

## TITLE 16

### STREETS AND SIDEWALKS, ETC<sup>1</sup>

#### CHAPTER

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2. CONSTRUCTION OF CURBS, SIDEWALKS, ETC.
3. DRIVEWAYS.
4. RAILROADS.
5. SMALL WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

#### CHAPTER 1

#### MISCELLANEOUS

#### SECTION

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- 16-122. Washing vehicles, etc.
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<sup>1</sup>Municipal code reference

Related motor vehicle and traffic regulations: title 15.

16-124. Catch basins--specifications generally.

**16-101. Definition.** As used in this chapter, where consistent with the context, the word “grade” as applied to any street shall mean the elevation above sea level of the sidewalk at the building or curblin. (1985 Code, § 21-1)

**16-102. Supervision.** The city manager shall have general care and charge of all highways, streets, sidewalks, bridges, parks, public buildings and grounds; shall cause same to be kept in good repair; shall make all necessary arrangements for cleaning the same; and shall see that all nuisances and obstructions are speedily removed, or give notice of same to the chief of police. (1985 Code, § 21-2)

**16-103. Throwing glass, tacks, etc., into streets.** No person shall throw, scatter, drop or place, or shall cause or procure to be thrown, scattered, dropped or placed in or upon any street, highway, avenue or other public place within the city, any glass, tacks, nails, pieces of metal or any other substance likely to injure or damage any horse or mule or bicycle or other wheeled vehicle having tires of rubber. (1985 Code, § 21-3)

**16-104. Placing or throwing dirt, ashes, etc.** No person shall put, place or throw in or upon any street or other place in this city any house dirt, ashes, soot, shavings, paper, rags, suds, weeds or refuse matter or rubbish or obstruction of any kind, and no person shall place or deposit in any street or other public place, any stone or mason’s or bricklayer’s rubbish, or allow his fuel to remain on any street or sidewalk overnight, without the consent of the city manager, prescribing the time and manner of such deposit. (1985 Code, § 21-4)

**16-105. Sidewalk vending.** (1) The sale of any food, beverages, merchandise, or any items of any kind on any public sidewalk, street, or other public area shall be prohibited except as provided in § 16-105(2) following.

(2) (a) Definitions. (i) "Sidewalk vending" shall mean to sell or offer to sell from a cart any authorized product on the public sidewalks, as identified in this section.

(ii) "Sidewalk vendor" shall mean any person who vends under the provisions of this section and shall include any employee or agent of another.

(b) Products sold. Products sold by sidewalk vendors shall be limited to food and non-alcoholic beverages.

(c) Locations. Sidewalk vending shall be permitted only upon public sidewalks within that portion of downtown Johnson City bounded by Colonial Way, State of Franklin Road, Buffalo Street, and East Market Street. Sidewalk vending shall also be permitted upon public sidewalks within that portion of downtown Johnson City bounded by North Roan

Street, West Millard Street, North Boone Street, and West King Street. No vending cart shall be located as to interfere with pedestrian movement or be located within thirty feet (30') of the center of the front door of a retail establishment selling food and beverages or be located within ten feet (10') of any marked pedestrian crosswalk or any transit stop. Only one (1) self-contained cart shall be allowed for one (1) vendor at one (1) location at any time.

(d) Permit required. Each sidewalk vendor shall operate pursuant to a permit issued by the city's finance department. The application for a sidewalk vendor's permit shall include the following:

(i) The full name, address, telephone number and e-mail address (if available) of the applicant and the owner (if other than the applicant) and proof of applicant's identity;

(ii) A description of the types of food and beverages to be sold;

(iii) An accurate depiction or description of the proposed sidewalk location where the applicant plans to vend;

(iv) Proof of compliance with all city and state health and sanitation regulations and requirements for vending carts and for selling food and/or non-alcoholic beverages and copies of all required permits;

(v) A valid business license issued by the City of Johnson City;

(vi) A valid business license issued by Washington County;

(vii) Proof of and continued maintenance of insurance by a company licensed to do business in Tennessee, insuring the vendor against all claims for damages which may arise from the operation pursuant to the permit; a certificate of insurance in the amount of one million dollars (\$1,000,000.00) naming the city as an additional insured with thirty (30) days' notice to the city of cancellation; and

(viii) A two hundred dollar (\$200.00) non-refundable application fee.

Not later than thirty (30) days after the filing of a completed application, the applicant shall be notified by the finance department of the issuance or denial of the permit. A permit issued pursuant to this section shall be valid for one (1) year from the issuance date. Each sidewalk vending location shall require a separate permit.

(e) Denial, revocation, suspension of permit. Any application may be denied and, following a hearing before the finance director, any sidewalk vendor permit may be suspended or revoked for any of the following causes:

(i) Fraud or misrepresentation in the application;

(ii) Fraud or misrepresentation in the operation of the vending business;

(iii) Conduct of the vending business in a manner that creates a public nuisance or constitutes a danger to the public health, safety or welfare;

(iv) Incomplete application;

(v) Failure of the applicant or sidewalk vendor to satisfy the requirements of this section;

(vi) Conduct in violation of the provisions of this section;

or

(vii) Failure to comply with any other applicable laws, including but not limited to federal, state, and local laws pertaining to the collection of taxes, fees, fines, or penalties.

The applicant or the sidewalk vendor may appeal the decision of the finance director by application to a court of competent jurisdiction in accordance with Tennessee law.

(f) Prohibited acts. No sidewalk vendor shall:

(i) Leave any cart unattended.

(ii) Store, park or leave any cart overnight on any street, sidewalk or other public area;

(iii) Allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the cart from which the business is operated;

(iv) Set up, maintain, or use any separate table or other device to increase the selling or display capacity of the cart;

(v) Solicit or sell to persons in the public roadway;

(vi) Solicit or sell to persons in motor vehicles;

(vii) Sell anything other than that which is specified in the permit;

(viii) Locate a cart on the sidewalk so as to block the sidewalk or the entranceway to any building or to block any driveway, crosswalk or transit stop;

(ix) Allow the cart or any other item relating to the operation of the vending business to touch or connect to any building or other structure, without the owner's permission; or

(x) Operate or park in the streets or alleys.

(g) Display of permits and licenses. Each sidewalk vendor shall display the following in a conspicuous manner:

(i) The vending permit issued by the city;

(ii) The business license issued by the city;

(iii) The business license issued by Washington County;

(iv) All state and local health and sanitation permits; and

(v) All other permits required by law to be displayed.

(h) General cleanliness. Each sidewalk vendor shall maintain the area around the vending cart in a neat and clean manner at all times and shall provide a litter receptacle for public use at the cart.

(i) Special events. The city may suspend the provisions of this section for special events and/or street festivals, which have street closures approved by the city commission.

(j) Enforcement. The police bureau of the city shall enforce the provisions of this section.

(k) Penalty. Any person violating this section shall be guilty of an offense and upon conviction shall pay a penalty of not more than fifty dollars (\$50.00) for each offense. Each day of violation shall constitute a separate offense. (1985 Code, § 21-5, as replaced by Ord. #4351-09, June 2009)

**16-106. Street carnivals, fairs, etc.** It shall be unlawful for any person to produce or offer to produce, set up or exhibit within the city any street carnival, street fair or other similar show; provided, that this section shall not be construed to apply to circuses and menageries. (1985 Code, § 21-6)

**16-107. Streamers, etc., on or over streets, sidewalks.** No person shall place or erect on or over any street, sidewalk, park or parkway any streamer or advertising matter of any kind. (1985 Code, § 21-7)

**16-108. Condemnation proceedings.** (1) Whenever the board of commissioners, by resolution, determines that the public interest demands that any new street should be opened within the city or any old street should be extended, widened or straightened, and the owner of the land through which same shall pass requires damages, the board shall by resolution proceed to condemn land for the same, and provide damages therefor in the manner set forth in the laws of the state. The names of any number of nonresident owners may be inserted in one (1) advertisement.

(2) Whenever the funds to settle the damages assessed by the jury of view, as provided in this section, shall be in the hands of the recorder for the benefit of the owner of the land, the board of commissioners may condemn the land by ordinance, and, after allowing such property owners five (5) days' time in which to open such street, may order such street to be opened, and the same shall be and become a public thoroughfare. (1985 Code, § 21-8)

**16-109. Grades—establishment generally.** (1) Every grade shall be fixed by the engineer and established by resolution of the board of commissioners on presentation of a profile showing such grade, and such profile shall be known as the official profile of such street or part of street. No grade, when once established, shall be changed by any person except on order of the board, by resolution, attested to in same manner as provided in this section.

