

TITLE 16

STREETS AND SIDEWALKS, ETC.¹

CHAPTER

1. EXCAVATIONS AND CUTS.
2. WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

CHAPTER 1

EXCAVATIONS AND CUTS

SECTION

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16-101. Intent and purpose. In order to provide for the public health, safety and welfare of the citizens of the Town of Thompson's Station, as well as to ensure the structural integrity of the town's streets and related infrastructures; to minimize the disruption to the traveling public; and to ensure the costs incurred by the town to maintain and manage the rights-of-way and that they are properly allocated among the various users of the rights-of-way,

¹Municipal code references

Related motor vehicle and traffic regulations: title 15.

Heavy trucks regulations: title 15, chapter 3.

the town hereby establishes standards for authorizing and managing the placement of facilities in rights-of-way; performing installation, maintenance, and other work in the rights-of-way; and appropriately recovering costs incurred by the town related to such activities. (Ord. #07-015, Sept. 2007)

16-102. Permit required. (1) It shall be unlawful for any person, firm, corporation, public or private utility, association, or others to make any cut or excavation in any street, curb, sidewalk, alley, or public rights-of-way in the town without having first obtained a rights-of-way construction permit, as herein required, and without complying with the provisions of this chapter; and it shall be unlawful to violate, or to vary from, the terms of any such permit; provided, however, any person maintaining existing pipes, lines, driveways, or other facilities in or under the surface of any public rights-of-way may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately; provided the permit could not reasonably and practicably have been obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the town administrator is open for business, and said permit shall be retroactive to the date when the work was begun; however, the town administrator or his designee shall have the authority to waive emergency permits.

(2) No one shall cut, build, or maintain a commercial or residential driveway across public rights-of-way without first obtaining a right-of-way construction permit from the town administrator or his designee and receiving the necessary lines and grades from the town engineer. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrian and/or vehicular traffic. (Ord. #07-015, Sept. 2007)

16-103. Applications. Applications for such permits shall be made to the town administrator, or such person designated by him to receive such applications, and shall include, but not be limited to, the following:

- (1) Name of the owner or operator of the facility;
- (2) A sketch or drawing of the project;
- (3) Dates of the construction activity, the proposed start and stop times and any proposal to temporarily reopen any roadway for any "peak hour" period;
- (4) The names of any known subcontractors working on the proposed project under the applicant's responsibility and authority;
- (5) Proof of payment of all money due the town for rights-of-way construction permit fees and any invoiced cost, loss, damage, or expense suffered by the town as a result of the applicant's prior construction activity including, but not limited to, any emergency action taken by the town;
- (6) Evidence that the applicant has obtained the insurance coverage required by § 16-112;

- (7) A traffic control plan if traffic is going to be impacted;
- (8) A list of the applicant's emergency providers, including name of company, local contact person, mailing and e-mail address, twenty-four (24) hour emergency phone number, and pager or fax number. This information shall be kept current by written notice to the town administrator or his designee; and
- (9) For major projects, as determined by the town administrator or his designee the following may be required:
 - (a) Detailed engineering plans. The plans shall show the location and area of the proposed project, the locations of all existing and proposed equipment and/or facilities, the height and/or depth of the proposed equipment and/or existing facilities, and the spatial relationship with any adjacent infrastructure, rights-of-way line, easement, utility, and/or other physical features. The plans shall be prepared under the direction of and signed by a registered professional engineer, and shall meet the size and scale as set forth in the Department of Public Works' Standard Design Criteria Manual;
 - (b) A copy of the engineering plans in an electronic format acceptable to the town administrator or his designee; and
 - (c) The applicant shall meet with the town administrator or his designee for a pre-work conference prior to issuance of a rights-of-way construction permit. (Ord. #07-015, Sept. 2007)

16-104. Failure to apply. Any person that fails to comply with § 16-103 shall be precluded from obtaining any rights-of-way construction permit or performing any further construction within the town's rights-of-way for up to three (3) months from the date of notification, in addition to any monetary penalty imposed by the town.

