

ORDINANCE NO. 2017 – 06

**An Ordinance to Establish Underground and Buried
Utility Area or Areas in the City of Hobart**

WHEREAS, the Common Council (“Council”) of the City of Hobart, Indiana (“City”) has taken notice that, on April 27, 2017, Governor of Indiana Eric Holcomb signed into law Senate Enrolled Act No. 213 (“SEA 213”) which enacted sweeping new legislative provisions severely limiting the authority of Indiana local governments to regulate the placement of small cell facilities and micro wireless facilities, and allows wireless service providers to place such facilities, including, in most cases, supporting poles and structures, in any public right of way; and

WHEREAS, SEA 213 allows cities and towns in Indiana to create Underground and Buried Utility Areas in which the city may 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 all of the following apply:

“(1) The area is designated strictly for underground or buried utilities before May 1, 2017.

(2) The permit authority does all of the following:

(A) Allows the collocation of small cell facilities on existing:

(i) utility poles; and

(ii) wireless support structures;

within the area.

(B) Allows the replacement of existing:

(i) utility poles; and

(ii) wireless support structures;
within the area.

(C) Provides:

(i) a waiver;

(ii) a zoning process; or

47 (iii) another procedure;
48 that addresses requests to install new utility poles or new
49 wireless support structures within the area.
50

51 (D) Upon receipt of an application for the construction,
52 placement, or use of a small cell facility on one (1) or more
53 new utility poles or one (1) or more new wireless support
54 structures in an area that is designated strictly for
55 underground or buried utilities, posts notice of the
56 application on the permit authority's Internet web site, if
57 the permit authority maintains an Internet web site. The
58 notice of the application required by this clause must
59 Include a statement indicating that the application is
60 available to the public upon request.
61

62 (3) The prohibition or other restrictions with respect to the
63 placement of new utility poles or new wireless support
64 structures within the area are applied in a nondiscriminatory
65 manner." SEA 213, Section 8; I.C. §8-1-32.3-15 (c);
66

67 and
68

69 WHEREAS, the Council recognizes that the City of Hobart has required and promoted
70 the underground burial of utilities wherever feasible, and has undertaken many projects in the
71 past two decades in which electrical, telephone and cable television facilities and transmission
72 wires have been installed underground; and
73

74 WHEREAS, the Council, having been allowed only three (3) days by the General
75 Assembly and Governor Holcomb to designate the districts for underground or buried utilities as
76 allowed by the above quoted language of SEA 213, now desires to establish said districts and to
77 otherwise comply with said statutory language.
78

79 THEREFORE, BE IT ORDAINED by the Common Council of the City of Hobart,
80 Indiana as follows:
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82 *SECTION ONE:* The Municipal Code of the City of Hobart
83 ("Code"), in Chapter 154 entitled "ZONING," in the Sub-Chapter entitled
84 "TELECOMMUNICATIONS; WIRELESS COMMUNICATION
85 FACILITIES AND SERVICE" is hereby amended by striking out all of the
86 language in §154.399, such section entitled "Applicability," and inserting
87 in lieu thereof the following new language:
88

89 **§154.399. APPLICABILITY.**
90

91 All other telecommunication utilities, telecommunication service
92 providers and/or companies that are engaged in the business of

93 providing the required infrastructure to the same, that proposes to
94 construct an antenna tower or antenna for cellular
95 telecommunication services or personal communication services
96 not constituting a “micro wireless facility” or “small cell facility”
97 as those terms are defined in I.C. §8-1-32.3-7.5 and I.C. §8-1-32.3-
98 9, respectively, shall submit a copy of the completed application in
99 accordance with the following regulations. Those persons or
100 organizations proposing to install micro wireless facilities or small
101 cell facilities as defined above shall give written notice to the City
102 Engineer and Board of Public Works and Safety through the
103 application and permit process specified in §§154.406 through
104 154.413 below.

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106 *SECTION TWO:* The Municipal Code of the City of Hobart
107 (“Code”), in Chapter 154 entitled “ZONING,” in the Sub-Chapter entitled
108 “TELECOMMUNICATIONS; WIRELESS COMMUNICATION
109 FACILITIES AND SERVICE” is hereby amended by adding new sections
110 as follows:

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112 **§154.406. UNDERGROUND AND BURIED UTILITIES**
113 **AREA.**

114
115 The City of Hobart hereby establishes an Underground and
116 Buried Utilities Area (“Area”) to be in effect on April 30, 2017,
117 and to apply throughout the City’s Right-of-Way (“ROW”) and
118 granted utility easements, and said Area is hereinafter defined as
119 follows:

120
121 a. In all areas of the City where no overhead or above-
122 ground utilities, utility facilities, overhead lines or associated
123 overhead structures used or useful in supplying electric,
124 communication, or similar and associated services currently exist;

125
126 b. In all areas of the City in which planned road
127 projects, redevelopment areas, and/or economic development areas
128 provide for and require underground buried utilities and utility
129 facilities, including but not limited to electric, communication and
130 similar or associated services;