(2) On streets, along hill sides, where it is necessary for drainage and economy, to have the curb grades higher or lower than the centerline of such street, the same shall be shown on the profile and approved as street grades. (1985 Code, § 21-9)

**16-110. Grades--when required; building permit.** No person shall erect any permanent improvement without first obtaining the grade from the city engineer and adhering to it. In case of such improvement being a building of any kind the city engineer shall not furnish the grade until the owner has obtained a building permit. (1985 Code, § 21-9.1)

**16-111. Utility poles, pipes, etc.--permit.** No public service corporation, whether operating under a city franchise or under the general laws of the state, shall locate any pole, wire, conduit, pipe or other apparatus without first having obtained a permit from the city manager in writing, one (1) copy of which shall be filed with the recorder. (1985 Code, § 21-10)

**16-112. Utility poles--specifications generally; use; removal.** The city manager shall specify in the permit the kind, size and height of poles to be used, the height at which all wires must be placed and the size, location and depth of all pipes and conduits. The construction of such lines shall conform thereto in all particulars, or be forthwith subject to removal. Any permit granted under this section shall be subject to the right of the city, free of charge, to place its fire alarm, telegraph or other electric lines, upon the poles or through the conduits so licensed to be maintained; and shall be subject to the right of the city to license the location of lines by any other person upon such poles or through such conduits, upon the payment to the owner thereof of a reasonable compensation, to be determined by the parties. The city manager shall not grant permits for more than one (1) line of poles on any street, unless it is impossible to use two (2) lines of wire on the same poles, and shall use every endeavor to located poles where they shall be least objectionable. Any such company, at its own expense, shall remove its poles or conduits to other suitable locations whenever ordered to do so by the board of commissioners. (1985 Code, § 21-11)

**16-113. Draining, discharging, etc., water across sidewalks.** No water shall be drained, discharged or permitted to drain from the roof of any building, so as to flow across any sidewalk or walkway. The conductors for such water shall be made by the owner of such building under such sidewalks or walkways, and shall be constructed under the direction of the city manager. (1985 Code, § 21-12)

**16-114. Removal of snow, ice or dirt.** No person shall allow any snow, ice or dirt to remain upon any sidewalk in front of any property owned,

controlled or occupied by him, for a longer period than twelve (12) hours; provided, that this shall not apply to dirt or gravel sidewalks. (1985 Code, § 21-13)

**16-115. Cutting, breaking, etc., fastening animals to trees.** No person shall cut, break or injure any shade trees on the public streets or sidewalks, or on the private premises of another, or fasten any horse or other animal to a shade tree standing upon any public street, ground or square, or suffer any animal over which, for the time being, he has charge, to stand or remain near to, and within reach of such tree. (1985 Code, § 21-14)

**16-116. Closing streets, alleys, sidewalks--generally.** The city manager shall close any public street, alley or sidewalk for such time as he may deem necessary, for any of the following reasons or purposes:

- (1) For necessary repairs to the street surfaces, or underground pipes or wires;
- (2) When a dangerous condition exists, pending repair of same;
- (3) For new construction or street paving or any underground construction; or
- (4) For cases of serious illness, when a physician shall have certified that the noise of traffic is endangering the life of his patient. (1985 Code, § 21-15)

**16-117. Closing streets, alleys, sidewalks--procedure.** Closing of streets, alleys or sidewalks as authorized by § 16-116 shall be actual and effective, by means of barriers plainly visible day or night so that an actual removal of or disregard of such barrier shall be necessary to effect entry. (1985 Code, § 21-16)

**16-118. Entering closed streets, etc.** No person shall, without authority, enter or remain upon any portion of the public street, alleys or sidewalks which have been enclosed, barricaded or roped off by order of the city manager or chief of police, or chief of the fire department. (1985 Code, § 21-17)

**16-119. Permit to obstruct or excavate street--required.** No person shall break or dig up the grounds in any public street, way or public place or lands of the city, or erect or place thereon any staging, or place or deposit thereon any brick, stone, timber or other building material, without first having obtained permission from the city manager in writing. (1985 Code, § 21-18)

**16-120. Permit to obstruct or excavate street--prerequisites; duties of permittee.** (1) In all cases under § 16-119 in which a permit may be given for obstructing or excavating any street, the city manager shall impose such restrictions and limitations as he shall see fit, to make the street safe and

convenient for public travel, by the erection of barriers, the maintaining of lights, the removal of rubbish or otherwise. Such permit shall express the time for which it shall remain in force. It shall be a condition of such permit that the person excavating any street shall cause the same to be refilled and tamped and put in as good condition as it was before being opened, and in the case of a paved street, the earth so excavated shall be hauled away and the excavation refilled with slag or sand well tamped on which the paving shall be laid as it was before, all done to the satisfaction of the city manager.

(2) If any street in the portion which has been so opened or dug up shall require repairing and resurfacing within a period of six (6) months after it has been so disturbed, the city manager shall give notice in writing to the person who had or was given the right to make the excavation, to make such repairs therein as are necessary. If such repairs are not made within seven (7) days from the time of notification the city manager shall proceed to make such repairs, and the expense of the same, in case of a department of the city, shall be charged to such department, and in all other cases the same shall be paid by the person making the excavation.

(3) No person shall be given a permit to place any building material or other obstruction upon the streets or to excavate the same, without first having executed a good and sufficient bond to the city in the sum of not less than one thousand dollars (\$1,000.00) nor more than ten thousand dollars (\$10,000.00), conditioned to save the city harmless of damages resulting from such obstructions or excavations, and conditioned also to make the repairs required in this section. (1985 Code, § 21-19)

**16-121. Contract for concrete walk, curbing, etc.; bond.** (1) All persons laying or constructing concrete walks, curbing, guttering, retaining walls and similar structures in the city by contract with property owners or the city, shall, before engaging in such work or contract, enter into good and sufficient bond with good and solvent security to be approved by the city, with the city, for the use and benefit of each person or owner for whom the work is to be done, in the penalty for sixty (60) per cent of the contract of such work, conditioned that the contractor shall lay or construct the same according to plans and specifications and maintain same for three (3) years.

(2) Any person violating this section shall be guilty of a misdemeanor. His contract for such work shall be void and of no effect and collection therefor shall not be made until such bond shall have been furnished. The city engineer shall be the inspector and arbiter to determine whether this section is complied with. (1985 Code, § 21-20)

**16-122. Washing vehicles, etc.** (1) It shall be unlawful for any person to discharge into any street, gutter or alley within the city, any water used by such person on the premises owned or occupied by him, in the washing of



vehicles or for any other purpose or to discharge into such streets, gutters or alleys any refuse caused by the use of water on such premises.

(2) This section shall not apply to the natural drainage of rain or melted snow from the premises of any owner or occupant. (1985 Code, § 21-21)

**16-123. Catch basins--when required.** Any person using water on the premises owned or occupied by him, in such a manner and in such quantities as to cause water or refuse to flow or be discharged into the streets, gutters or alleys of the city, in the absence of appliances to prevent such discharge of water or refuse, is required to connect with the sanitary or storm sewer of the city in such manner that all such water shall flow into such sewer and not into the street, gutters or alleys of the city and to construct a catch basin upon his premises in such a manner and to maintain such catch basin in such manner that mud, debris and refuse caused from the use of such water will not enter into such sewer line. (1985 Code, § 21-22)

**16-124. Catch basins--specifications generally.** All catch basins required by § 16-123 shall be installed or constructed in a manner approved by the city engineer, and all sewer taps made under the requirements of this code shall be made in a manner approved by the city engineer. (1985 Code, § 21-23)

## CHAPTER 2

### CONSTRUCTION OF CURBS, SIDEWALKS, ETC.

#### SECTION

- 16-201. Sidewalk specifications.
- 16-202. When owner to construct or repair sidewalk.
- 16-203. Notice to owner to construct or repair.
- 16-204. Compliance with notice; work done by city.
- 16-205. Curbing alterations, etc.