The fee for such rights-of-way construction permits shall be set by resolution as adopted by the Board of Mayor and Aldermen of the Town of Thompson's Station. (Ord. #07-015, Sept. 2007)

16-105. Deposit. It shall be the responsibility of the permittee to place with the Town of Thompson's Station a cash deposit or a surety bond either by the job or activity or on an annual basis. The amount of the deposit shall be determined by the town administrator or his designee based upon the size and nature of the permitted work within the rights-of-way. The town may use the deposit to cover its cost should a failure of restoration work occur to the public rights-of-way facility. (Ord. #07-015, Sept. 2007)

16-106. Manner of excavating; barricades, signage and lights. Any person, firm, corporation, public or private utility, association, or others making any excavation or tunnel shall do so according to the specifications and standards issued by the Town of Thompson's Station and must comply with the provisions of the Tennessee Underground Utility Damage Prevention Act

(Tennessee Code Annotated, §§ 65-31-101, et seq.). Sufficient and proper barricades, signage, and lights shall be maintained to protect persons and property from injury by or because of the excavations being made. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. It shall be the responsibility of the permittee to adhere to the manual on uniform traffic-control devices. (Ord. #07-015, Sept. 2007)

16-107. Restoration of public rights-of-way. Any person, firm, corporation, public or private utility, association or others making any excavation or tunnel in or under any street, curb, alley or public rights-of-way in the town shall backfill said street, curb, alley or public rights-of-way and restore the same including final surfacing to town specifications and standards promptly upon the completion of the work for which the excavation or tunnel is made. Final surfacing may be done by the town at the expense of the entity for which the excavation or tunnel is made, if requested; providing that town crews can schedule the work within twenty-four (24) hours of this request: If not, the entity will be required to place final surfacing in accordance with the requirements of this chapter. No excavation or tunnel in or under any street, curb, sidewalk, alley, or public rights-of-way shall be permitted to obstruct the flow of traffic unless the permit holder coordinates with the town engineer or town administrator and provides a plan to address the impact on traffic flow. In the event final resurfacing cannot be completed immediately after backfilling, the entity shall use temporary resurfacing materials such as coldmix or steel plate or an approved detour around such opening or excavation which would aid the flow of traffic.

The detour must be approved by the town administrator prior to establishing any such detour. Such detour routes must be adequately signed and marked according to the Manual on Uniform Traffic-Control Devices. Maintenance of signage and markings will be the responsibility of the permittee. (Ord. #07-015, Sept. 2007)

16-108. Existing facilities in rights-of-way. Each existing right-of-way occupant with more than one hundred linear feet (100') of facilities shall provide the town the following information:

(1) The name, address, telephone number and form of business of the individual, company or corporation owning facilities within the public rights-of-way of the Town of Thompson's Station, and the names and addresses of all persons authorized to act on behalf of the individual, company or corporation;

(2) The name, address and telephone number of a responsible person whom the town may notify or contact at any time concerning the rights-of-way occupant's facilities;

(3) A detailed description of the physical facilities owned, operated, managed or leased by the rights-of-way occupant. Detailed description is to include, but not be limited to, as built drawings and plans of existing facilities showing the locations of the facilities, including any manholes or overhead poles, the size, type and depth of any conduit or other enclosures, and the relationship of the system to all other existing poles, utilities, sidewalks, pavement, telecommunication facilities, and other improvements within the rights-of-way.

Such information must be submitted in hard copy and, if available, digitally. Any individuals, companies and corporations who have failed to provide the information required in this section shall be prohibited from making extensions, modifications or improvements to any existing facilities within the rights-of-way of the Town of Thompson's Station and will not be approved to install any new facilities within the rights-of-way of the Town of Thompson's Station until the information required in this section is provided. Nothing in this section shall be construed as granting permission or authority for an unauthorized facility to remain in the town's rights-of-way. (Ord. #07-015, Sept. 2007)

