

RESOLUTION NO. R081020D
**A RESOLUTION OF THE CITY OF FISHERS BOARD OF PUBLIC WORKS
& SAFETY AMENDING THE WAIVER APPLICATION TO CONSTRUCT, PLACE,
OR USE SMALL CELL FACILITIES & ASSOCIATED SUPPORTING
STRUCTURES WITHIN CITY RIGHT-OF-WAY DESIGNATED 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”);

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;

WHEREAS, in accordance with the Act, on or around April 28, 2017, the City of Fishers Board of Public Works & Safety (“Board”) approved Resolution R042817, which in part, (i) designated certain right-of-way within the City of Fishers (the “City”) strictly for underground or buried utilities and (ii) adopted a procedure governing requests to install new utility poles or new wireless support structures within the area, a “Waiver Application to Construct, Place, or Use Small Cell Facilities & Associated Supporting Structures Within City Right-of-Way Designated Strictly for Underground or Buried Utilities (“Waiver”); and

WHEREAS, the Board now desires to amend the Waiver as further described in Exhibit A, which is attached hereto and incorporated herein (the “Amendment”).

NOW THEREFORE, BE IT RESOLVED, by the City of Fishers Board of Public Works & Safety meeting in regular session as follows:

Section 1. The Board hereby approves the Amendment in substantially similar form as Exhibit A, which is attached hereto and incorporated herein.

Section 2. This Resolution shall be of full force and effect from and upon its adoption and in accordance with Indiana law.


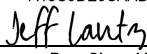

SO RESOLVED, by the City of Fishers Board of Public Works & Safety meeting this 10th day of August, 2020.

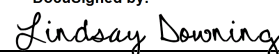
**BOARD OF PUBLIC WORKS &
SAFETY, CITY OF FISHERS
HAMILTON COUNTY, INDIANA**

YAY

NAY

ABSTAIN

DocuSigned by: 	Scott Fadness, Chairman		
DocuSigned by: A15C9DE0CAAD43F... 	Jeff Lantz, Member		
DocuSigned by: 63E7058F08A... 	Jason Meyer, Member		

ATTEST: 
Lindsay Downing, Board Clerk

DATE: 08-10-2020

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Christopher P. Greisl

**CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY
WAIVER PROCEDURE TO CONSTRUCT, PLACE, OR USE SMALL CELL
FACILITIES & ASSOCIATED SUPPORTING STRUCTURES WITHIN CITY 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 City right-of-way within areas designated strictly for underground or buried utilities.

- A. Definitions: For purposes of this Section, the following definitions, which shall be interpreted consistent with Ind. Code §§ 8-1-32 and - 32.3, *et. seq.*, as amended, shall apply:
1. “antenna” means any communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless communications service.
 2. “base station” means a station located at a specific site that is authorized to communicate with mobile stations. The term includes all radio transceivers, antennas, coaxial cables, power supplies, and other electronics associated with a station.
 3. “collocation” means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.
 4. “construction plan” when referring to a new wireless support structure means a written plan for construction that demonstrates that the aesthetics of the wireless support structure is substantially similar to the street lights located nearest the proposed location; includes the total height and width of the wireless facility and wireless support structure, including cross section and elevation, footing, foundation and wind speed details; a structural analysis indicating the capacity for future and existing antennas, including a geotechnical report and calculations for the foundations capacity; the identity and qualifications of each person directly responsible for the design and construction; and signed and sealed documentation from a professional engineer that shows the proposed location of the wireless facility and wireless support structure and all easements and existing structures within one thousand (1,000) feet of such wireless facility or wireless support structure.

“construction plan” when referring to substantial modification of an existing wireless facility or wireless support structure means a plan 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.

