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ORDINANCE 2017-25

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA CONCERNING IMPROPER UTILITY CONNECTIONS AND THEFT OF UTILITY SERVICE

WHEREAS, the Town of Whitestown, Indiana ("Town") owns and operates municipally owned utilities in and around the Town; and

WHEREAS, individuals, business, and contractors, from time to time, have unfortunately utilized schemes, devices, deception, tampering, connected to utility service without authorization, or otherwise wrongfully taken utility service, in a manner to avoid paying for the service (collectively, "Improper Utility Connections"); and

WHEREAS, a person who utilizes any device or scheme to avoid being assessed for the full amount of services received from a utility service provider violates Ind. Code § 35-43-5-6, a Class B infraction punishable by a fine of up to $1,000; and

WHEREAS, a person who, with the intent to defraud a utility service provider, avoids a lawful charge for that service by scheme or devise or by tampering with facilities or equipment of the utility service provider commits Deception under Ind. Code § 35-43-5-3(a)(5), which is a Level 6 Felony when the deception results in a financial loss to a governmental entity; and

WHEREAS, a person who knowingly or intentional exerts unauthorized control over the Town's water or utility services further commits Theft and Conversion under Ind. Code § 35-43-4, which is a minimum Class A misdemeanor up to a Level 5 felony; and

WHEREAS, pursuant to Ind. Code § 34-24-3-1, the Town is entitled to treble damages, costs, attorneys' fees, and other costs and expenses incurred by the Town, for losses as a result of violations under Ind. Code § 35-43; and

WHEREAS, Improper Utility Connections without paying applicable rates and charges imposes a burden and cost on the Town's other citizens, businesses, and paying ratepayers; and

WHEREAS, the Town appreciates and encourages the assistance of citizens and businesses in identifying and reporting Improper Utility Connections; and

WHEREAS, the Town Council for the Town of Whitestown desires to confirm and reaffirm the policy of the Town in cases of improper connections and/or schemes, devices, deception, tampering, theft, and/or conversion to avoid paying for utility service.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

Section 1. Recitals. The recitals set forth above are incorporated herein by reference as though fully set forth herein.

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Section 2. Improper Utility Connections. In cases in which persons, business, or contractors utilize schemes, devices, deception, tampering, connect to utility service without authorization or knowledge of the utility, or otherwise wrongfully take utility service in a manner that avoids or was intended to avoid paying for the applicable Town utility service, including but not limited to in violation of Ind. Code §§ 35-43-4, 35-43-5-3, 35-43-5-6, or other applicable laws, the following policies apply:

A. The applicable property or connection is subject to immediate disconnection from utility service.

B. The responsible person is subject to citation and prosecution by the Whitestown Police Department, Code Enforcement Officer, and/or other appropriate official for a violation of Ind. Code § 35-43-5-6, punishable by a fine or judgment of up to $1,000. The responsible person may include, but is not limited to, the applicable property owner, tenant, property manager, customer, and/or contractor.

C. The utility will bill the responsible person and/or property owner for the applicable utility service that was used or for which payment was avoided (e.g., rate for water taken, sewer rates, etc.), times three (3). For example, if a responsible person connects to a Town water line without the Town's knowledge or authorization and would have been billed $1,000 for water and sewer service during the applicable period, the responsible person and/or property owner will be billed $3,000. In cases in which the Improper Connection occurs on a particular property, the utility may bill the responsible person and the property owner shall remain ultimately responsible for all bills.

D. The utility may, in its sole discretion and on a case by case basis, estimate the bills for the applicable utility service under subpart C above in circumstances where the actual amount of utility service used cannot be specifically determined (e.g., where the actual usage was not metered). Examples of calculating estimated bills may include, but is not limited to, historic usage at the property, usage of similar customers, timing of connection, size of tanks available to the responsible person, or industry practices.

E. In the event the responsible person refuses or fails to timely pay the utility bills under subparts C and D above, the utility may bring a civil action under Ind. Code § 34-24-3-1 and other applicable laws, and is entitled to recover, in part:

(1) An amount up to three (3) times actual damages;
(2) The costs of the action;
(3) Reasonable attorneys' fees;
(4) Travel expenses that are incurred by the Town to: (A) file papers and attend court proceedings; or (B) provide witnesses to testify in court proceedings related to the recovery of a judgment;

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(5) A reasonable amount to compensate the Town for time used to: (A) file papers and attend court proceedings; or (B) travel to and from activities described in clause (A);

(6) Direct and indirect expenses incurred by the Town to compensate employees and agents for time used to: (A) file papers and attend court proceedings; or (B) travel to and from activities described in clause (A); and

(7) All other reasonable costs of collection.

F. The responsible person may also be cited and prosecuted for applicable violation(s) of criminal laws, including but not limited to Ind. Code §§ 35-43-4 and/or 35-43-5-3.

Section 3. Superseding Clause. The provisions of this Ordinance shall supersede any conflicting provisions in prior ordinances, resolutions, rules, or regulations of the Town. Title 5, Art. 3., Ch.2, § 17 of the Town Code (currently complied as § 13.05.100) is hereby repealed, to the extent not previously superseded or repealed.

Section 4. Severability. The provisions of this Ordinance are severable. In the event any one or more of the provisions contained in this Ordinance should be held illegal, invalid, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and/or the prior ordinances, rules, regulations, or policies of Whitestown shall not in any way be affected or impaired and shall remain in full force and effect.

Section 5. Effective Date. This Ordinance, except to the extent it incorporates already existing or permissible polices or procedures, shall be in full force and effect from and after its passage and any applicable publication.

[Signature Page Follows]

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Adopted by the Town Council of the Town of Whitestown, Indiana, this 21 day of June, 2017.

THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA	YAY/NAY
Eric Miller, President	Yes
Susan Austin, Vice-President	Yes
Kevin Russell	Yes
Clinton Bohm	Yes
Jeffrey Wishek	Yay

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

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