16-109. Perpetual care. Any person, firm, corporation, public or private utility, association, or others affecting a public rights-of-way within the town, shall be responsible for any defects which occur to the public facility within the public rights-of-way due to workmanship or materials. The cost for repairs shall be the responsibility of the utility owners of the facility which was placed within the Town of Thompson's Station rights-of-way. The town engineer will be responsible for making the repairs or having the work contracted. The town may allow the utility to make the repair if requested to do so. Repairs shall be made in accordance with specifications furnished by the Town of Thompson's Station or the town's engineering consultants. (Ord. #07-015, Sept. 2007)

16-110. Inspection. It shall be the responsibility of any person, firm, corporation, public or private utility, association, or others to call the director of public works for an inspection of the permitted facility as required by the rights-of-way construction permit. The permit shall specify, based upon the size and scope of the permitted work, the type of inspection to be required. The cost of all inspections shall be borne by the owner of the permitted work whether the work is performed by the staff of the Town of Thompson's Station or by a third party service. The permittee is to be bound by the rules and regulations as specified on the permit. (Ord. #07-015, Sept. 2007)

16-111. Specifications. Each rights-of-way construction permit shall be assigned a set of restoration specification standards. These specifications will be referenced by number and so indicated on the permit. It shall be the responsibility of the town engineer to maintain and provide the specification standards. The permittee may request a copy as required. The cost of the

specification shall be limited to reproduction cost and paid by the permittee. (Ord. #07-015, Sept. 2007)

16-112. Insurance. In addition to making the deposit hereinbefore provided to be made, each person applying for a rights-of-way construction permit shall file a certificate of insurance or other suitable instrument indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of the insurance shall be prescribed by the town administrator in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury in effect shall not be in an amount less than the current limits found in the Tennessee Governmental Tort Liability Act (Tennessee Code Annotated, §§ 29-20-101, et seq.). (Ord. #07-015, Sept. 2007)

16-113. Indemnification. Each rights-of-way occupant and permittee shall, at its sole cost and expense, indemnify, hold harmless, and defend the town, its elected and appointed officials, officers, boards, commissions, commissioners, agents, employees, and volunteers against any and all claims, suits, causes of action (whether frivolous or otherwise) proceedings, and judgments for damages or equitable relief arising out of the installation, construction, maintenance, or operation of facilities by the rights-of-way occupant or permittee; the conduct of the rights-of-way occupant's business in the town; or in any way arising out of the rights-of-way occupant's enjoyment or exercise of the privileges granted by the town or applicable law, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the town, other applicable law, or the terms of any grant to occupy the rights-of-way.

Each rights-of-way occupant and permittee shall indemnify and hold harmless the town, and its elected and appointed officers, officials, boards, commissions, commissioners, employees, agents, and volunteers from and against any and all claims, demands, suits, or causes of action (whether frivolous or otherwise) of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the town arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the rights-of-way occupant or permittee, or its agents, independent contractors, or employees related to or in any way arising out of the construction, operation or repair of the facilities in question.

The indemnity provision of this section includes, but is not limited to, the town's reasonable attorneys' fees incurred in defending against any such action,

claim, suit (whether frivolous or otherwise), or proceeding, as well as the reasonable value of any services rendered by the town attorney, or town staff or employees.

Nothing in this chapter shall be construed to waive any immunity the town enjoys under applicable law, or the Tennessee Constitution.

Acceptance of the provisions of this section shall be a condition of all rights to occupy town rights-of-way or to obtain a rights-of-way construction permit. (Ord. #07-015, Sept. 2007)

16-114. Time limits. Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement, or until the refill is made ready for the pavement to be put on by the town if the town restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the town administrator. (Ord. #07-015, Sept. 2007)

16-115. Supervision. The town administrator or his designee shall monitor all excavations and tunnels being made in or under any public street, curb, sidewalk, alley, or other public rights-of-way in the town and see to the enforcement of the provisions of this chapter. Notice shall be given to him before the work of refilling any such excavation or tunnel commences and said work may not commence until the inspector arrives at the site or gives verbal permission to proceed. (Ord. #07-015, Sept. 2007)