131
132 c. In all areas of the City which would require
133 compliance with §§154.399 through 154.406 of the City of Hobart
134 Municipal Code (“HMC”);

135
136 d. In all other areas of ROW or proposed ROW
137 throughout the City or in a utility easement granted by the City,
138 whether or not above-ground utilities or utility facilities currently

139 exist;

140
141 e. Notwithstanding sub-sections (a) through (d) above,
142 any utility that requires construction, placement, or use of a small
143 cell facility in an area designated strictly for underground or buried
144 utilities, may submit an application to the City Board of Public
145 Works and Safety requesting a waiver to install new utility poles or
146 new wireless support structures in the Area pursuant to the
147 provisions of HMC §§154.400 through 154.403, except that said
148 sections shall be deemed to have been amended or rendered
149 inapplicable, in whole or in part, to comply with the provisions of
150 the of the Indiana Code governing a “micro wireless facility” or
151 “small cell facility” as those terms are defined in I.C. §8-1-32.3-7.5
152 and I.C. §8-1-32.3-9, respectively: I.C. §8-1-32.3-4.2, I.C. §8-1-
153 32.3-7.5, I.C. §8-1-32.3-9, I.C. §8-1-32.3-12; I.C. §8-1-32.3-12.5,
154 I.C. §8-1-32.3-13, I.C. §8-1-32.3-14, I.C. §8-1-32.3-15, I.C. §8-1-
155 32.3-26, and I.C. §8-1-32.3-27.

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157 **§154.407. OVERHEAD POLES, LINES OR**
158 **STRUCTURES PROHIBITED.**

159
160 From and after the effective date of this Ordinance, no
161 person, utility, corporation or other organization shall erect or
162 construct within the City’s ROW or granted utility easement any
163 pole, overhead line, or associated overhead structure used or useful
164 in supplying electric, communication, or similar and associated
165 services.

166
167 **§154.408. UNDERGROUND OR BURIED PLACEMENT**
168 **OF UTILITIES REQUIRED.**

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170 Unless expressly authorized by the City Board of Public
171 Works and Safety, all utilities located within the City’s ROW or
172 granted easement shall be placed underground or buried.

173
174 **§154.409. EXISTING POLES, WIRES or LINES.**

175
176 All existing overhead poles, wires and utility transmission
177 lines may remain within the City’s ROW or utility easement, but
178 may not be replaced or relocated without the written authorization
179 of the City Board of Public Works and Safety.

180
181 **§154.410. SEVERABILITY.**

182
183 In the event that any provision of §§154.399, and 154.406
184 through 411 is found by a court of competent jurisdiction to be

185 unconstitutional or unenforceable for any reason, then the
186 remaining provisions of such sections shall be given effect to the
187 extent practicable.
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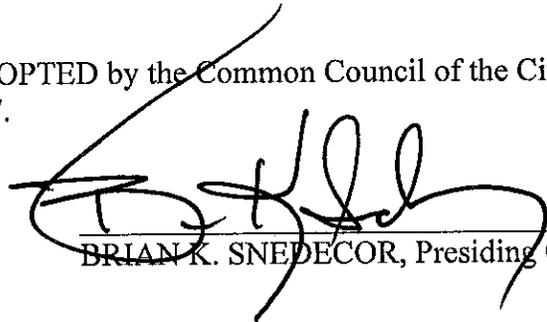
189 **§154.411. MAP OF AREA OR AREAS.**
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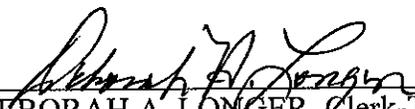
191 The map appended to Ordinance No. 2017-06 enacting this Section
192 shows the boundaries of the City’s Underground and Buried Utility
193 Areas as of the time of adoption of this Section. Such map shall be
194 updated from time to time by the Board of Public Works and
195 Safety, and is made an integral part of this Section.
196

197 *SECTION THREE:* The Council finds that, due to the inordinately brief
198 time allowed by the above cited legislation to designate Underground and Buried
199 Utility Areas, an emergency exists requiring the Council to meet on Sunday to
200 consider this Ordinance. This Ordinance shall take effect immediately upon its
201 passage and execution by the City Executive.
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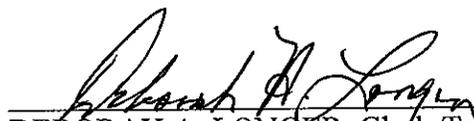
203 *SECTION FOUR:* All ordinances or portions thereof in effect prior to the
204 effective date and in conflict with the provisions of this ordinance are hereby
205 repealed.
206