5. “electrical transmission tower” means a structure that physically supports high voltage overhead power lines. The term does not include a utility pole.
6. “equipment compound” means the area that: (1) surrounds or is near the base of a wireless support structure; and (2) encloses wireless facilities.
7. “existing structure” does not include a utility pole or an electrical transmission tower.
8. “micro wireless facility” means a small cell facility that (1) is not larger in dimension than (A) twenty-four (24) inches in length; (B) fifteen (15) inches in width; and (C) twelve (12) inches in height; and (2) if the small cell facility has an exterior antenna, the exterior antenna is not longer than eleven (11) inches.
9. “permit authority” means the City of Fishers Board of Public Works & Safety and designated staff.
10. “person” means a corporation, firm, partnership, association, organization or any other group acting as a unit, as well as a natural person.
11. “small cell facility” means: (1) a personal wireless service facility as defined by the Act or (2) a wireless service facility that satisfies the following requirements: (a) each antenna, including exposed elements, has a volume of six (6) cubic feet or less; (b) all antennas, including exposed elements, have a total volume of six (6) cubic feet or less; and (c) the primary equipment enclosure located with the facility has a volume of twenty-eight (28) cubic feet or less.
12. “small cell network” means a collection of interrelated small cell facilities designed to deliver wireless service.
13. “substantial modification of a wireless support structure” means a change to a small cell facility, utility poles or wireless support structures. The term “substantial modification” does not include the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public right-of-way.

14. “utility pole” means a structure that is: (1) owned or operated by: (a) a public utility; (b) a communications service provider; (c) a municipality; (d) an electric membership corporation; or (e) a rural electric cooperative; and (2) designed and used to: (a) carry lines, cables, or wires for telephone, cable television, or electricity; (b) provide lighting; (c) provide traffic control; or (d) provide signage.
15. “wireless communications services” means services whether mobile or at a fixed location, that are provided using wireless facilities through licensed or unlicensed spectrum.
16. “wireless facility” means the set of equipment and network components that are (1) owned and operated by a communications service provider; and (2) necessary to provide wireless communications service. The term does not include a wireless support structure.
17. “wireless support structure” means a freestanding structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole or an electrical transmission tower

B. Designated Underground Utility Area: On or around April 28, 2017, the City of Fishers designated certain City right-of-way located on or about all Local Roads, Arterial-Primary Roads, Arterial-Secondary roads, Collector roads, and roundabouts within the City strictly for underground or buried utilities (individually or collectively, “Underground Utility Area”) and prohibited the construction, placement or use of a new utility pole or new wireless support structure within the Underground Utility Area. In accordance with subsequent legislative amendments made to Ind. Code §8-1-32.3 (P.L. 23-2018), the City’s Underground Utility Area only applies to areas zoned strictly for residential land use before May 1, 2017. 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.

C. 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 E the following, among other applicable factors:

1. **Collocation Preference**. Applicants seeking a waiver to install a new utility pole or new wireless support structures within the Underground Utility Area shall consider the City’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.

(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 telecommunication 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 telecommunication 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 telecommunication equipment at a reasonable cost, or
- (2) The planned telecommunication 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 telecommunication 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 telecommunication 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 endeavor to meet the following specifications:

- (a) Maximum Tower Height: 46 feet.
- (b) Support structures must match to the greatest extent possible, either (i) existing light structures of the neighborhood, or (ii) the City's street light poles, per engineering specifications as may be amended from time to time by the City's Board of Public Works & Safety and shall be "Fishers Green" which is commonly called Lilly Industries "Holiday Green" RAL 6004. Support structures shall include luminaires that match the City's specifications for lighting and be maintained in good working order at the cost of the applicant, including the cost of electricity. This specification may be eliminated at the discretion of the Permit Authority or through the Applicant's collaboration with the applicable neighborhood/community association. Any antenna equipment mounted to the support structures (antenna or other permitted equipment) shall also be matching in color to the support structure.
- (c) All facility equipment at a single facility, with the exception of the antenna itself, shall be either (i) ground mounted in a cabinet having dimensions no greater than a volume of 28 cubic feet or less, or (ii) within the pole. Maximum Antenna dimensions, including exposed elements are a volume of 6 cubic feet..
- (d) New utility poles should, to the greatest extent possible, be located at or near intersections, right-of-way adjacent to common areas, entrances of neighborhoods, or be utilized to replace existing light facilities within a neighborhood.
- (e) All support structures shall have a plaque identifying the structure, the owner and the owner's contact information, said plaque shall not exceed 0.25 square feet.
- (f) All wiring and fiber shall be concealed within the support structure and all conduit, wiring and fiber shall be buried between structures and/or structures and ground mounted cabinets.
- (g) Wireless support structures and facilities shall be designed to blend into the surrounding environment through the use of color, camouflaging and architectural treatment and the entire facility shall be aesthetically and architecturally compatible

with its environment. The use of materials compatible with the surrounding environment is required for associated support structures, which shall be designed to architecturally match the exterior of residential or commercial structures within the neighborhood or area. Specific requirements for aesthetics of the wireless support structures and facilities shall be in accordance with standards established by the City's Board of Public Works & Safety, from time to time.