16-116. Stop work order. If at any time that any person, firm, corporation, public or private utility, association, or others is making any cut or excavation in any street, curb, alley, or public rights-of-way, or is tunneling under any street, curb, alley, or public rights-of-way in the town and it is determined by the town administrator or his designee that the work being performed is not in compliance with the town's regulations, state or federal regulations or recognized construction and/or safety practices, the town administrator or his designee shall issue a stop work order and the person, firm, corporation, public or private utility, association, or others that is making the cut or excavation in any street, sidewalk, curb, alley, or public rights-of-way, or is tunneling under any street, sidewalk, curb, alley, or public rights-of-way shall cease work in the town's rights-of-way until corrective measures are taken and the town administrator or his designee rescinds the stop work order. (Ord. #07-015, Sept. 2007)

16-117. Facility relocation. A rights-of-way occupant shall, within three (3) months from the date of notification, at its own expense, permanently relocate, protect, or modify any part of its facility when required by the town by reason of traffic safety, public safety, road construction, change of street grade,

installation of water, stormwater, or sanitary pipes, traffic signal devices, or any other types of town improvement projects. The town administrator may recommend such actions in order to prevent interference by the rights-of-way occupant's facilities with: a present or future town use of the town's rights-of-way; or a capital improvement project funded and scheduled to be undertaken by the town; or an economic development project in which the town has an interest or investment. The town administrator may also recommend such actions: when the public health, safety and welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the rights-of-way, both vehicular and pedestrian; or when above-ground equipment is located in such a manner as to create an obstruction to a driver's line of sight. The rights-of-way occupant may for due cause make application to the town administrator or his designee for an extension to complete such relocation as required by this section.

Failure by the rights-of-way occupant to relocate its facilities within the three (3) months from date of notification shall result in the rights-of-way occupant being assessed liquidated damages for each day of the delay. The daily amount of liquidated damages shall be determined by the liquidated damages contained in any construction contract(s) the town may have entered into in conjunction with infrastructure improvements that necessitate the need for the rights-of-way occupant to relocate its facilities. In those cases where the town is performing the infrastructure improvements with town forces, the amount of the daily liquidated damages shall be the average of the daily liquidated damages amounts found in all town contracts for the past two (2) years commencing with the date of notification referenced above. If the rights-of-way occupant fails to pay the town for the liquidated damages as charged, the total amount of liquidated damages (daily amount x the number of days delayed) shall be attached to the cost of any future permit the rights-of-way owner may apply for, to install, extend or improve their facilities within the town's rights-of-way and no permit shall be issued until the total costs are paid. (Ord. #07-015, Sept. 2007)

16-118. Violations and penalty. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable by civil penalty not to exceed fifty dollars (\$50.00). Each day a violation occurs shall constitute a separate offense. Nothing herein shall prohibit the town from seeking other remedies, including injunctive relief or claims for damages to its rights-of-way to enforce the purposes of this chapter. (Ord. #07-015, Sept. 2007)

CHAPTER 2

WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

SECTION

- 16-201. Purpose and scope.
- 16-202. Definitions.
- 16-203. Permitted use; application and fees.
- 16-204. Facilities in the ROW; maximum height; other requirements.
- 16-205. Effect of permit.
- 16-206. Maintenance, removal, relocation or modification of small wireless facility and fiber in the ROW.
- 16-207. Public right-of-way rates—attachment to town-owned/leased PSSs and new PSSs installed within the public right-of-way or town-owned/leased property.
- 16-208. Remedies; violations.
- 16-209. General provisions.

16-201. Purpose and scope. (1) Purpose. In accordance with Tennessee Code Annotated §§ 13-24-401, et seq., known as "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018," the purpose of this chapter is to establish policies and procedures for the placement of small wireless facilities in the public rights-of-way within the town's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the town's rights-of-way and to the town as a whole.

(2) Intent. In enacting this chapter, the town is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- (b) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (c) Prevent interference with the facilities and operations of facilities lawfully located in public rights-of-way or public property;
- (d) Protect against environmental damage, including damage to trees;
- (e) Preserve the character of the neighborhoods, areas, and zones in which facilities are installed; and
- (f) Facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services.

(3) Conflicts with other chapters. This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict. (as added by Ord. #2019-009, Nov. 2019 **Ch2_8-2-21**)

16-202. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Aesthetic plan." Any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the town or designated area within the town. 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) "Antenna." communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(3) "Applicable codes." Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this chapter.