**16-201. Sidewalk specifications.** The specifications for the construction, repair or replacement of sidewalks and curbs shall be prepared by the city engineer and all work shall be performed pursuant to such specifications, copies of which shall be on file in the city engineer's office. (1985 Code, § 21-40)

**16-202. When owner to construct or repair sidewalk.** For the purpose of securing good and substantial sidewalks in the city and securing uniformity in the construction thereof, the board of commissioners, whenever deemed necessary by it, for the public welfare, may require the owner of any lot, or part of lot, in the city, fronting upon any public street, to construct and keep in repair a good and substantial sidewalk or foot pavement, along the whole street frontage of his lot, and of width and material prescribed by the board. (1985 Code, § 21-41)

**16-203. Notice to owner to construct or repair.** When so instructed by resolution by the board of commissioners, the recorder shall give the owner of a lot written notice stating the action of the board, and especially setting forth the work to be done pursuant to § 16-202 and the length of time within which same must be done; provided, that the time fixed shall not be less than twenty (20) days. (1985 Code, § 21-42)

**16-204. Compliance with notice; work done by city.** If the owner of any lot shall refuse to build or repair foot pavements within the time required by a notice so to do, and agreeably thereto, the board of commissioners, through any officer or agent it may designate, may contract for the construction or repair of same and shall pay the cost thereof out of the street fund, and the amounts so paid shall be a lien upon such lots or property and may be enforced by attachments at law or in equity; or the amount may be recovered against the owner by suit before any court of competent jurisdiction. The city attorney is authorized to proceed to enforce the lien declared and fixed by the charter and this chapter. (1985 Code, § 21-43)

**16-205. Curbing alterations, etc.** No curbing along the streets and alleys of the city shall be changed, altered or cut except under the supervision and direction of the city engineer or some competent person appointed by him. (1985 Code, § 21-44)

## CHAPTER 3

### DRIVEWAYS

#### SECTION

- 16-301. Policy.
- 16-302. Definitions.
- 16-303. Prohibited locations.
- 16-304. Placement.
- 16-305. Width of approach.
- 16-306. Construction details.
- 16-307. Permit--required.
- 16-308. Permit--application.
- 16-309. Permit--prerequisites to issuance.
- 16-310. Permit--issuance; fees.
- 16-311. Permit--no existing public sidewalks.

**16-301. Policy.** While acknowledging that it is every property owner's legal right to have access, it is also the city's responsibility to protect the health, safety, and welfare of the traveling public. To this end, and because of proliferation of curb cuts causes increased traffic hazards, it is the policy of the city to limit the number and placement of curb cuts only to those necessary to meet minimum legal obligations. The city engineer shall enforce this policy when reviewing and permitting driveway entrances. The "Guidelines for Urban Major Street Design, Recommended Practices," written by the Institute of Transportation Engineers Technical Committee 5-5, shall be used as the minimum standard. In cases where these guidelines differ from the adopted standards shown below, the adopted standards shall apply. (1985 Code, § 21-61)

**16-302. Definitions.** For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(1) "Curb return." The curve portion of a street curb or alley curb at the street or alley intersections.

(2) "Driveway." An area on private property where automobiles and other vehicles are operated or allowed to stand.

(3) "Driveway approach." Any area, construction or facility between the roadway of public street and private property intended to provide access for vehicles from the roadway of a public street to something definite on private property such as a parking area, a driveway, or a door at least seven (7) feet wide intended and used for an entrance or exit of vehicles.

(4) "End slopes." Those portions of a driveway approach which provide a transition from normal curb and sidewalk elevations to the grade of the approach, by means of sloping surface. (1985 Code, § 21-62)

**16-303. Prohibited locations.** (1) No driveway approach shall be permitted to encompass any city or other public facilities. Under the permit provided for in § 16-307, the applicant may be authorized to relocate any such utility upon application to the subject utility provider and upon making suitable arrangements for financial reimbursements to such provider.

(2) No residential driveway approach including end slopes shall be permitted within twenty-five (25) feet of the edge of a cross street or within five (5) feet of the curb return, whichever is greater. No commercial driveway approach including its end slopes and curb return shall be permitted within seventy-five (75) feet of the edge of a cross street or within ten (10) feet of the curb return, whichever is greater. See Figure 1.

(3) No driveway or series of driveway approaches serving other than residential property shall be permitted to be constructed in such a way that the exit from such property would be accomplished by backing vehicles into a street right-of-way or roadway. (1985 Code, § 21-63)

**16-304. Placement.** (1) Not more than one (1) driveway approach shall be permitted per lot when the lot is one hundred (100) feet or less in width fronting on any street. Additional driveway approaches for lots fronting more than one hundred (100) feet on a street shall be at the professional discretion of the city engineer. The city engineer shall use as the basis for judgment such factors as street design and capacity, traffic counts, surrounding land use, and other established engineering guidelines.

(2) Driveways shall not be permitted at locations hidden from the user of the public street, as where sight distance problems exist.

(3) Horizontal approach angles between the centerline of the driveway and the centerline of the public street shall be a minimum of seventy (70) degrees. (1985 Code, § 21-64)

**16-305. Width of approach.** The width of a driveway approach shall not exceed the following dimensions measured at curbing from top of end slopes:

(1) The maximum width for residential driveways shall be fifteen (15) feet for single driveways and twenty-four (24) feet for double driveways.

(2) The maximum width for commercial driveways shall be forty (40) feet, not including turning radii. See Figure 2. (1985 Code, § 21-65)

**16-306. Construction details.** (1) All driveway approaches between the curblines and the property line shall be constructed of portland cement concrete proportioned to the satisfaction of the city engineer, except as provided in § 16-311, or if permitted by the city engineer, asphalt concrete may be used between the back of the curblines and the street side of the sidewalk line. The concrete of the driveway approach, including the sidewalk section, shall be at least six (6) inches thick for residential approaches and at least eight (8) inches thick for commercial approaches.

(2) The sidewalk section of the driveway approach shall be finished and scored as specified by the city engineer for typical sidewalk construction. Apron and end slope areas of the driveway approach shall be finished, after troweling smooth and scoring, with a fiber pushbroom drawn over the surface parallel to the curbline.

(3) Driveways with a grade of four (4) per cent or greater shall conform to Figure 8, as shown in Article IV, Standards of Design for Streets and Drainage. (1985 Code, § 21-66)

**16-307. Permit--required.** It shall be unlawful for any person to construct or maintain a driveway approach in the city without first obtaining a permit. (1985 Code, § 21-76)

**16-308. Permit--application.** Any person desiring to obtain a permit for driveway approaches shall file an application with the city engineer. This application shall be in writing upon forms provided by the city and shall contain information showing the type of construction, the length of the driveway, the exact location of the driveway and any other information which may be required by the city engineer. (1985 Code, § 21-77)

**16-309. Permit--prerequisites to issuance.** The owner and contractor shall protect the public from injury or damage during the construction of driveway approaches and it is stipulated, as an essential condition of the issuance of a permit, that the city shall not be liable for damage which may arise from the prosecution of such work. (1985 Code, § 21-78)

**16-310. Permit--issuance; fees.** Upon approval of such improvements, covered by this chapter, by the city engineer the applicant shall pay five dollars (\$5.00) per fifteen (15) feet of driveway approach width or fraction thereof for the permit. (1985 Code, § 21-79)

**16-311. Permit--no existing public sidewalks.** Where standard curb and gutter have been installed but concrete sidewalks have not been installed, the permit may authorize the applicant to construct the driveway approach from the curbline to the applicant's premises of the same materials as those used for paving the applicant's premises, or of any other material satisfactory to the city engineer. Such driveway approach shall be constructed to the established grade and shall be adequate and suitable for the traffic to be carried by it. The permit shall provide and the applicant shall agree that if and when thereafter concrete sidewalks are constructed the applicant or his successor shall install concrete driveway approaches as specified in § 16-304. (1985 Code, § 21-80)

## CHAPTER 4

### RAILROADS

#### SECTION

- 16-401. Speed limit.
- 16-402. Obstructing crossing.
- 16-403. Crossing at street intersection; specifications.
- 16-404. Service of process, etc., upon railroads, etc.
- 16-405. Trespassing.
- 16-406. Soliciting patronage, etc., at depots, etc.
- 16-407. Maintenance or order, etc., at depots.
- 16-408. Children loitering about depots, etc.

