

ORDINANCE 11-14-22-A
AMENDING ORDINANCE NO. 08-23-21-B

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF HAMILTON COUNTY
CONCERNING RELOCATION OF UTILITY LINES WITHIN DRAINAGE EASEMENTS
REGULATED BY THE HAMILTON COUNTY DRAINAGE BOARD; AND PROVIDING FOR
NOTICE, RELOCATION OF UTILITY LINE, AND PAYMENT OF COSTS OF RELOCATION OF
UTILITY FACILITIES WITHIN DRAINAGE EASEMENTS

WHEREAS, pursuant to the definitions set out in Indiana Code 36-9-27-2, a “regulated drain” means an open drain, a tiled drain, or a combination of the two; and,

WHEREAS, Indiana Code 36-9-27-33 provides a Right of Entry of 150-feet in width centered over regulated drain tiles or 75-feet from each top-of-bank of an open ditch regulated drain, unless the Drainage Board has approved a reduction in these widths; and,

WHEREAS, the Hamilton County Drainage Board (“the Drainage Board”), has the authority to prohibit and/or limit the placement and maintenance of Utility Facilities within regulated drains established pursuant to Indiana Code 36-9-27-33(d), and to manage such authority by a system of permits and non-enforcement agreements; and,

WHEREAS, the Drainage Board has jurisdiction to regulate, prohibit, or permit any use of a platted or unplatted regulated drain, drainage easements, whether or not the regulated drain is located inside or outside of the corporate limits of municipalities within Hamilton County, Indiana; and,

WHEREAS, there exists a system of regulated drains, including open ditches, regulated tile drains and other drainage structures throughout Hamilton County (“Drains”); and,

WHEREAS, pursuant to Indiana Code 36-9-27-15, the Drainage Board has jurisdiction to regulate any regulated drains within Hamilton County; and,

WHEREAS, from time to time, the Drainage Board may issue a permit a public utility company (“Utility Company”) to allow the Utility Company to construct and place similar equipment owned or used by a Utility Company (collectively “Utility Facilities”) within, or crossing, a regulated or dedicated drainage easements (collectively “the Drainage Easements”); and,

WHEREAS, from time to time, the regulated drains and Utility Facilities co-exist within a dedicated Drainage and Utility Easement (“DUE”) as a shared use easement; and,

WHEREAS, Indiana Code 36-9-27-48 provides a procedure for public utility to relocate its facilities within a regulated drain if the relocation is necessary for the construction, maintenance, or reconstruction of the drainage facilities in the regulated drain; and,

WHEREAS, at any time the Hamilton County Surveyor (“the Surveyor”), any employee of the Surveyor’s Office, any other person or company designated by the Surveyor, or under contract with the Drainage Board, may need access to regulated drains to repair the drain; to remove obstructions; to construct or extend the Drains; or perform other maintenance work as needed to provide for the conveyance of stormwater and/or other statutory duties and obligations throughout Hamilton County; and,

WHEREAS, from time to time persons and/or Utility Companies intentionally or negligently, cause damage to the regulated drains and/or the land within Drainage Easements, which damage must be repaired in order to permit the use of a Drainage Easement for its intended purpose; and,

WHEREAS, from time to time, when the Surveyor is constructing a new regulated drain, maintaining a regulated drain, relocating a regulated drain, or reconstructing a regulated drain (collectively, “Drainage Work”) within a Regulated Drainage Easement or a DUE, the Utility Facility must be relocated by the Utility Company pursuant to Indiana Code 36-9-27-48, to allow the Drainage Work to repair, replace and/or relocate the utility’s facilities; and,

WHEREAS, a Utility Company’s delay in relocating the Utility Facility from or within the regulated drain can result in delays in the Drainage Board and Surveyor meeting their statutory duties and obligations, can result in time delays; can result in increases in the cost of the Drainage Work; can result in an increase assessments to those benefitting from the Drainage Work; can result in delays in establishing the final cost of the Drainage Work; can result in a delay in the issuance of assessments; can result in a delay in the payment of such assessments which affects the monies available for other Drainage Work; can result in delays in the release of contractor retainage for completed portions of the Drainage Work; and can result in the loss of service to the citizens of the County; and