(4) "Applicant." Any person or entity who submits an application pursuant to this part.

(5) "Application." A request submitted by an applicant to the Town of Thompson's Station:

(a) For a permit to deploy or collocate small wireless facilities in the rights-of-way; or

(b) To approve the installation or modification of a Potential Support Structure (PSS) associated with deployment or collocation of small wireless facilities in the rights-of-way.

(6) "Authority-owned PSS" or "Town-owned PSS." A PSS owned or leased by the town in the rights-of-way, including:

(a) A utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for traffic cameras or signage; and

(b) A pole or similar structure owned/leased by the town in the rights-of-way that supports only wireless facilities. Authority-owned PSS does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned.

(7) "Collocate," "collocating," and "collocation." In their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace small

wireless facilities on, adjacent to, or related to a PSS. "Colocation" does not include the installation of a new PSS or replacement of authority-owned PSS;

(8) "Communications facility." The set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service.

(9) "Communications service." Cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service.

(10) "Communications service provider." 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 § 7-59-303, or a wireless provider.

(11) "Day." Calendar day.

(12) "Fee." A one (1) time, non-recurring charge.

(13) "Micro wireless facility." A small wireless facility that:

(a) Does not exceed twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height; and

(b) The exterior antenna, if any, does not exceed eleven inches (11") in length.

(14) "Permittee." An applicant who has been granted a permit.

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

(16) "Potential support structure for a small wireless facility" or "PSS." A pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the colocation 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.

(17) "Rate." A recurring charge.

(18) "Residential neighborhood." An area within the town's geographic boundary that is zoned or otherwise designated by the town for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas.

(19) "Right-of-way" or "ROW." The space in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the town, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority

that are contiguous to paved roads, but excluding lands other than streets that are owned by the town.

(20) "Right-of-way use permit" or "permit." A permit for the construction or installation of wireless facilities, small wireless facilities, wireless backhaul facilities, fiber optic cable, conduit, and associated equipment necessary to install wireless facilities in the right-of-way.

(21) (a) "Small wireless facility." A wireless facility with:

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

(ii) Other wireless equipment in addition to the antenna that 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 subdivision, "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.

(b) "Small wireless facility" includes a micro wireless facility.

(22) "Town." Town of Thompson's Station, Tennessee.

(23) "Wireline backhaul facility." A communications facility used to transport communications services by wire from a wireless facility to a network;

(24) (a) "Wireless facility." Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(i) Equipment associated with wireless communications; and

(ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(b) "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is collocated;

(ii) Wireline backhaul facilities; or

(iii) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(c) "Wireless facility" includes small wireless facilities.

(25) "Wireless infrastructure provider." Any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or PSSs, but that is not a wireless services provider.

(26) "Wireless provider." A wireless infrastructure provider or a wireless services provider.

(27) "Wireless services." Any service using licensed or unlicensed spectrum, including the use of Wifi, whether at a fixed location or mobile, provided to the public.

(28) "Wireless services provider." A person who provides wireless services. (as added by Ord. #2019-009, Nov. 2019 *Ch2_8-2-21*)

16-203. Permitted use; application and fees. (1) Permitted use. Collocation of a small wireless facility or installation of a new, replacement, or modified PSS shall be a permitted use, subject to the restrictions in this title.

(2) Permit required. No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first obtaining a right-of-way use permit from the town. Any right-of-way use permit shall be reviewed, issued, and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the town 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) Permit applications. All applications for right-of-way use permits filed pursuant to this chapter shall be on a form, paper or electronic, provided by the town. The applicant may include up to twenty (20) small wireless facilities within a single application. The 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 page of such materials accordingly.

(4) Application requirements. The application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

(a) The applicant's name, address, telephone number, and e-mail address;

(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 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 town 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;

(d) The location of the site(s), including the latitudinal and longitudinal coordinates of the specific location(s) of the site;

(e) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval from the third party;

(f) 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 non-discriminatory 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;

(g) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements (as set forth 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, if any, that the town 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 town imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW;

(h) 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 and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer; and

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

(5) Approval or denial of application; response time. The town 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 town shall respond to applications per the specific requirements of Tennessee Code Annotated, § 13-24-409(b)(3), as may be amended. The town 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.