**16-401. Speed limit.** It shall be unlawful for any railway company or its employees to operate or cause to be operated, within the corporate limits of the city, any train of cars, locomotive, handcar or rolling stock of any kind at a greater rate of speed than thirty (30) miles per hour. (1985 Code, § 18-1)

**16-402. Obstructing crossing.** It shall be unlawful for any person to cause or permit any locomotive engine, car or train of cars to stand upon any street crossing within the city for a longer time than four (4) minutes at one (1) time, which crossing shall not again be obstructed until all travelers awaiting upon the highway over such crossing shall have passed. (1985 Code, § 18-2)

**16-403. Crossing at street intersection; specifications.** It shall be the duty of each railroad entering the city to provide good and substantial crossings at every street intersection, all to be done in a manner satisfactory to the city engineer. (1985 Code, § 18-3)

**16-404. Service of process, etc., upon railroads, etc.** When any railroad or other corporation is charged with a violation of this code or other ordinance of the city, the warrant or process shall be served upon the highest agent of such company to be found in the city, and such service shall be deemed sufficient notice to such company or corporation. (1985 Code, § 18-4)

**16-405. Trespassing.** It shall be unlawful for any person, other than a railroad employee or passenger, to get upon any engine, car or train of cars attached to an engine, or to stand upon the steps or platform of any passenger car, or to ride or to attempt to ride upon an engine from one (1) point to another. (1985 Code, § 18-5)

**16-406. Soliciting patronage, etc., at depots, etc.** It shall be unlawful for any person at any depot or regular stopping place of trains to call

out or to solicit patronage, in a noisy or boisterous manner, for any hotel, restaurant, boardinghouse, taxicab, bus or transfer wagon, or for the care and delivery of baggage or other thing, or for any such person soliciting such patronage to go upon any railroad platform or within fifty (50) feet of any railroad train, while same is standing at its usual stopping place; nor shall such person crowd the ticket or other offices of any railroad or other company or corporation, engaged in the carrying of passengers or freight, so as to annoy, inconvenience or otherwise interfere with the traveling public, or the business of such railroad, company or corporation. (1985 Code, § 18-6)

**16-407. Maintenance of order, etc., at depots.** On arrival and departure of the railroad trains at the depots within the city, it shall be the duty of some member of the police force to be present and preserve order and keep doorways and passageways in and above the depot cleared of all persons not on business, or not properly there; and any person refusing to obey such officer may be by him arrested and brought before the city judge. (1985 Code, § 18-7)

**16-408. Children loitering about depots, etc.** It shall be unlawful for the parents or guardians of children or wards under fourteen (14) years of age to permit such children or wards to loiter around, in or about any railroad depot, track or similar place within the city, without a guardian or protector. It shall be the duty of all police officers of the city to take immediate charge of such children or wards and return them to their homes, and promptly arrest the parents or guardian of such children, and bring them before the city judge. (1985 Code, § 18-8)



## CHAPTER 5

### SMALL WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY

#### SECTION

- 16-501. Definitions.
- 16-502. Purpose and scope.
- 16-503. Permitted use, application requirements, and fees.
- 16-504. Application review.
- 16-505. Requirements for small wireless facilities in the right-of-way.
- 16-506. Violations of this chapter.

**16-501. Definitions.** The following definitions are strictly intended for the purpose of the wireless communication provisions herein. Where definitions duplicate or conflict with other city code or zoning code definitions, the following definitions shall apply to small wireless communication applications only.

(1) "Aesthetic plan" means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the city or designated area within the city. An aesthetic plan may include a provision that limits the plan's application to construction or deployment that occurs after adoption of the aesthetic plan. For purposes of this part, such a limitation is not discriminatory as long as all construction or deployment occurring after adoption, regardless of the entity constructing or deploying, is subject to the aesthetic plan.

(2) "Administrative review" means ministerial review of an application by the authority relating to the review and issuance of a permit, including review by the appropriate city's administration, development services department and public works department staff to determine whether the issuance of a permit is in conformity with the applicable provisions of this chapter.

(3) "Antenna" means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

(4) "Applicable codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the authority, including any amendments adopted by the authority, or otherwise are applicable in the jurisdiction.

(5) "Applicant" means any person who submits an application under this chapter.

(6) "Application" means a written request, on a form provided by the authority, for a permit to deploy or collocate small wireless facilities in the ROW.

(7) "Authority" means the City of Johnson City or any agency, subdivision or any instrumentality thereof.

(8) "Batch application" applications for multiple facilities submitted simultaneously by a single provider.

(9) "City" means the City of Johnson City or any agency, subdivision or any instrumentality thereof.

(10) "Colocate" means to install or mount a small wireless facility in the public ROW on an existing support structure, an existing tower, or on an existing pole/PSS to which a small wireless facility is attached at the time of the application. "Colocation" has a corresponding meaning.

(11) "Communications facility" means, collectively, the equipment at a fixed location or locations within the public ROW that enables communications services, including:

(a) Radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), wireless facilities, and comparable equipment, regardless of technological configuration; and

(b) All other equipment associated with any of the foregoing. A communications facility does not include the pole/PSS, tower or support structure to which the equipment is attached.

(12) "Communications service" means cable service, as defined in 47 U.S.C. § 522(6); broadband service, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

(13) "Communications service provider" means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in Tennessee Code Annotated, § 7-59-303, or a wireless provider;

(14) "Decorative pole" means a pole that is specially designed and placed for aesthetic purposes. (see Figures 5, 6, & 7)

(15) "Discretionary review" means review of an application by the authority relating to the review and issuance of a permit that is other than an administrative review.

(16) "Facility height" means the height of a PSS, in combination with associated wireless facility, shall be the vertical distance from the highest point of the wireless facility and its PSS to either

(a) The surface grade at the base of the PSS or

(b) The surface grade of the nearest adjacent street, whichever is higher.

(17) "Fee" means a one (1) time, non-recurring charge.

(18) "FCC" means the Federal Communications Commission of the United States.

(19) "Historic district" means a property or area zoned as a historic district or zone pursuant to Tennessee Code Annotated, § 13-7-404;

(20) "Laws" means, collectively, any and all federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(21) "Ordinary maintenance and repair" means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a communications facility and/or the associated support structure or pole/PSS, that does not require blocking, damaging or disturbing any portion of the public ROW.

(22) "Period light" means a style of lighting fixture designed to replicate the style of light used in the city's downtown historic district while also meeting the city's standards for illumination.

(23) "Permit" means a written authorization (in electronic or hard copy format) to install, at a specified location(s) in the public row, a communications facility, tower or a pole to support a communications facility.

(24) "Permittee" means an applicant that has received a permit under this chapter.

(25) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

(26) "Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the public right-of-way. A pole does not include a tower and does not include a structure that supports electric transmission lines (Fig 1).



(27) "Potential support structure for a small wireless facility" or "PSS" means a pole or other structure (Fig 3) used for wireline communications, electric distribution (Fig 2), lighting, traffic control, signage, or a similar function, including poles installed solely for the co-location of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;



(28) "Provider" means a communications service provider or a wireless services provider, and includes any person that owns and/or operates within the public ROW any communications facilities, wireless

Fig. 3 Examples of Potential Support Structures / PSSs



facilities, poles built for the sole or primary purpose of supporting communications facilities, or towers.

(29) "Public right-of-way" or "public ROW" means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this chapter shall include public utility easements, but only to the extent the authority has the authority to permit use of the area or public utility easement for communications facilities or poles, towers and support structures that support communications facilities. The term does not include a federal interstate highway.

(30) "Public utility easement" means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public utility easement does not include an easement dedicated solely for authority use or where the proposed use by the provider is inconsistent with the terms of any easement granted to the authority.

(31) "Replace" or "Replacement" means, in connection with an existing pole, support structure, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this chapter and any other applicable authority code, in order to address limitations of the existing structure to structurally support co-location of a communications facility.

(32) "Small wireless facility" means a wireless facility that meets both of the following qualifications:

(a) Each antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and

(b) All other wireless equipment associated with the antenna, including the provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this section "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services; and "small wireless facility" includes a micro wireless facility;

(33) "Staff" means employees of the City of Johnson City responsible for the administration of requests associated with this ordinance.

(34) "State" means the State of Tennessee.

(35) "Support structure" means a structure in the public ROW to which a wireless facility is attached at the time of the application.

(36) "TDOT" means the Tennessee Department of Transportation.

(37) "Tower" means any structure in the public ROW built for the sole or primary purpose of supporting a wireless facility. A tower does not include a pole or a support structure.

(38) "Wireless facility" means the equipment at a fixed location or locations in the public row that enables wireless services. The term does not include:

(a) The support structure, tower or pole on, under, or within which the equipment is located or colocated; or

(b) Coaxial, fiber-optic or other cabling that is between communications facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. A small wireless facility is one type of a wireless facility.