WHEREAS, pursuant to Indiana Code 36-9-27-48 and the terms of this Ordinance, the cost of any such relocation of the Utility Facilities is the responsibility of the Utility Company; and,

WHEREAS, upon the recommendation of the Drainage Board, the Board of Commissioners of Hamilton County believes that it is necessary to approve an Ordinance to expressly create a process for the Surveyor to provide notice to a Utility Company of the need to relocate one, or more, of their Utility Facilities, from or within a regulated drain, provide a reasonable time period for the Utility Company to relocate their Utility Facilities, and if the Utility Facilities are not relocated, the Surveyor shall provide the Utility Company notice that the Surveyor, by and through the Drainage Board, , shall contract with a qualified contractor to relocate the Utility Facility for the Utility Company and at the expense of the Utility Company; and,

WHEREAS, upon recommendation of the Drainage Board, the Board of Commissioners of Hamilton County believes that it is necessary to require real estate developers within Hamilton County to expressly incorporate language in their recorded plats to acknowledge the definition of regulated drains and that the Drainage Board shall have a right to compel the relocation of any of the Utility Facilities in a DUE, platted easement, a Regulated Drainage Easement, or any regulated drain, whether the regulated drain is located within a platted subdivision, easement and within either the incorporated or unincorporated portions of Hamilton County if the Utility Facilities interfere with the Drains; and,

WHEREAS it is necessary to establish a procedure to provide a Utility Company proper notice of the need to relocate their Utility Facilities to post performance bonds in addition with any other remedy and provide procedures if the Utility Company does not relocate their Utility Facilities within a reasonable time for Drainage Work of the County to proceed; and,

WHEREAS, in order to assure that real estate developers and Utility Companies are clearly informed of the rights of the Surveyor, his employees, and contractors under contract with the Drainage Board to access and use the drainage easements, it is necessary that the Board of Commissioners of Hamilton County pass an Ordinance to codify the rights, powers, and remedies of the Drainage Board, to

protect its rights and use of the drainage easements, platted easements, and DUE's for the benefit of all of the citizens and landowners in Hamilton County.

WHEREAS, Indiana Code 36-9-27-48 provides a Utility Company the opportunity to make their objections to any requirement to relocate their Utility Facilities, request a hearing before the Drainage Board, and if after hearing any objections, the Drainage Board is permitted to determine if the relocation of Utility Facilities owned by a Utility Company is necessary for the proposed work in a regulated drain; and,

WHEREAS, it is necessary for Hamilton County to recover the cost of relocation in the event a Utility Company refuses to relocate its Utility Facilities within a reasonable time and that Utility Facilities must be relocated by the Surveyor; and,

WHEREAS, some of the rights and powers of the Drainage Board under Indiana Code 36-9-27 and this Ordinance may be exercised by the Board of Commissioners as Executive of Hamilton County, Indiana; and,

IT IS THEREBY ORDAINED by the Board of Commissioners of Hamilton County as follows:

SECTION I. DEFINITIONS.

For purposes of this Ordinance, the following terms shall have the following definitions:

- a. "Drainage Board" means Hamilton County Drainage Board.
- b. "Regulated Drain " means: i) Easement rights defined in Indiana Code 36-9-27-2), whether or not expressly dedicated in any Platted or Dedicated Drainage Easement, sometimes referred to as "DUE or Drainage and Utility Easement"; and whether the regulated drain is inside or outside of the limits of a city or town within Hamilton County ("regulated drains"),
- c. "Drainage Encroachments" includes any structure, tree, shrub, Utility Facilities, or other material, including all fences located within a Drainage Easement, which impedes the flow of surface water or subsurface water within the Drainage Easement, or obstructs access, impedes, or restricts authorized personnel to repair, maintain, construct, or reconstruct any drainage structures or land within any part of a Drainage Easement.