(6) Deployment after permit. An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the town and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection, then the town may require that the applicant complete a new application and pay an application fee associated with the new application.

(7) Multiple permit applications at same location. If the town receives multiple applications seeking to deploy or collocate small wireless facilities at the same location in an incompatible manner, then the town may deny the later filed application, as priority for locations shall be given on a first come, first served bases and as allowed.

(8) Bridge and/or overpass special provision. If the applicant's site plan includes any collocation 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.

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

(10) Application fees. Unless otherwise provided by law, all permit applications for small wireless facility pursuant to this chapter shall be accompanied by a fee in accordance with Tennessee Code Annotated, § 13-24-407. This fee shall be one hundred dollars (\$100.00) each for the first five (5) small wireless facilities and fifty dollars (\$50.00) each for additional small wireless facilities included in a single application. There shall also be a fee of two hundred dollars (\$200.00) for all first-time applicants. Applications fees shall increase by ten percent (10%) on January 1, 2020, and every five (5) years thereafter, rounded to the nearest dollar. (as added by Ord. #2019-009, Nov. 2019 *Ch2_8-2-21*)

16-204. Facilities in the ROW; maximum height; other requirements. (1) Aesthetic plan. Unless otherwise determined by town staff, 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:

(a) Collocation is recommended, when possible. Should the wireless provider not be able to collocate, the wireless provider shall provide justification in the application;

(b) When unable to match the design and color of existing utility poles/PSSs in the immediate area small wireless facilities and/or new PSSs shall be designed using stealth or camouflaging techniques, to make the installation as minimally intrusive as possible including stealth poles that are black or bronze in color, powder-coated and that do not exceed sixteen inches (16") in diameter. The town reserves the right to require a street light on the PSS. New wooden PSSs shall be strictly prohibited;

(c) When an applicant seeks to deploy a small wireless facility, and associated equipment, within a residential neighborhood, then the applicant must deploy the facility in the right-of-way within twenty-five feet (25') of the property boundaries separating residential lots larger than three-fourths (3/4) acres and within fifteen feet (15') of the property boundaries separating residential lots if lots are three-fourths (3/4) acres or smaller; and

(d) New small wireless facilities, antennas, and associated equipment shall be consistent in size, mass, and color to similar facilities and equipment in the immediate area of the proposed facilities and equipment, minimizing the physical and visual impact to the community.

(2) Compliance with underground facilities. Subject to waivers as determined by the Town of Thompson's Station 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 town's zoning regulations.

(3) Replacing an existing town-owned PSS. Town-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 the PSS being replaced, and must continue to be capable of performing the same function in a comparable manner as it performed prior to replacement.

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

(b) The town reserves the right to require a street light on the new PSS.

(4) Maximum height. A new PSS installed or an existing PSS replaced in the ROW shall not exceed the greater of:

(a) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;

(b) Fifty feet (50') above ground level; or

(c) For a PSS installed in a residential neighborhood, forty feet (40') above ground level.

(5) Maximum height for small wireless facilities. Small wireless facilities shall not extend:

(a) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(b) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(6) Construction in the rights-of-way. All construction, installation, maintenance, and operation of wireless facilities in the right-of-way by any wireless provider 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, as might apply.

(7) Town of Thompson's Station Planning Commission approval. Unless otherwise provided in this chapter, the Town of Thompson's Station Planning Commission approval 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 subsections (1) through (6) above.

(b) 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 Town of Thompson's Station Planning Commission.

(8) 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 and compiled into a set of guidelines titled, "Town of Thompson's Station Guidelines for Wireless Communications Facilities in the Public Right-of-Way." In no case shall any guidelines be retroactive. Facilities approved for which right-of-way use permits have been issued prior to the effective date of a new guideline shall not be affected. (as added by Ord. #2019-009, Nov. 2019 *Ch2_8-2-21*)

16-205. Effect of permit. (1) Authority granted; no property right or other interest created. A permit authorizes an applicant to undertake only certain activities in accordance with this chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(2) Duration. No permit issued under this chapter shall be valid for a period longer than twelve (12) months unless construction has commenced within that period and is thereafter diligently pursued to completion. In the event that construction begins but is inactive for more than ninety (90) days, the permit expires.