(39) "Wireless services" means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

(40) "Wireless services provider" means a person who provides wireless services. (as added by Ord. #4695-19, Aug. 2019 *Ch12\_6-20-20*)

**16-502. Purpose and scope.** (1) The purpose of this chapter is to provide policies and procedures for the placement of small wireless facilities upon properly-permitted facilities within covered areas of the City of Johnson City.

(2) It is the intent of this chapter to establish uniform standards including, but not limited to:

(a) Prevention of interference with the use of streets, sidewalks, alleys, traffic or light poles, and other public ways and places;

(b) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(c) Prevention of interference with other facilities and operations of facilities lawfully located in covered areas or public property;

(d) Preservation of the character of neighborhoods where facilities are installed;

(e) Preservation of the character of historic structures, or historic areas, including but not limited to structures or areas listed on the National Register of Historic Places or locally designated historic districts; and

(f) Facilitation of the rapid deployment of small wireless facilities to provide the citizens with the benefits of advanced wireless services. (as added by Ord. #4695-19, Aug. 2019 *Ch12\_6-20-20*)

**16-503. Permitted use, application requirements, and fees.**

(1) Permitted use. The following uses within the public ROW shall be permitted uses.

(a) Colocation of a small wireless facility that conforms with all standards including the design standards of § 16-505(1)(c).

(b) Modification of a PSS/pole or support structure or replacement of a pole for colocation of a communications facility where the modification or replacement conforms with all standards including the design standards of subsection § 16-505(1)(c).

(c) New PSS/poles that receive proper administrative approval and conform with all standards including the design standards of § 16-505(1)(c).

(d) Construction of a communications facility, other than those set forth in this ordinance, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground or aboveground between two or more existing PSS/poles or an existing PSS/pole and an existing tower and/or existing support structure, and related equipment and appurtenances.

(2) Permit required. No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first filing an application and obtaining a small wireless facility permit from the city. Any small wireless facility permit shall be reviewed, issued and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the city may from time to time establish for effective management of the right-of-way, and otherwise shall conform to the requirements of this chapter and applicable law.

(3) Compliance with permit. (a) Policies and procedures. The city is authorized to establish such written policies and procedures, consistent with this chapter, as the city reasonably deems necessary for the implementation of this chapter.

(b) Police powers. The city, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the city under applicable federal, state and local laws and regulations.

(c) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications. The authority and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee. The authority may stop work in order to assure compliance with the provision of this chapter.

(4) Emergency work. Notwithstanding the foregoing, in the event of an emergency, a provider or its duly authorized representative may work in the public ROW prior to obtaining a permit, provided that the provider shall attempt to contact the authority prior to commencing the work and shall apply for a permit as soon as reasonably possible, but not later than the next business day after commencing the emergency work. For purposes of this subsection, an

"emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

(5) Effect of permit. A permit from the authority authorizes an applicant to undertake only the activities in the public ROW specified in the application and permit, and in accordance with this chapter and any general conditions included in the permit. Unless otherwise expressly stated, a permit does not authorize attachment to or use of existing PSS/poles, towers, support structures or other structures in the public ROW; a permittee or provider must obtain all necessary approvals from the owner of any PSS/pole, tower, support structure or other structure prior to any attachment or use. A permit does not create a property right or grant authority to the applicant to interfere with other existing uses of the public ROW.

(6) Other permits needed. In addition to obtaining a permit for installation of a communications facility, PSS/poles built for the sole or primary purpose of supporting communications facilities, or towers in the public ROW, an applicant must obtain all other required permits, including but not limited to: building permits, electrical permits, TDOT permits, etc.

(7) No substitute for other required permissions. No small wireless facility permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the city for the privilege of transacting and carrying on a business within the 2 or any permit or agreement for occupying any other property of the city.

(8) No waiver. The failure of the city to insist on timely performance or compliance by any permittee holding a small wireless facility permit shall not constitute a waiver of the city's right to later insist on timely performance or compliance by that permittee or any other permittee holding such small wireless facility permit. The failure of the city to enforce any provision of this chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this chapter on any other occasion, nor shall the failure to enforce any prior ordinance or city charter provision affecting the right-of-way, any wireless facilities, or any user or occupant of the right-of-way act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.

(9) Safe condition. The provider shall, at its sole cost and expense, keep and maintain its communications facilities, PSS/poles, support structures and towers in the public row in a safe condition, and in good order and repair. If the authority determines communications facilities are in disrepair or the appearance is not kept in a satisfactory manner, the authority may require maintenance or removal of the communications facilities.

(10) Permit duration. Any small wireless facility permit for construction issued under this article shall be valid for a period of ninety (90) days after issuance, provided that the ninety (90) day period may be extended for up to an additional nine (9) months upon written request of the applicant (made prior to

the end of the initial ninety (90) day period) if the failure to complete construction is as a result of circumstances beyond the reasonable control of the applicant.

(11) Ordinary maintenance and repair. A small wireless facility permit shall not be required for ordinary maintenance and repair. The provider or other person performing the ordinary maintenance and repair shall obtain any other permits required by applicable laws and shall notify the authority in writing at least ten (10) business days prior to performing the ordinary maintenance and repair.

(12) Small wireless facility permit applications required information. The application shall be made by the provider or its duly authorized representative and shall contain the following:

(a) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.

(b) The names, addresses, telephone numbers, and e-mail addresses of all consultants, contractors and subcontractors, if any, acting on behalf of the applicant with respect to the filing of the application or who may be involved in doing any work on behalf of the applicant.

(c) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this chapter. The applicant shall state whether the applicant believes the proposed work is subject to administrative review or discretionary review.

(d) A site plan for each proposed location with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the city to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices.

(e) The location of the site(s), including the latitudinal and longitudinal coordinates of the specific location of the site(s) using WGS84 as the coordinate system of reference with coordinates specified in decimal degrees to no less than three (3) significant digits or provide digitized spatial data (shape files) of the exact point of the proposed location.

(f) If applicable, the identification of any third party upon which a PSS the applicant intends to collocate and a copy of the authorization for use of the property from the PSS/pole, tower or support structure owner on or in which the communications facility will be placed or attached. If authorization is not complete at time of application, the application may proceed, however the authorization information shall be



provided within the given application review time and before final approval can be issued.

(g) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility

(h) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements (as set forth in subsections § 16-505(3)(h) and (i) below); rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions (as set forth in subsections § 16-503(4) and (5)(3)(f), if any, that the city imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the city imposes on a general and nondiscriminatory basis upon entities that are entitled to deploy infrastructure in the ROW;

(I) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS/pole and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

(j) To the extent the proposed facility involves colocation on a PSS/pole, tower or support structure, a structural report performed by a duly licensed engineer evidencing that the PSS/pole, tower or support structure will structurally support the colocation (or that the PSS/pole, tower or support structure will be modified to meet structural requirements) in accordance with applicable codes.

(k) A statement that all wireless facilities shall comply with all applicable codes.

(l) Detailed construction drawings regarding the proposed facility; and

(m) For any new above-ground facilities, accurate visual depictions or representations, if not included in the construction drawings.

(13) Proprietary or confidential information in application. Applications are public records that may be made publicly available pursuant to the

Tennessee Public Records Act (Tennessee Code Annotated, § 10-7-101 et seq.). Notwithstanding the foregoing, applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each portion of such materials accordingly, and the authority shall treat the information as proprietary and confidential, subject to the Tennessee Public Records Act (Tennessee Code Annotated, § 10-7-101, et seq.) and the authority's determination that the applicant's request for confidential or proprietary treatment of application materials is reasonable. The authority shall not be required to incur any costs to protect the application materials from disclosure, other than the authority's routine procedures for complying with the Tennessee Public Records Act (Tennessee Code Annotated, § 10-7-101 et seq.).

(14) Batch application. An applicant may simultaneously submit an application for multiple small wireless facilities in a single application. A batch application may include not more than twenty (20) applications for small wireless facilities, or may file a single, consolidated permit application covering such communications facilities, provided that the proposed communications facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the authority. If the applicant files a consolidated application, the applicant shall pay the application fee as stated in § 16-503(20). Batch applications require a pre-application meeting with the city's appropriate development services department and public works department staff.

(15) Multiple permit applications at same location. If the city receives multiple applications seeking to deploy or colocate small wireless facilities at the same location in an incompatible manner, then the city may deny the later filed application.

