

Avon Town Council

Ordinance No. 2017 - 08

Establishing an Underground and Buried Utility District

Whereas, the Town of Avon, Indiana, under Indiana Code § 36-9-2-7 and Avon Town Code 4-120 through 4-123, may regulate the use of public ways; and

Whereas, the Town has established a policy and practice to encourage utilities and utility facilities located in the rights-of-way (“ROW”) to be buried or placed underground; and

Whereas, the Town has residential and other areas in which property owners have made investments to improve aesthetic standards by guaranteeing utilities are placed underground; and

Whereas, public necessity, health and safety now require that all new utilities located within the Town’s rights-of-way (ROW) or a granted utility easement, or both, must be placed underground or buried, and the Town now finds that it is in the best interests of the public health, safety, and general welfare of its citizens to prohibit the erection of all poles, overhead lines, and associated overhead structures used or useful in supplying electric, communication or similar and associated services within the Town’s ROW or granted utility easement; and

Whereas, to further the public necessity, and to comply with the provisions required under I.C. 8-1-32.3-15, as added by P.L. 145-2015, Section 3, the Town Council now establishes an Underground and Buried Utilities District (“District”) and designates the District to be in effect throughout all ROW within the corporate boundaries of the Town.

It is, therefore, ordained by the Avon Town Council that a new section, Section 4-122(F), is hereby added to Chapter 4 of the Avon Town Code. This new section shall read as follows:

“4-122 Other Requirements.

(F) Underground and Buried Utility Districts.

- (1) The Town hereby establishes an Underground and Buried Utilities District (“District”) to be in effect April 28, 2017, and to apply throughout the Town’s ROW and

granted utility easements, and is hereinafter defined as follows:

- (a) In all areas of the Town where no overhead or above ground utilities, utility facilities, overhead lines, or associated overhead structures used or useful in supplying electric, communication or similar and associated services currently exist;
- (b) In all areas of the Town where planned road projects, redevelopment areas or economic development areas, or both, provide for and require underground buried utilities and utility facilities, including but not limited to electric, communication or similar and associated services;
- (c) In all areas of the Town that would require compliance with Town Code, Subdivision Control Ordinance, Zoning Ordinance and other applicable ordinances, regulations and rules;
- (d) All other areas of ROW or proposed ROW throughout the Town, or in a utility easement granted by the Town, whether above ground utilities or utility facilities currently exist.
- (e) Notwithstanding subsections (a) through (d) above, any utility that requires construction, placement, or use of a small cell facility in an District designated strictly for underground or buried utilities, may submit an application to the Public Works Director requesting a waiver to install new utility poles or new wireless support structures within the District under provisions defined by local law, as amended. A utility may appeal a denial of such application to the Avon Plan Commission by filing with the Public Works Director within 30 days of the denial a written notice of appeal, stating the reasons for the appeal.
- (f) Upon receipt by the Public Works Department for the construction, placement, or use of a small cell facility on one or more new utility poles or one or

more new wireless support structures in the area that is designated strictly for underground utilities, the Public Works Director will post notice of the application on the Town's website and state that the application is available for public inspection upon request.

(g) Neighborhood associations or homeowner's associations may register with the Town to receive notices of any application filed under this section for permits in the association's jurisdictional area. Instructions for registration will be posted on the Town's website.

(2) From and after the effective date of this Ordinance, no person, corporation, or utility may erect or construct within the Town's ROW or granted utility easement, any pole, overhead line, or associated overhead structure used or useful in supplying electric, communication or similar associated services.

(3) Unless a waiver is obtained or the Public Works Director otherwise expressly authorizes to the contrary, all utilities located within the Town's ROW or a granted utility easement shall be placed underground or buried.

(4) All existing overhead poles, wires, or utility transmission lines may remain within the Town's ROW or utility easement, but may not be replaced or relocated without prior written authorization of the Public Works Director except:

(a) providers may collocate small cell facilities on existing utility poles and wireless support structures; and

(b) providers may replace existing utility poles and wireless support structures."

It is further ordained that if any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

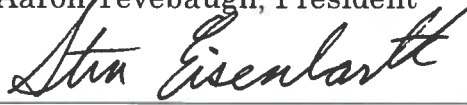
It is further ordained that any other provision of the Avon Town Code which is not expressly amended by this Ordinance shall remain in full force and effect.

It is further ordained that This Ordinance shall be in full force and effect on April 28, 2017.

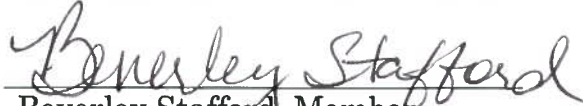
Adopted this 27th day of April, 2017.



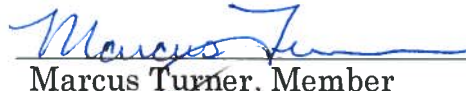
Aaron Tevebaugh, President



Steve Eisenbarth, Vice President



Beverley Stafford, Member

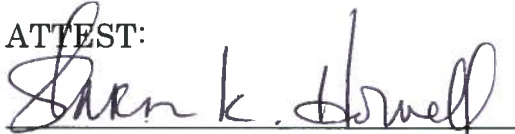


Marcus Turner, Member



Greg Zusan, Member

ATTEST:



Sharon Howell, Clerk-Treasurer