Cumberland Town Council

Ordinance 2017-8

An Ordinance Establishing an Underground and Buried Utility District

Whereas, the Town of Cumberland, Indiana, under Indiana Code §36-9-2-7, 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 and property values by guaranteeing utilities are place 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 Indiana Code §8-1-32.3-15, as added by Public Law 145-2015, Section 3, the Town Council now establishes an Underground and Buried Utilities District (“Area”) and designates the Area to be in effect throughout all ROW within the corporate boundaries of the Town.

NOW, THEREFORE, BE IT ORDAINED that a new section, Section 00-09-95-80 is hereby added to the Cumberland Town Code.

The new section shall read as follows:

“Section 00-09-95-80 Underground and Buried Utility District.

(A) The Town hereby establishes an Underground and Buried Utilities District (“Area”) 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:

(1) 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;

(2) 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;

(3) In all areas of the Town that would require compliance with the Town Code, Subdivision Control Ordinance, Zoning Ordinance and other applicable ordinances, regulations and rules;
(4) 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:

(5) Notwithstanding subsections (1) through (4) above, any utility that requires construction, placement, or use of a small cell facility in an Area designated strictly for underground or buried utilities, may submit an application to the Street Commissioner requesting a waiver to install new utility poles or new wireless support structures within the Area under provisions defined by local law, as amended. A utility may appeal a denial of such application to the Cumberland Plan Commission by filing with the Street Commissioner within 30 days of the denial a written notice of appeal, stating the reasons for the appeal:

(6) Upon receipt by the Street Commissioner of an application for construction, placement, or use of a small cell facility on one or more new utility pole or one or more new wireless support structure in an area that is designated strictly for underground utilities, the Street Commissioner will post notice of the application on the Town’s website and state that the application is available for public inspection upon request:

and

(7) 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.

(B) 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.

(C) Unless a waiver is obtained or the Town’s Street Commissioner 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.
(D) 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 Street Commissioner, except:

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

(2) 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 this Ordinance shall be in full force and effect from April 28, 2017.

Passed and adopted by the Avon Town Council this 3rd day of May 2017.

CUMBERLAND TOWN COUNCIL:

Anna Pea, President
Joe Siefker, Vice President
Nicole Bell, Member