(3) Termination of permit. In all other circumstances, the permit expires in twelve (12) months. (as added by Ord. #2019-009, Nov. 2019 *Ch2_8-2-21*)

16-206. Maintenance, removal, relocation or modification of small wireless facility and fiber in the ROW. (1) Notice. Within ninety (90) days following written notice from the town, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities and support structures within the rights-of-way whenever the town has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any town improvement in or upon, or the operations of the town in or upon, the rights-of-way. The town agrees to use good faith efforts to accommodate any such disconnection, removal, relocation, change, or alteration and to assist with identifying and securing a mutually agreed upon alternative location,

(2) Maintenance of existing facilities. With respect to each wireless facility installed pursuant to a right-of-way use permit, permittee is hereby permitted to enter the right-of-way at any time to conduct repairs, maintenance or replacement not substantially changing the physical dimension of the wireless facility. Permittee shall comply with all rules, standards and restrictions applied by the town to all work within the right-of-way. If required by the town, permittee shall submit a "maintenance of traffic" plan for any work resulting in significant blockage of the right-of-way. However, no excavation or work of any kind may be performed without a permit, as provided herein, except in the event of an emergency. In the event of emergency, permittee shall attempt to provide advance written or oral notice to the public works director or other town designee.

(3) Removal of existing facilities. If the permittee removes any wireless facilities, it shall notify the town of such change within sixty (60) days.

(4) Damage to facilities or property. A permittee, including any contractor or subcontractor working for a permittee, shall avoid damage to any wireless facilities and/or public or private property. If any wireless facilities and/or public or private property are damaged by permittee, including any contractor or subcontractor working for permittee, the permittee shall promptly commence such repair and restore (to a comparable or better condition) such property within ten (10) business days unless such time period is extended by the public works director or his designee. Permittee shall utilize the Tennessee One Call System prior to any disturbance of the rights-of-way and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.

(5) Emergency removal or relocation of facilities. The town retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the town, as the town may determine to be necessary,

appropriate or useful in response to any serious public health or safety emergency. If circumstances permit, the town shall notify the wireless provider in writing and provide the wireless provider a reasonable opportunity to move its own wireless facilities prior to cutting or removing a wireless facility and shall notify the wireless provider after cutting or removing a wireless facility. Any removal shall be at the wireless provider's sole cost. Should the wireless facility be collocated on property owned by a third-party, the town shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal.

(6) Abandonment of facilities. Upon abandonment of a small wireless facility within the rights-of-way of the town, the wireless provider shall notify the town within ninety (90) days. Following receipt of such notice the town may direct the wireless provider to remove all or any portion of the small wireless facility if the town reasonably determines that such removal will be in the best interest of the public health, safety and welfare. Should the wireless facility be collocated on property owned by a third-party, the town shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal. Any removal shall be at the wireless providers sole cost.

(7) No application, fee, rate, and/or approval is required for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in Tennessee Code Annotated, § 68-101-104. (as added by Ord. #2019-009, Nov. 2019 *Ch2_8-2-21*)

16-207. Public right-of-way rates—attachment to town-owned/leased PSSs and new PSSs installed within the public right-of-way or town-owned/leased property. (1) Annual rate. The rate to place a small wireless facility on a town-owned or leased PSS in the rights-of-way shall be one hundred dollars (\$100.00) per year for all town-owned or leased PSSs in the rights-of-way. All equipment attached to a town-owned pole shall constitute a single attachment and therefore a single use of a town-owned PSS. Such compensation, for the first year or for any portion thereof, together with the application fee specified in this chapter shall be the sole compensation that the wireless provider shall be required to pay the town. This rate will be due January 1 of each year of the permit.