(16) Approval or denial of application; response time. The city responds to the applications for permit per the timelines prescribed in federal law and in Tennessee Code Annotated, § 13-24-409(b), as may be amended, regarding the approval or denial of applications, and the city shall respond to applications per the specific requirements of Tennessee Code Annotated, § 13-24-409(b)(3), as may be amended. The city reserves the right to require a surcharge as indicated in Tennessee Code Annotated, § 13-24-409(b)(7)(F)(i), as may be amended, for high-volume applicants.

(17) Bridge and/or overpass special provision. If the applicant's site plan includes any colocation design that includes attachment of any facility or structure to a bridge or overpass, then the applicant must designate a safety contact. After the applicant's construction is complete, the applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the applicant nor its contractors have discovered

evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, then the applicant shall provide notice of the evidence to the safety contact.

Any bridge on a state or federal route or state-owned structure will require review and permission from the TDOT - Structures Division. Any local bridge twenty feet (20') or greater in length must also have a review by the Tennessee Department of Transportation Structures Division and have a letter from the division stating that the proposed attachment(s) will not cause structural damage or reduce the weight limit of the bridge. Review and possible permits will be required by the appropriate railroad when any bridge owned by the railroad, any bridge over the railroad, any tunnel under the railroad any structure on railroad ROW that is proposed to have any attachments. Railroad review and possible permits will be required when there is any proposal to cross over or under any railroad ROW, whether attached to a bridge or not with any device or line of any type. Additionally all bridges within the city that have attachment proposals shall be reviewed by the public works department.

(18) Material changes. Unless otherwise agreed to in writing by the authority, any material changes to an application, as determined by the authority in its sole discretion, shall be considered a new application for purposes of the time limits set forth in § 16-504, unless otherwise provided by applicable laws.

(19) Information updates. Except as otherwise provided herein, any amendment to information contained in a permit application shall be submitted in writing to the city within thirty (30) days after the change necessitating the amendment.

(20) Fees and charges. (a) Small wireless facility permit application fee. Every applicant shall pay a one (1) time permit application fee of two hundred dollars (\$200.00) at the time of your first application.

(b) Batch application. For every batch application, an applicant shall pay a permit application fee of one hundred dollars (\$100.00) for each of the first five (5) small cell facilities, and fifty dollars (\$50.00) each for every facility thereafter for a maximum of twenty (20) small cell facilities per application.

(c) ROW use rate. In exchange for the privilege of non-exclusive occupancy of the public ROW, the provider shall pay the authority one hundred (\$100.00) per installation per year. The ROW use fee shall be due and payable within thirty (30) days of issuance of the applicable permit(s) required under this chapter and annually thereafter.

(d) Other fees. The applicant or provider shall be subject to any other generally applicable fees of the authority or other government body, such as those required for electrical permits, building permits, or other permits, which the applicant or provider shall pay as required in the applicable laws, as well as attachment fees for the use of authority owned

PSS/poles, towers, support structures, ducts, conduits or other structures in the public ROW, as set forth in attachment agreements authorizing such use.

(e) No refund. Except as otherwise provided in a small wireless facility permit, the provider may remove its communications facilities, PSS/poles or towers from the public ROW at any time, upon not less than thirty (30) days prior written notice to the authority, and may cease paying to the authority any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the public ROW. In no event shall a provider be entitled to a refund of fees paid prior to removal of its communications facilities, PSS/poles or towers. (as added by Ord. #4695-19, Aug. 2019 *Ch12\_6-20-20*)

**16-504. Application review.** (1) Review of small wireless facility applications. The authority shall review the application and, if the application conforms to applicable provisions of and this section, the authority shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

(a) Within thirty (30) days of receiving an application, the authority will notify the applicant whether the application is incomplete, and identify the missing information. The applicant may resubmit the completed application within thirty (30) days without additional charge, in which case the authority shall have thirty (30) days from receipt of the resubmitted application to verify the application is complete, notify the applicant that the application remains incomplete or, in the authority's sole discretion, deny the application; and

(b) Make its final decision to approve or deny the application within thirty (30) days for a colocation, and sixty (60) days for any new structure, after the application is complete (or deemed complete in the event the authority does not notify the applicant that the application or resubmitted application is incomplete).

(c) The authority shall advise the applicant in writing of its final decision.

(2) Review deadline. If the authority fails to act on an application within the sixty (60) day review period (or within the thirty (30) day review period for an amended application), the applicant may provide notice that the time period for acting has lapsed and may pursue final approval.

(3) Compensation. Every permit shall include as a condition the applicant's agreement to pay such lawful ROW use fees, business license taxes, and administrative fees as are permitted under applicable Tennessee and federal law. The applicant shall also pay all applicable ad valorem taxes, service fees, sales taxes, or other taxes and fees as may not or hereafter be lawfully imposed on other businesses within the city.

(4) Conferences. Staff will review submissions to determine if colocation or other alternative sites will meet the needs of the applicant(s) and the City of Johnson City. Conferences will be scheduled to resolve specific issues related to requests when safety is a concern, multiple providers are requesting to locate at/near the same location, proposed locations may be affected by planned construction or the authority believes that an alternative design might allow for co location on existing infrastructure rather than installation of a new pole. The review and conference will take place within the given time constraints of application review. (as added by Ord. #4695-19, Aug. 2019 *Ch12\_6-20-20*)

**16-505. Requirements for small wireless facilities in the right-of-way.**

(1) Administrative review. Pursuant to § 16-503, the authority shall perform an administrative review of permit applications according to the following location, design, and installation standards:

(a) Public ROW construction and installation requirements.

(I) The authority shall not issue a permit unless the applicant, or a provider on whose behalf the applicant is constructing communications facilities, PSS/poles or towers, has received all other applicable permits.

(b) Location of new facilities.

(i) The provider shall not locate or maintain its communications facilities, PSS/poles and towers so as to unreasonably interfere with the use of the public ROW by the authority, by the general public or by other persons authorized to use or be present in or upon the public ROW.

(ii) Pedestrian and vehicular paths shall not be impeded.

(iii) The provider shall not locate or maintain its communication facilities, PSS/poles and towers within a sight distance triangle as described in Article IV (4.11 - vision clearance) of the zoning code

(iv) The provider shall not locate or maintain its communication facilities, PSS/poles and towers so as to block the visibility of traffic control devices (signal heads, video detection cameras, preemption receivers, or signs). The equipment shall not block the access to traffic control equipment or block the view of traffic from existing traffic surveillance cameras.

(v) The provider shall refer to the "Manual on Uniform Traffic Control Devices: for Streets & Highways" for offsets/setbacks and the American Association of State Highway Transportation Officials (AASHTO) Design Guidelines for line of sight requirements based on speed limit and other factors at each proposed location. These requirements will be applied in locating

above ground PSS/poles over eighteen inches (18") in diameter and equipment cabinets over two feet (2') in height.

(vi) Identification requirements. For the purpose of georeferencing, each pole shall provide a unique identifier, as determined by the Authority, placed in a visible location.

(vii) Facilities must meet the National Electric Code standards for separation from other utilities

(c) Design standards/aesthetic plan. Unless otherwise specifically stated below, in an attempt to blend into the built environment, all small wireless facilities, new or modified utility poles, PSSs for the collocation of small wireless facilities, and associated equipment shall be consistent in size, mass, shape, and color to similar facilities and equipment in the immediate area, and its design for the PSS shall meet the adopted aesthetic plan, subject to following requirements:

(i) Collocation. Collocation is recommended, when possible except in the case of an existing decorative pole/period light. Should the wireless provider not be able to co locate, the wireless provider shall provide justification in the application.

(ii) Replacing an existing city-owned PSS. City-owned PSS may be replaced for the collocation of small wireless facilities. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of a PSS that is appropriate for that location, and must continue to be capable of performing a greater function or, at a minimum, the same function in a comparable manner as it performed prior to replacement.

(A) When replacing a city-owned PSS, the replacement PSS becomes the property of the city, subject to Tennessee Code Annotated, § 13-24-408(g), as may be amended.

(B) The city reserves the right to require a streetlight on the new PSS.

(iii) New poles. Any new PSS that is not a collocation or a replacement of an existing PSS must be approved by the city manager or his designee. New PSSs shall not be permitted to be installed in the rights-of-way in areas in which no utility poles, streetlight poles, or PSSs exist at the time of application without prior approval by the city manager or his designee.

(iv) Consistency. New small wireless facilities, antennas, and associated equipment shall conform with the design standards of the district in which it is located as listed below (see § 16-505(1)(c)(v)).