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 City, the City 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 City shall consider the general welfare of its community, including, without limitation input received from adjacent property owner(s) through its community or neighborhood association. The City shall be especially mindful of community input when considering a waiver within any residentially zoned area of the City. 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.

D. Contents of Waiver Application to Install New Utility Pole or New Wireless Support Structure, Substantial Modification of a Wireless Support Structure, or Collocation:

- 1. Pre-File Process.** Prior to submitting a waiver to (a) install a new utility pole or new wireless support structure, (b) Substantial Modification of a Wireless Support Structure, or (c) Collocation within the Underground Utility Area, the Applicant shall submit a masterplan for each neighborhood in which it seeks a waiver to install a new utility pole. The neighborhood masterplan should show, to the greatest extent possible, all proposed locations of new utility poles or new wireless support structures that the Applicant is either (i) currently requesting a waiver to install or (ii) reasonably predicts that it will soon request a waiver to install in the near future. The neighborhood masterplan should be submitted either in a "kmz" file or in spreadsheet format.
- 2. Request for Address.** After Applicant has submitted its neighborhood masterplan, it must request an address for its newly proposed utility pole from the City, which includes but is not limited to supplying the City with latitude/longitude coordinates of the proposed new utility pole.

3. **Submit Waiver Application/ Review Process.** Upon submittal of a neighborhood masterplan and an address for its proposed facility, the Applicant may submit a waiver application through the City's Viewpoint System.

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 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.

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.

4. **City Review**

- (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.

Upon receiving a complete application, the City will inform the effected neighborhood/community association or property management group of a proposed

permit(s). The City will coordinate a meeting to facilitate communication between the Applicant and neighborhood/community association or property management group to collaborate and provide feedback on proposed locations, suggest alternative locations for the Applicant's consideration, and attempt to reach consensus prior to final consideration by the Permit Authority in general accordance with the following timeline:

- i. 4 Weeks Prior to Permit Authority's Consideration: The City will contact the applicable community/ neighborhood association or property management group to establish a mandatory meeting between it and the Applicant.
 - ii. 4 Weeks Prior to Permit Authority's Consideration: The City will send letters to property owners who are within 200' of a proposed new utility pole and direct these residents to work with their community/neighborhood association or property management group to provide comments or concerns.
 - iii. 2 Weeks Prior to Permit Authority's Consideration: The City will host a meeting (virtual or live) with the Applicant, applicable community/neighborhood association or property management group to discuss the proposed residential locations and any alternative locations proposed by the community/neighborhood association or property management group. The City will document these meetings and provide a summary of its content to the Permit Authority. The parties' failure to reach consensus during the meeting will result in the Permit Authority making its final determination based upon the standards outlined herein.
 - iv. Permit Authority's Final Consideration. The Residential Waiver will generally be considered within 4 weeks of the Applicant's submission of a complete waiver application.
- (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.

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. Construction Requirements: All antennas, telecommunication towers, accessory structures and any other wiring constructed within the City of Fishers planning and zoning jurisdiction shall comply with the following requirements:

1. All applicable provisions of this Unified Development Ordinance and the Building Code of the State of Indiana, as amended, and the Federal Communications Commission (FCC) when applicable.
2. All wireless facilities and support structures shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code, as amended, and the Electronics Industry Association.
3. All wireless facilities and support structures shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code, as amended.
4. All wireless facilities and support structures shall be constructed to conform with the requirements of the Occupational Safety and Health Administration (OSHA).
5. All wireless facilities and support structures shall be designed and constructed to all applicable standards of the American National Standards Institute (ANSI) manual, as amended.
6. All wireless facilities and support structures shall be designed and constructed, at a minimum, to withstand wind gusts of at least eighty (80) miles per hour with one-half (½) inch of ice and to accommodate all collocation sites as required by this Unified Development Ordinance.