- d. "Drains", as defined in the preamble, means the system of open ditch drains, and tile drains, or both located throughout Hamilton County, the provision of which is designed and intended to facilitate the positive flow and drainage of stormwater runoff and groundwater through and along any Drainage Easement, DUE, or contains a regulated drain.
- e. "Real Property Owner" means the owner of record (as ownership is shown on the real property tax records of Hamilton County) of a parcel of land, which is encumbered by a Drainage Easement or DUE.
- f. "Reconstruction" means work on a drain as described in Indiana Code 36-9-27-34(b) to correct any of the problems with the drain and also includes the discharge or outlet portion of the drain.
- g. "Surveyor" means the Hamilton County Surveyor, any employee of the Surveyor's Office, and/or any contractor or other person or company designated by the Surveyor or under contract with the Drainage Board, to perform any Drainage Work.
- h. "Utility Company" means any private or public utility company.
- i. "Utility Facility" means any underground or overhead cable, conduit, duct, wire, conductor, piping, or other means of transmission, conveyance, or supply of the material, item, or other resource being supplied or conveyed by the Utility Company (collectively, "Transmission Lines") and manholes, hand holes, vaults, below and above grade structures, poles, junction boxes, access risers, transformers, switch gears, hydrants, and other ancillary components of the utility distribution system (collectively, "Other Components") , or similar equipment of a Utility Company.

SECTION II. RELOCATION REQUIREMENTS

- a. Pursuant to Indiana Code 36-9-27-48, whenever in the construction or reconstruction of a "regulated drain" or the Surveyor determines that a Utility Facility will interfere with or prohibit the Drainage Work, the Surveyor shall include in the plans of the relocation requirements of the Utility Facility.

- b. The Surveyor shall, by registered mail, send a copy of the requirements to the Utility Company owning the Utility Facility including a proposed work schedule.
- c. The Utility Company is permitted to request a hearing to express objections and/or concerning the provided relocation requirements including the work schedule.
- d. Upon the conclusion of the hearing, the Drainage Board may change the relocation requirements or approve the relocation adjustments as recommended by the Surveyor.
- e. If the Drainage Board determines that the relocation of the Utility Facility is necessary in the construction or reconstruction of a regulated drain, the cost of relocation shall be paid for by the Utility Company.
- f. Upon approval of the proposed relocation, the utility shall be issued a permit for the relocation of a work plan, including a schedule for the relocation.
- g. The work plan shall require the utility to post a performance bond in the estimated cost of the relocation. The performance bond may also secure the time for completion of the relocation.

SECTION III. CONFLICTS IN REGULATED DRAINAGE EASEMENTS.

- a. Any Utility Facility that is placed within or crossing any Drainage Easement whether the easement, is created by deed, platted easement, dedicated easement, or any provision of Indiana Code 36-9-27, is subject to the right of the Drainage Board to use any part of the regulated drain for drainage purposes.
- b. The Surveyor shall provide appropriate notice, by certified mail and by other means established by a Utility Company for project utility coordination, to the Utility Company of a necessary relocation of a Utility Facility for the Drainage Work; the notice shall be sent to the Utility Company that owns the Utility Facility and will provide the Utility Company the plans and schedule for relocation and any requirements for the Utility Facility.
- c. The Utility Company shall have thirty (30) days to respond to the Drainage Board and/or Surveyor to request a hearing before the Drainage Board on the work plan and schedule.

- d. If the Drainage Board and/or Surveyor does not receive a response to the notice provided to the Utility Company within thirty (30) days, the Utility Company shall be provided a permit to relocate its facilities within one-hundred-and-twenty (120) days from the date of the notice to comply with the relocation requirement. As a condition of the permit, the utility shall post a performance bond in the amount of the reasonably anticipated cost of the relocation plus Fifteen Thousand Dollars (\$15,000).
- e. If a hearing is requested and the Drainage Board provides their determination that the relocation is necessary for the Drainage Work, the Utility Company shall be provided one-hundred and twenty (120) days to comply with the Drainage Board's determination.
- f. If the Utility Company does not comply with the Drainage Board's determination within one-hundred-and-twenty (120) days, the Drainage Board shall take such action as allowed by Section VI (the "Enforcement Procedures" section).

SECTION IV. PLATTED SUBDIVISIONS AND DRAINAGE EASEMENTS.