(v) Districts (see map § 16-505(1)(K)  
General commercial

- Facility height:
  - Maximum ten feet (10') in height above the tallest existing PSS in place in a ROW that is located within five hundred feet (500') of the new PSS in the ROW or fifty feet (50') above ground level; whichever is greater.
  - For a PSS installed in a residential neighborhood, forty feet (40') above ground level.
- Pole requirements: Pole type shall be approved by the director of public works.
- Pole diameter: Pole diameter shall be approved by the director of public works.
- Light requirements: Light type shall be approved by the director of public works.
- Size: Antenna fit within an enclosure of no more than six (6) cubic feet in volume and all other wireless equipment associated with the antenna, including the provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.
- Color: Pole color shall be approved by the director of public works.

#### General residential

- Facility height: Twenty-five feet (25') maximum.
- Pole requirements: Decorative pole and base or tapered steel pole.
- Pole diameter: Max. six inches (6") at height of five foot (5') on pole.
- Light requirements: Full cut-off, LED placed at height of fifteen feet (15').
- Size: Antenna fit within an enclosure of no more than six (6) cubic feet in volume and all other wireless equipment associated with the antenna, including the provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.
- Color: Black powder-coated historic residential.
- Facility height: Twenty-five feet (25') maximum.
- Pole requirements: Decorative pole and base.
- Pole diameter: Max. six inches (6") at height of five foot (5') on pole.
- Light requirements: Period-style light at height of fifteen feet (15').
- Size: Antenna fit within an enclosure of no more than six (6) cubic feet in volume and all other wireless equipment associated with the antenna, including the provider's

preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.

- Color: "Cultural district" Green or black powder-coated.

#### Historic commercial

- Facility height: Twenty-five feet (25') maximum.
- Pole requirements: Decorative pole and base.
- Pole diameter: Max. six inches (6") at height of five foot (5') on pole.
- Light requirements: Period-style light at height of fifteen feet (15').
- Size: Antenna fit within an enclosure of no more than six (6) cubic feet in volume and all other wireless equipment associated with the antenna, including the provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.
- Color: "Cultural district" green.

#### School zones and parks

- Facility height: Twenty-five feet (25') maximum.
- Pole requirements: Decorative pole and base or tapered steel pole.
- Pole diameter: Max. six inches (6") at height of five foot (5') on pole.
- Light requirements: Period-style light at height of up to twenty feet (20').
- Size: Antenna fit within an enclosure of no more than six (6) cubic feet in volume and all other wireless equipment associated with the antenna, including the provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.
- Color: Black powder-coated.

(d) Overlapping districts. If proposed location is located within multiple, overlapping districts, the stricter requirements will rule.

(e) Concealment and undergrounding measures.

(i) All conduit, wires, and other wireless hardware shall be located internal to the pole.

(ii) Unless otherwise agreed to in writing by the authority or otherwise required by applicable laws, whenever any existing electric utilities or communications facilities are located underground within a public ROW, the provider with permission to occupy the same portion of the public ROW shall locate its communications facilities underground at its own expense.

(iii) Compliance with underground facilities. Subject to waivers as determined by the Johnson City Regional Planning Commission, an applicant must comply with existing requirements



to place all electric, cable, and communications facilities underground in a designated area of a ROW, as determined by the city's subdivision regulations.

(iv) Limits on use of ground-mounted equipment for wireless facilities. Ground mounted equipment, limited to housing equipment and other supplies in support of the operation of the wireless facility, shall be placed in an underground vault. Where above-ground placement is necessary, a conference and approval by the authority is required. Stealth design shall be employed for above-ground equipment.

(f) Attachment to and replacement of decorative poles.

(i) Notwithstanding anything to the contrary in this chapter, an applicant may not install a small wireless facility on an existing decorative pole.

(ii) Notwithstanding anything to the contrary in this chapter, an applicant may not replace a decorative pole with a new decorative pole unless the authority has determined, in its sole discretion, that each of the following conditions has been met:

- The application qualifies for issuance of a permit under this chapter.
- The attachment and/or the replacement pole is in keeping with the aesthetics of the decorative pole/period light; and

(iii) notwithstanding anything to the contrary in this chapter, an applicant may not, replace a decorative pole with a new decorative pole, or install new above-ground communications facilities in the Downtown Historic District or the Tree Streets Historic Conservation District unless the authority has determined, in its sole discretion, that each of the following conditions has been met:

- The application qualifies for issuance of a permit under the chapter;
- The attachment and/or the replacement pole is in keeping with the aesthetics and character of the district;
- The attachment meets the secretary of the interior standards and
- The proposed support structure and wireless facility receives a certificate of appropriateness from the historic zoning commission.

(g) Period lights. Design must replicate existing lighting by district according to § 16-505(1)(c)(v) (see Figures 4 - 7 below).

(h) Limits on number and location of support structures that may be installed or used.

(i) Where sufficient pedestrian lighting is present, no new freestanding support structures shall be allowed

(ii) Where sufficient pedestrian lighting is present, only replacement structures shall be allowed which include an appropriately designed light pole/fixture.

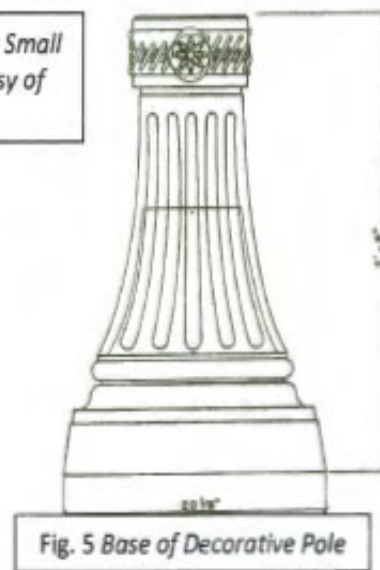
(iii) Where insufficient pedestrian lighting exist, a new pedestrian-scale decorative light pole may be considered for installation as a small cell support structure.

(i) Aesthetic approach for different types of facilities. Colocations on existing structures will use a design that limits visual clutter and conceals conduit, mounting brackets, and other hardware. No facilities or associated equipment shall be allowed to extend more than twenty-four inches (24") horizontally from a PSS.

(j) Additional criteria regarding the location, type, and/or design of small cell facilities and utility poles shall be subject to change. All changes shall be made available to the public for thirty (30) days prior to their effective date. In no case, shall any standards be retroactive. Facilities approved for which small wireless facility permits have been issued prior to the effective date of a new guideline shall not be affected.



*Fig. 4 Example of Period Light with Small Wireless Facility. Imagery courtesy of LCD Infrastructure*



*Fig. 5 Base of Decorative Pole*

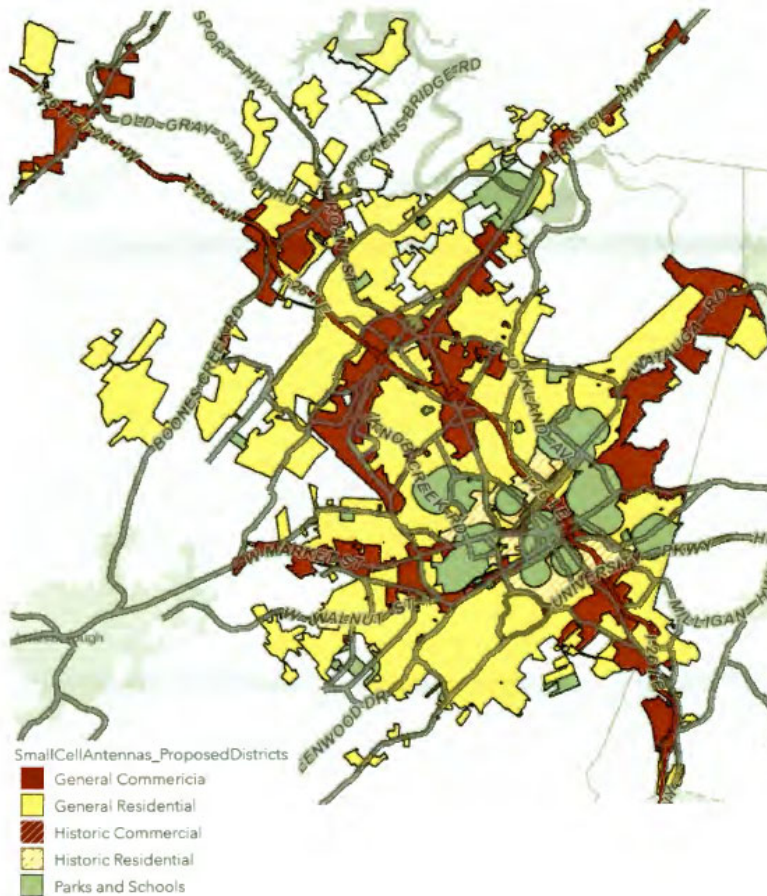


Fig. 6 Example of Cultural District Green Decorative Pole with Period Light



Fig 7 Example of Black Decorative Pole with Period Light

(k) Small cell design standards district map.