(2) A wireless provider authorized to place a new PSS within public right-of-way on town-owned or leased property shall pay to the town for use of the right-of-way or property in the amount of one hundred dollars (\$100.00). This rate will be due January 1 of each year of the permit. (as added by Ord. #2019-009, Nov. 2019 *Ch2_8-2-21*)

16-208. Remedies; violations. In the event a reasonable determination is made that a person has violated any provision of this chapter, or a right-of-way use 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 town, 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 town may take all actions authorized by this chapter and/or Tennessee law and regulations. (as added by Ord. #2019-009, Nov. 2019 **Ch2_8-2-21**)

16-209. General provisions. (1) **Insurance.** Each permittee shall, at all times during the entire term of the right-of-way use 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 AA Best rating (or equivalent) no less than "A" indemnifying the town 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:

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

(b) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits as specified in Appendix A - Comprehensive Fees and Penalties but in no case less than one million dollars (\$1,000,000.00) per occurrence, combined single limit and two million dollars (\$2,000,000.00) in the aggregate.

(c) Commercial automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this article XII for limits as specified in Appendix A - Comprehensive Fees and Penalties, but in no case less than one million dollars (\$1,000,000.00) per occurrence combined single limit each accident.

(d) 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.

The town shall be designated as an additional insured 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 town with at least thirty (30) days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of premium of the policy coverages.

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

(2) Indemnification. Each permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the town, 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 or removal of permittee's wireless system or wireless facilities in the rights-of-way. Each permittee shall defend any actions or proceedings against the town 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 attorneys' fees, reasonable expert fees, court costs and all other reasonable costs of indemnification.

(3) As-built maps. As the town controls and maintains the right-of-way for the benefit of its citizens, it is the responsibility of the town to ensure that such public right-of-way meet the highest possible public safety standards. Upon request by the town and within thirty (30) days of such a request, a permittee shall submit to the engineering 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 town, or his or her designee. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Public Records Act (Tennessee Code Annotated, §§ 10-7-101, 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 town rights-of-way shall update such maps as required under this chapter upon written request by the town.

(4) Right to inspect. With just and reasonable cause, the town 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 town as part of the inspection.

(5) Proprietary information. If a person considers information it is obligated to provide to the town under this chapter to be a business or trade secret or otherwise proprietary or confidential in nature and desires to protect the information from disclosure, then the person shall mark such information as proprietary and confidential. Subject to the requirements of the Tennessee Public Records Act (Tennessee Code Annotated, §§ 10-7-101, et seq.) as amended, and other applicable law, the town shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure to the maximum extent of the law. The town shall provide written notice to the person in the following circumstances:

(a) If the town receives a request for disclosure of such proprietary and confidential information and the town attorney determines that the information is or may be subject to disclosure under applicable law; or

(b) If the town attorney determines that the information should be disclosed in relation to its enforcement of this chapter or the exercise of its police or regulatory powers. In the event the person does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within thirty (30) days following receipt of the town's notice, then the town may disclose the information without further written notice to the person.

(6) Duty to provide information. Within ten (10) days of a written request from the town, a permittee shall furnish the town with information sufficient to demonstrate the following: that the permittee has complied with all requirements of this chapter; that all fees due to the town in connection with the services provided and wireless facilities installed by the permittee have been properly paid by the permittee; and any other information reasonably required relating to the permittee's obligations pursuant to this chapter.

(7) No substitute for other required permissions. No right-of-way use 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 town for the privilege of transacting and carrying on a business within the town or any permit or agreement for occupying any other property of the town.

(8) No waiver. The failure of the town to insist on timely performance or compliance by any permittee holding a right-of-way use permit shall not constitute a waiver of the town's right to later insist on timely performance or compliance by that permittee or any other permittee holding such right-of-way use permit. The failure of the town 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 town 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) Policies and procedures. The town is authorized to establish such written policies and procedures consistent with this chapter as the town reasonably deems necessary for the implementation of this chapter.

(10) Police powers. The town, 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 town under applicable federal, state and local laws and regulations.

(11) Severability. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this chapter invalid. (as added by Ord. #2019-009, Nov. 2019 ***Ch2_8-2-21***)