- a. From the date of passage of this Ordinance, any real estate developer that is platting a subdivision, any resident constructing any personal residential structure, or commercial entity that is constructing a structure that shall connect to any drain under the Drainage Board's jurisdiction, shall include language in their conveyances or their recorded plats that shall include in such documents an express statement that the Utility Company's property rights, concerning Utility Facilities, shall be inferior to the property rights granted to the Drainage Board for any appropriate type of drainage as authorized in the definition of "regulated drains" as described in Indiana Code 36-9-27-2.
- b. The plat or easement dedication document shall also state that Utility Facilities that cross or that are installed within a regulated drainage Easement or a DUE shall contain, or will contain, only Utility Facilities to serve the real estate located reasonably near the Utility Facilities or are necessary for public safety. Transmission lines which convey service a substantial distance from the Utility Facilities may be approved by the Drainage Board if

necessary for public safety or service beyond a reasonable distance for the Utility Facilities.

The plat shall also state that the location of all Utility Facilities, within a Drainage Easement or DUE that contains or will contain a part of the Drains, shall be reviewed and approved by the Surveyor before installation.

- c. All plats approved subsequent to date of this Ordinance shall include the following language:

Any public or private utility that locates its Utility Facilities within any “regulated drain” shall provide the Hamilton County Surveyor with plans showing the location of its Utility Facilities within the easement. The location of the Utility Facilities shall be reviewed by the Hamilton County Surveyor before installation. In the event, there is a subsequent conflict between the location of the Utility Facilities and the drainage structures within the easement, the Hamilton County Drainage Board may require relocation of the Utility Facilities pursuant to Section III and Section VI of this Ordinance.

- d. The Drainage Board shall be permitted to use the same procedures stated in Section III and Section VI for conflicts and for relocating Utility Facilities in Easements, for regulated drains that contain, or will contain, part of the drains, and where the Drainage Board has superior property rights.
- e. This section is not intended to exclude any Utility Company from operating or placing Utility Facilities in the Drainage Easement or a DUE utilities are necessary to serve the platted land or other land in reasonable proximity to the Utility Facilities. This Ordinance requires developers and Utility Companies to receive prior approval of the Hamilton County Drainage Board or Hamilton County Surveyor of the proposed location of Utility Facilities within any Drainage Easement prior to installation. The developers and Utility Companies shall have their plan approved showing their locations of all their Utility Facilities by the Surveyor. The developer’s and Utility Companies’ plans must identify the locations of all Utility Facilities within or crossing a Drainage Easement or a DUE that contains or will contain a portion of the Drains. Any Utility Facility installations within or that cross a Drainage Easement or a DUE that contains or will contain a portion of the Drains that are not approved by the Surveyor shall be in violation of this Ordinance.

SECTION V. UTILITY INSTALLATIONS.

From the date of passage of this Ordinance, all proposed utility installations within or that cross a Drainage Easement or DUE that contains, or will contain a portion of the Drains, shall conform to the following:

- a. Prior to installation of any Utility Facilities, Utility Companies shall submit a plan showing the proposed locations of all Utility Facilities for review and approval by the Surveyor.
- b. Utility Company shall obtain all permits, non-enforcement agreements, or other approvals prior to starting installation within a Drainage Easement or a DUE.
- c. Proposed Utility Facilities that cross or that are installed within a Drainage Easement or a DUE that contains, or will contain, a part of the Drains shall be limited to the Utility Facilities to serve the contiguous or reasonably close users.
- d. Proposed Utility Facilities that are considered Other Components shall not be installed within the limits of a Drainage Easement or DUE unless the component is necessary for public safety.
- e. The ground surface elevation within the limits of the Drainage Easement or DUE that contains or will contain a part of the Drains shall not be altered in any manner by the installation of the Utility Facility.
- f. For any crossings of a regulated drain, including those associated with the relocation requirements for the Drainage Work:
 1. After installation of Utility Facilities, prior to backfilling the trench, Utility Company shall confirm that the horizontal and vertical location of the top of the installed Utility Facility confirms with the location and elevation of the approved location of Utility Facilities crosses the center of the regulated drain tile. Horizontal and vertical information shall be in a format and datum acceptable to the Hamilton County Surveyor. Such information shall be provided to the Surveyor within thirty (30)-days of the completion of the construction of the crossing.

