

RESOLUTION 2017- 02

A RESOLUTION OF THE CASS COUNTY COMMISSIONERS OF CASS COUNTY, INDIANA TO ESTABLISH AN UNDERGROUND AND BURIED UTILITY DISTRICT

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

WHEREAS, pursuant to I.C. 36-7-4-510(b) on July 20, 2009, the Cass County Commissioners approved Resolution 2009-3 adopting The Cass County Comprehensive Plan *to create a policy for the development of public ways, places, lands, structures, and utilities*; and

WHEREAS, public necessity, health and safety now require that all new utilities located within the County's Right of Way (here after "ROW") and/or a granted utility easement shall be placed underground or buried, and the County, by and through the Cass County Commissioners, 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 County's ROW or granted utility easement; and

WHEREAS, to further the aforementioned 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 Cass County Commissioners now hereby 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 County.

NOW, THEREFORE BE IT ORDAINED AND RESOLVED, by the Cass County Commissioners as follows:

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

Section 2. The County hereby establishes an Underground and Buried Utilities District ("Area") to be in effect April 28, 2017, and to apply throughout the County's ROW and granted utility easements, and is hereinafter defined as follows:

- a. In all areas of the County 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 County where planned road projects, redevelopment areas and/or economic development areas provide for and require underground buried utilities and utility facilities, including but not limited to electric, communication or similar and associated services;

- c. All other areas of ROW, proposed ROW, or newly adopted ROW throughout the County, or in utility easement granted by the County, whether or not above ground utilities or utility facilities currently exist.
- d. Notwithstanding subsections (a) through (d) 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 Cass County Commissioners requesting a waiver to install new utility poles or new wireless support structures within the "Area".

Section 3. From and after the effective date of this resolution, no person, corporation, or utility shall erect or construct within the County'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. A person, corporation, or utility may submit an application to the County Commissioners requesting a waiver to install new utility poles or support structures within the "Area". However, a person, corporation or utility that is currently providing utility services, installed as the date of this resolution, shall be permitted to continue to repair and maintain utility structures and facilities in the ROW.

Section 4. Unless otherwise expressly authorized by the Cass County Commissioners, all utilities located within the County's ROW or granted utility easement shall be placed underground and/or buried.

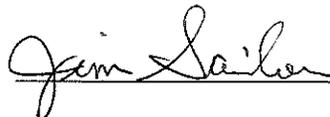
Section 5. All existing overhead poles, wires, and/or utility transmission lines may remain within the County's ROW or utility easement, but may not be replaced or relocated without prior written authorization of the Cass County Commissioners. However, a person, corporation or utility that is currently providing utility services, installed as the date of this resolution, shall be permitted to continue to repair and maintain utility structures and facilities in the ROW.

Section 6. 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 enforcement of same can be given same effect.

Section 7. This Resolution shall be in full force and effect from and after the date of its passage.

SO RESOLVED this 28 day of April, 2017

Cass County Commissioners, Cass County, Indiana



Jim Sailors, President



Jeff LeDonne

Absent

Ralph Anderson

ATTEST:

Cheryl Alcorn

Cheryl Alcorn, Auditor