207 ALL OF WHICH is PASSED and ADOPTED by the Common Council of the City of
208 Hobart, Indiana on this 30th day of April, 2017.
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210 
211
212 BRIAN K. SNEDECOR, Presiding Officer
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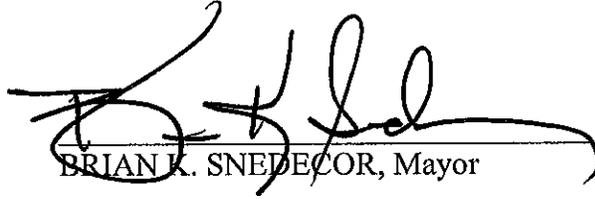
214
215 ATTEST: 
216 DEBORAH A. LONGER, Clerk-Treasurer
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221 PRESENTED by me to the Mayor of the City of Hobart on the 30th day of April, 2017 at
222 the hour of 5:20 p.m.
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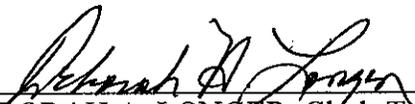
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225 
226 DEBORAH A. LONGER, Clerk-Treasurer
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APPROVED, EXECUTED and RETURNED by me to the Common Council of the City of Hobart on this 30th day of April, 2017.

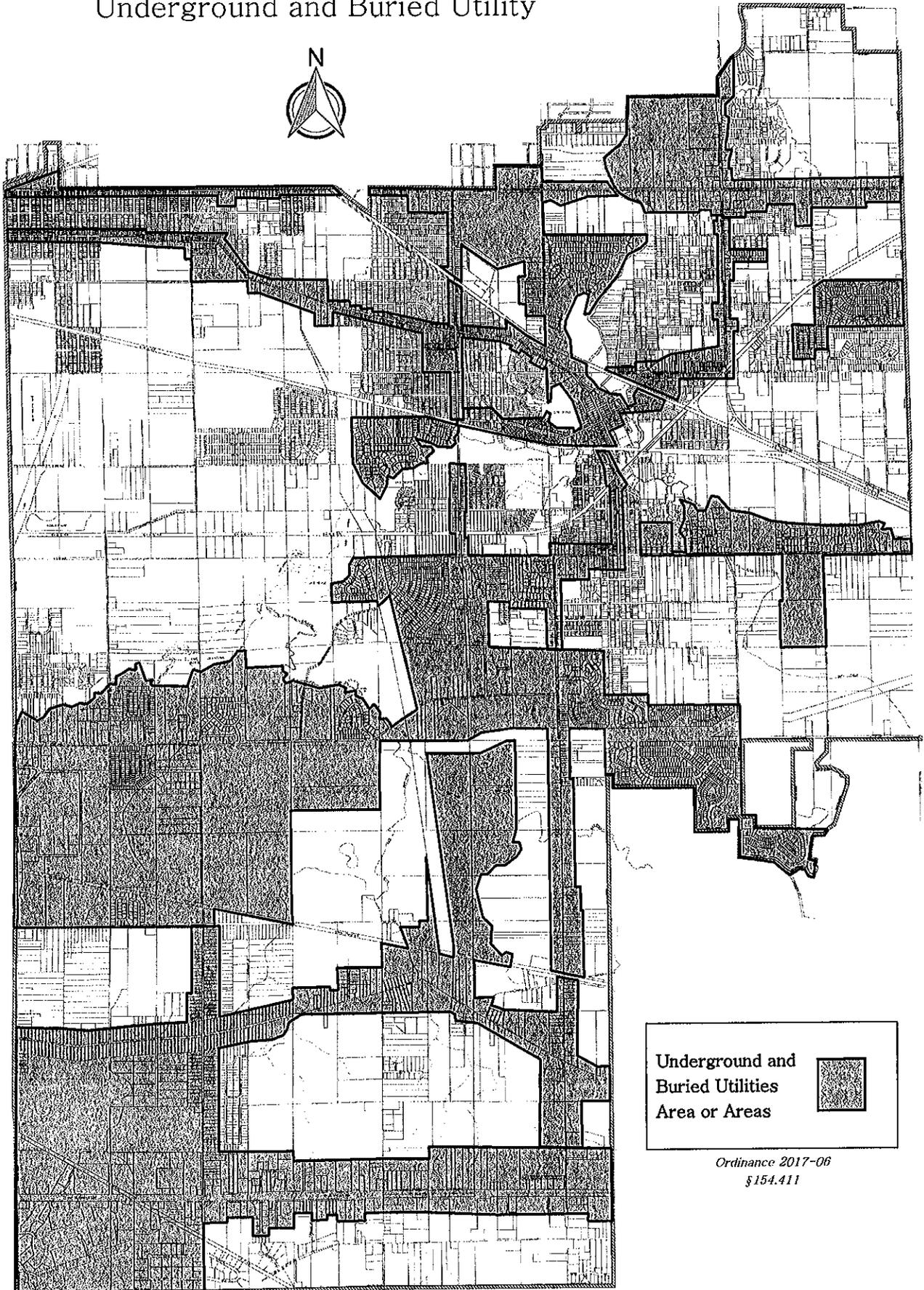


BRIAN K. SNEDECOR, Mayor

ATTEST: 
DEBORAH A. LONGER, Clerk-Treasurer

City of Hobart, Indiana

Underground and Buried Utility



Underground and
Buried Utilities
Area or Areas



Ordinance 2017-06
§154.411