(2) Discretionary review. Unless otherwise provided in this chapter, approval from the Johnson City Regional Planning Commission shall be required for:

(a) Any wireless provider that seeks to construct or modify a PSS or wireless facility that is determined to not comply with the height, diameter, design, color standards and expectations set forth in subsection § 16-505(1).

(3) Construction standards. In performing any work in, or affecting the, public ROW, the provider, and any agent or contractor of the provider, shall comply with the provisions of this chapter and all other applicable municipal ordinances, and shall conform to the requirements of the following publications, as from time to time amended: The Rules of Tennessee Department of Transportation Right-of-Way Division, the National Electrical Code, and the National Electrical Safety Code, AASHTO Design Guidelines and Manual Uniform Traffic Control Devices, as might apply.

(a) General safety and compliance with laws. The permittee shall employ due care during the installation, maintenance or any other work in the ROW, and shall comply with all safety and public ROW-protection requirements of applicable laws, applicable codes, and any generally applicable authority guidelines, standards and practices, and any additional commonly accepted safety and public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable laws).

(b) Interference. The permittee shall not interfere with any existing facilities or structures in the public ROW, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any public ROW. The city's public works department must also be notified and concur with lane closures on all streets, including state routes.

(c) Utility locates. Before beginning any excavation in the Public ROW, the Permittee shall comply with "Tennessee 811 - CALL BEFORE YOU DIG" requirements.

(d) Restoration requirements. (i) The provider, or its agent or contractor, shall restore, repair and/or replace any portion of the public ROW that is damaged or disturbed by the provider's communications facilities, PSS/poles, towers or work in or adjacent to the public ROW. Restoration of pavement, sidewalks landscaping, grass, etc. shall be in accordance with the right of way excavation permit application.

(ii) If the provider fails to timely restore, repair or replace the public ROW as required in this subsection, the authority or its contractor may do so and the provider shall pay the authority's costs and expenses related to such work, including any delay

damages or other damages the authority incurs arising from the delay.

(e) Traffic control. Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the authority.

(f) Removal, relocation and abandonment. (i) Within thirty (30) days following written notice from the authority, the provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its communications facilities, PSS/poles, support structures or towers within the public ROW or utility easement, including relocation of above-ground communications facilities underground (consistent with the provisions of this chapter), whenever the authority has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any authority improvement, the operations of the authority in, under or upon the public ROW, or otherwise is in the public interest. The provider shall be responsible to the authority for any damages or penalties it may incur as a result of the provider's failure to remove or relocate communications facilities, PSS/poles, support structures or towers as required in this subsection.

(ii) The authority retains the right and privilege to cut or move any communications facility, PSS/pole, support structure or tower located within the public row of the authority, as the authority may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the authority shall notify the provider and give the provider an opportunity to move its own facilities prior to cutting or removing the communications facility, PSS/pole, support structure or tower. In all cases, the authority shall notify the provider after cutting or removing the communications facility, PSS/pole, support structure or tower as promptly as reasonably possible.

(iii) A provider shall notify the authority of abandonment of any communications facility, PSS/pole, support structure or tower at the time the decision to abandon is made, however, in no

case shall such notification be made later than thirty (30) days prior to abandonment. Following receipt of such notice, the provider shall remove its communications facility, PSS/pole, support structure or tower at the provider's own expense, unless the authority determines, in its sole discretion, that the communications facility, PSS/pole, support structure or tower may be abandoned in place. The provider shall remain solely responsible and liable for all of its communications facilities, PSS/poles, support structures and towers until they are removed from the public row unless the authority agrees in writing to take ownership of the abandoned communications facilities, PSS/poles, support structures or towers.

(iv) If the provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its communications facilities, PSS/poles, support structures or towers or remove any of its abandoned communications facilities, PSS/poles, support structures or towers as required in this subsection, the authority or its contractor may do so and the provider shall pay all costs and expenses related to such work, including any delay damages or other damages the authority incurs arising from the delay.

(g) As-built maps. As the city controls and maintains the right-of-way for the benefit of its citizens, it is the responsibility of the city to ensure that such public right-of-way meet the highest possible public safety standards. Upon request by the city and within thirty (30) days of such a request, a permittee shall submit to the public works department (or shall have otherwise maintained on file with the department) as-built maps and engineering specifications depicting and certifying the location of all its existing small wireless facilities within the right-of-way, provided in standard electronic or paper format in a manner established by the director of public works, or his or her designee. Permittees must also submit shape files for location specific data to the city's geographic information system division. Such maps/data are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Public Records Act (Tennessee Code Annotated, § 510-7-101, et seq.) to the maximum extent of the law. After submittal of the as-built maps as required under this section, each permittee having small wireless facilities in the city right-of-way shall update such maps as required under this chapter upon written request by the city.

(h) Insurance requirements. Each permittee shall, at all times during the entire term of the small wireless facilities permit, maintain and require each contractor and subcontractor to maintain insurance with a reputable insurance company authorized to do business in the

State of Tennessee and which has an A.M. Best rating (or equivalent) no less than "A" indemnifying the city from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of permittee's wireless facilities in the rights-of-way. The amounts of such coverage shall be not less than the following:

(i) Worker's compensation and employer's liability insurance. Tennessee statutory requirements.

(ii) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations; independent contractors contractual liability; products/completed operations; X, C, U coverage; and personal injury coverage with limits no less than one million dollars (\$1,000,000.00) per occurrence, combined single limit and ten million dollars (\$10,000,000.00) in the aggregate.

(iii) Commercial automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this article with limits no less than one million dollars (\$1,000,000.00) per occurrence combined single limit each accident.

(iv) Commercial excess or umbrella liability. Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

(v) The city shall be designated as an additional insured for ongoing and completed operations under each of the insurance policies required by this section except worker's compensation and employer's liability insurance. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this section. Permittee shall provide the city with at least thirty (30) days advance written notice of any material changes or cancellation of any required insurance policy or in the case of non-payment of premium, at least ten (10) days written notice of cancellation.

(vi) Permittee shall impose similar insurance requirements as identified in this section on its contractors and subcontractors.

(i) Indemnification. Each permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the city, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance, removal or

abandonment of permittee's wireless system or wireless facilities in the rights-of-way. Each permittee shall defend any actions or proceedings against the city in which it is claimed that personal injury, including death, or property damage was caused by the permittee's construction, installation, operation, maintenance or removal of permittee's wireless system or wireless facilities in the rights-of-way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorney's fees, reasonable expert fees, court costs and all other reasonable costs of indemnification.

(j) Use of conduit. Permittees using space in ducts, conduits and on PSS/poles must comply with the terms of this code, unless expressly exempted by the authority.

(k) Right to inspect. With just and reasonable cause, the city shall have the right to inspect all of the small wireless facilities, including aerial facilities and underground facilities, to ensure general health and safety with respect to such facilities and to determine compliance with the terms of this chapter and other applicable laws and regulations. Any permittee shall be required to cooperate with all such inspections and to provide reasonable and relevant information requested by the city as part of the inspection.

(l) Application fees and bonds. Unless otherwise provided by applicable laws, all applications pursuant to this chapter shall be accompanied by the fees required under subsection § 16-503(20). Unless otherwise provided as part of permitting or agreed to in writing by the authority, a performance bond or other form of surety acceptable to the Authority equal to at least one hundred percent (100%) of the estimated cost of the work within the public ROW shall be provided before the applicant commences work. (as added by Ord. #4695-19, Aug. 2019 *Ch12\_6-20-20*)

**16-506. Violation of this chapter.** In the event a reasonable determination is made that a person has violated any provision of this chapter, or a small wireless facility permit, such person shall be provided written notice of the determination and the specific, detailed reasons therefor. Except in the case of an emergency, the person shall have thirty (30) days to commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the city, in its reasonable judgment, may extend the time period to cure, provided that the person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the city may take all actions authorized by this chapter and/or Tennessee law and regulations. (as added by Ord. #4695-19, Aug. 2019 *Ch12\_6-20-20*)