures. Supportive documentation by a qualified and licensed professional engineer indicating that the interference cannot be prevented at a reasonable cost; or
 - (3) The existing or approved utility pole or electrical transmission tower, buildings or structures within the search radius cannot accommodate the planned wireless equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer; or
 - (4) Other unforeseen reasons that make it unfeasible or impossible to locate the planned wireless equipment upon an existing or approved utility pole or electrical transmission tower, building or structure; or
 - (5) The person has been unable to enter a commonly reasonable lease term with the owners of existing utility pole or electrical transmission tower, buildings or structures.

- 2. **Specifications.** Applicants seeking a waiver to install a new utility pole or new wireless support structures within the Underground Utility Area shall meet the specifications outlined in Senate Enrolled Act SB 213.

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3. **Continued Operation.** A person receiving a waiver for (1) construction of a new wireless support structure; or (2) substantial modification of a wireless support structure; that is not used for a period of six (6) consecutive months shall remove the facility at the owner's sole cost and expense. Should such owner fail to remove the wireless support structure or wireless facilities within thirty (30) days from the date a Notice of Violation is issued by the Town, the Town may remove such structure or facilities and bill the owner for the costs of removal and cleanup of the site. The owner of any facility who has been granted a waiver under this Section shall annually file a copy of any inspections completed on such wireless support structure or wireless facilities with the permit authority for continued operation and use of the wireless support structure or wireless facilities.
4. **Community Input.** When considering each waiver, the Town shall consider the general welfare of its community, including, without limitation input received from adjacent property owner(s). The Town shall be especially mindful of community input when considering a waiver within any residentially zoned area of the Town. The permit authority shall allow a neighborhood association or homeowners association to register with the permit 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 wireless support structures in an area within the jurisdiction of the neighborhood association or homeowners association.

C. Contents of Waiver Application

1. **Contents of Waiver Application.** An application for a waiver shall include the following:
 - (a) The name, business address, and point of contact for the applicant;
 - (b) The location of the proposed or affected wireless pole or support structure or wireless facility;
 - (c) A construction plan, as defined herein, that describes the proposed wireless, support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.
 - (d) Evidence supporting the choice of location, including, without limitation
 - (1) maps or plats showing the proposed location(s) of applicant's proposed wireless support structure; and
 - (2) a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless support structure was not a viable option.

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2. **Single Application.** An applicant may submit one (1) application for multiple wireless service facilities that are located within Underground Utility Area. The waiver authority may issue a single waiver for all wireless support structures and service facilities included in the application rather than individual waivers for each wireless support structure and service facility.
3. **Procedure.**
 - (a) **Determination of Completion/Defects.** Within ten (10) days of receipt of an application, the permit authority shall review the application to determine if the application is complete. If the permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. An applicant that receives a written notice of incompleteness may cure the defects and resubmit the application within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.
 - (b) **Decision by Permit Authority.** Not more than forty-five (45) days after the permit authority makes an initial determination of completeness, the permit authority shall:
 - (1) review the application to determine if it complies with applicable requirements of this Section;
 - (2) review the application to determine if it complies with standards required as established by the permit authority, and
 - (3) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time to cure defects in the application, the forty-five (45) days shall be extended for a corresponding, reasonable amount of time.
4. **Written Determinations.** A written determination shall state clearly the basis for the decision to approve or deny an application. If the permit authority denies an application, the written notice must include substantial evidence in support of the denial. A notice is considered written if it is included in the minutes of a public meeting of the permit authority.

D. **Substantial Modification.**

1. **Contents of Application.** An application for substantial modification of a wireless support structure shall include:
 - (a) The name, business address, and point of contact for the applicant;
 - (b) The location of the proposed or affected wireless support structure or wireless facility; and

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- (c) A construction plan, as defined herein, that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.
- 2. **Single Application.** An applicant may submit one (1) application for multiple modifications of wireless support structures and service facilities that are located within Underground Utility Area. The permit authority may issue a single waiver for all wireless support structures and service facilities included in the application rather than individual waivers for each wireless support structure and service facility.
- 3. **Procedure.**
 - (a) **Determination of Completion/Defects.** Within ten (10) days of receipt of an application, the permit authority shall review an application to determine if the application is complete. If the permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. An applicant that receives a written notice of incompleteness may cure the defects and resubmit the application within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.
 - (b) **Decision by Permit Authority.** Not more than forty-five (45) days after the permit authority makes an initial determination of completeness, the permit authority shall: (1) review the application to determine if it complies with applicable requirements of this Section; (2) review the application to determine if it complies with standards required as established by the permit authority; and (3) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time to cure defects in the application, the fifteen (15) days shall be extended for a corresponding, reasonable amount of time.

- 4. **Written Determinations.** A written determination shall state clearly the basis for the decision to approve or deny an application. If the permit authority denies an application, the written notice must include substantial evidence in support of the denial. A notice is considered written if it is included in the minutes of a public meeting of the permit authority.

E. **Collocation.** An application for a waiver for collocation shall include:

- 1. **Contents of Application.** An application for collocation of a wireless support structure shall include:

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- (a) The name, business address, and point of contact for the applicant;
 - (b) The location of the proposed or affected wireless support structure or wireless facility; and
 - (c) Evidence of conformance with applicable building permit requirements.
2. **Single Application.** An applicant may submit one (1) application to collocate multiple wireless service facilities that are located within Underground Utility Area. The permit authority may issue a single waiver or all wireless service facilities included in the application rather than individual waivers for each wireless service facility.
3. **Procedure.**
- (a) **Determination of Completion/Defects.** Within ten (10) days of receipt of an application, the permit authority shall review an application to determine if the application is complete. If the permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. An applicant that receives a written notice of incompleteness may cure the defects and resubmit the application within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.
 - (b) **Decision by Permit Authority.** Not more than forty-five (45) days after the permit authority makes an initial determination of completeness, the permit authority shall: (1) review the application to determine if it complies with applicable requirements of this Section; (2) review the application to determine if it complies with standards required as established by the permit authority; and (3) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time to cure defects in the application, the fifteen (15) days shall be extended for a corresponding, reasonable amount of time.

4. **Written Determinations.** A written determination shall state clearly the basis for the decision to approve or deny an application. If the permit authority denies an application, the written notice must include evidence in support of the denial. A notice is considered written if it is included in the minutes of a public meeting of the permit authority.
- F. **Construction Requirements:** All antennas, wireless towers, accessory structures and any other wiring constructed within the Town of Nashville planning and zoning jurisdiction shall comply with the Town building and zoning requirements, as well as state and federal requirements.