2. For trenchless installations, the Utility Company shall provide the horizontal and vertical location of the top of the installed Utility Facility where it crosses the flowline of the regulated drain open ditch or where it crosses the center of the regulated drain tile based on the information available from the machinery and equipment used to complete the trenchless installation. Horizontal and vertical information shall be in a format and datum acceptable to the Surveyor. Such information shall be provided to the Surveyor within 30-days of the completion of the construction of the crossing.”

Any Utility Facility installations within or that cross a Drainage Easement or a DUE that contains or will contain a portion of the Drains that are not approved by the Surveyor shall be in violation of this Ordinance.

SECTION VI. ENFORCEMENT PROCEDURES.

- a. If the Utility Company does not comply and relocate their Utility Facility within the date approved within the work plan, the Bond may be forfeited. The Drainage Board’s determination, pursuant to Indiana Code 36-9-27-48 (c), and/or the Surveyor, by and through the Drainage Board, may contract with a qualified contractor to relocate the Utility Facilities and all expenses incurred by the Surveyor shall be paid for by the Utility Company.
- b. If the Utility Company does not pay for any expenses incurred by the Surveyor for the relocation of the Utility Facility within sixty (60) days of receiving the invoice for the services, then the Drainage Board shall pursue the unpaid costs through any appropriate legal recourse. The Drainage Board shall be entitled to attorney fees for pursuing and obtaining the unpaid fees.
- c. For every day the Utility Company does not relocate their Utility Facility past the date included in the Company’s permit, or does not pay for any expenses incurred by the Surveyor for the relocation of the Utility Facility past the sixty (60) days of receiving the invoice for the relocation services, shall be a new and separate violation of this Ordinance. For each day

of the violation and the County may subject the Utility Company to penalties and fines pursuant to Indiana Code 36-1-6-2. The fines may be up to two-thousand and five-hundred dollars (\$2,500) for the first violation of this ordinance and every subsequent violation fine may be up to seven-thousand and five-hundred dollars (\$7,500). The penalties and fines shall be in addition to any relocation expense incurred by the Surveyor for relocating the Utility Facility and any attorney's fees incurred by the Drainage Board enforcing this Ordinance.

- d. In the event the Utility Facility is not relocated in a timely manner described above or the Utility Company does not pay for any expenses incurred by the Surveyor for relocating the Utility Company's Utility Facilities, the County may, in addition to forfeiture of the utility's performance bond, initiate an action to enforce any or all of the terms of this Ordinance pursuant to Indiana Code 34-28-5, including charge the Utility Company the costs of relocation of their Utility Facility, in addition all fines or penalties and attorney fees. Each subsequent day of noncompliance shall be a new and separate ordinance violation against the Utility Company.
- e. In the event there is little to no cooperation by the Utility Companies concerning the Utility Facility relocation, the Drainage Board reserves the right to suspend any requests or permit applications submitted by the Utility Company until the Utility Company relocates their Utility Facility and is in full compliance with this Ordinance.
- f. None of the penalties or remedies of this Ordinance are exclusive of the other penalties and remedies listed above, and the County may seek any, or all, such remedies.
- g. The issuance of each or subsequent Notice of Violation to a Utility Company shall be deemed a separate offense.

SECTION VII. PERFORMANCE BONDS.

As an alternative to posting performance for each utility relocation provided by this Ordinance, a utility may post an annual performance bond in an amount reasonably set by the Drainage Board.

SECTION VIII. EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE.

This Amended Ordinance, except for the fines and penalties sections, shall be in full force and effect on the 15th day of January, 2023, which is more than thirty (30) days after publication of Notice of Adoption. The fines and penalties portions of this Ordinance shall take effect sixty (60) days after publication, which will be October 28, 2022. The Hamilton County Auditor is directed to have the provisions of this Ordinance codified in the Hamilton County Code of Ordinances. The County Attorney shall prepare and publish a notice of adoption of this Ordinance within ten (10) days of passage.

Until the effective date of this Ordinance, Ordinance 08-23-21-B shall remain in full force and effect.

ALL OF WHICH IS ORDAINED by the Board of Commissioners of Hamilton County on the 14th day of November, 2022.

BOARD OF COMMISSIONERS OF
HAMILTON COUNTY

Steven C. Dillinger
Mark Heirbrandt
Christine Altman

ATTEST:

Robin M. Mills, Auditor