

TITLE 9**BUSINESS, PEDDLERS, SOLICITORS, ETC.**¹**CHAPTER**

1. MISCELLANEOUS.
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4. TAXICABS.
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CHAPTER 1**MISCELLANEOUS****SECTION**

9-101. "Going out of business" sales.

9-101. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1978 Code, § 5-101)

¹Municipal code references

Building, plumbing, wiring and housing regulations: title 12.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Permit required.
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- 9-203. Application for permit.
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- 9-213. Expiration and renewal of permit.

9-201. Permit required. It shall be unlawful for any peddler, canvasser, solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1978 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (1978 Code, § 5-202)

9-203. Application for permit. Applicants for a permit under this chapter must file with the recorder a sworn written application containing the following:

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.

¹Municipal code reference
Privilege taxes: title 5.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, where such goods or products are located at the time said application is filed, and the proposed method of delivery.

(7) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant.

(8) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to evaluate properly the applicant's moral reputation and business responsibility.

(9) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(10) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(11) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the town to cover the cost of investigating the facts stated therein. (1978 Code, § 5-203)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the recorder within seventy-two (72) hours.

(2) If as a result of such investigation the chief reports the applicant's moral reputation and/or business responsibility to be unsatisfactory the recorder shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The recorder shall keep a permanent record of all permits issued. (1978 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the recorder within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The recorder shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in

writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1978 Code, § 5-205)

9-206. Bond. Every permittee shall file with the town recorder a surety bond running to the town in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the town and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the town that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the town doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1978 Code, § 5-206)

9-207. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the municipality or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1978 Code, § 5-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1978 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1978 Code, § 5-209)

9-210. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1978 Code, § 5-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for permit or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

(d) Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(2) Notice of the hearing for revocation of a permit shall be given by the recorder in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1978 Code, § 5-211)

9-212. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1978 Code, § 5-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1978 Code, § 5-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

- 9-301. Permit required.
- 9-302. Prerequisites for a permit.
- 9-303. Denial of a permit.
- 9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1978 Code, § 5-301)

9-302. Prerequisites for a permit. The recorder shall, upon application, issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

- (1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity.
- (2) The control and supervision of the solicitation will be under responsible and reliable persons.
- (3) The applicant has not engaged in any fraudulent transaction or enterprise.
- (4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.
- (5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1978 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1978 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1978 Code, § 5-304)

CHAPTER 4

TAXICABS¹

SECTION

- 9-401. Taxicab franchise and privilege license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Liability insurance or bond required.
- 9-404. Revocation or suspension of franchise.
- 9-405. Mechanical condition of vehicles.
- 9-406. Cleanliness of vehicles.
- 9-407. Inspection of vehicles.
- 9-408. License and permit required for drivers.
- 9-409. Qualifications for driver's permit.
- 9-410. Revocation or suspension of driver's permit.
- 9-411. Drivers not to solicit business.
- 9-412. Parking restricted.
- 9-413. Drivers to use direct routes.
- 9-414. Taxicabs not to be used for illegal purposes.
- 9-415. Miscellaneous prohibited conduct by drivers.
- 9-416. Transportation of more than one passenger at the same time.

9-401. Taxicab franchise and privilege license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the town and has a currently effective privilege license. (1978 Code, § 5-401)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the chief of police. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab service; present the application to the board of mayor and aldermen; and make

¹Municipal code reference
Privilege taxes: title 5.

a recommendation to either grant or refuse a franchise to the applicant. The board of mayor and aldermen shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the board of mayor and aldermen shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1978 Code, § 5-402)

9-403. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in an amount equal to that required by the state's financial responsibility law as set out in Tennessee Code Annotated, title 55, chapter 12. The insurance policy or bond required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the town. (1978 Code, § 5-403)

9-404. Revocation or suspension of franchise. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1978 Code, § 5-404)

9-405. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the town unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1978 Code, § 5-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the town shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1978 Code, § 5-406)

9-407. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1978 Code, § 5-407)

9-408. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (1978 Code, § 5-408)

9-409. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the chief of police:

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the municipality who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1978 Code, § 5-409)

9-410. Revocation or suspension of driver's permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-409. (1978 Code, § 5-410)

9-411. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the municipality for the purpose of obtaining patronage for their cabs. (1978 Code, § 5-411)

9-412. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the town for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging

passengers if such stops are made in such manner as not to interfere unreasonably with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1978 Code, § 5-412)

9-413. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1978 Code, § 5-413)

9-414. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (1978 Code, § 5-414)

9-415. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise disturb the peace, quiet and tranquility of the town in any way. (1978 Code, § 5-415)

9-416. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1978 Code, § 5-416)

CHAPTER 5

POOL ROOMS¹

SECTION

9-501. Prohibited in residential areas.

9-502. Hours of operation regulated.

9-503. Minors to be kept out; exception.

9-501. Prohibited in residential areas. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire on any premises located in any block where fifty percent (50%) or more of the land is used or zoned for residential purposes. (1978 Code, § 5-501)

9-502. Hours of operation regulated. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 11:00 P.M. and 6:00 A.M. on other days except Friday and Saturday nights which shall be from 12:00 Midnight and 6:00 A.M. (1978 Code, § 5-502)

9-503. Minors to be kept out; exception. It shall be unlawful for any person operating, maintaining, or conducting any place where pool table or tables are kept for public use or hire to allow minors under the age of eighteen (18) years to visit in, loiter in or around, or to play pool or any other game therein unless the business has on file a currently effective written notice from the town recorder that said minor's parent or guardian has appeared personally before the town recorder or his designee and has executed a written, dated, and signed permission for such activity. It shall be the duty of the recorder, immediately upon receiving such permission, to give written notice thereof to the chief of police and to the business concerned. A written permission given after a violation of this section shall not be a defense to prosecution for such violation. (1978 Code, § 5-503)

¹Municipal code reference
Privilege taxes: title 5.

CHAPTER 6

CABLE TELEVISION

SECTION

9-601. To be furnished under franchise.

9-601. To be furnished under franchise. Cable television service shall be furnished to the Town of Linden and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the Town of Linden and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹

¹For complete details relating to the cable television franchise agreement see Ord. dated March 5, 1974, in the office of the town recorder.

CHAPTER 7

TELECOMMUNICATIONS RIGHTS-OF-WAY RENTAL

SECTION

- 9-701. Purpose.
- 9-702. Applicable scope.
- 9-703. Definitions.
- 9-704. Municipal right-of-way use permit required.
- 9-705. Application to provide telecommunications services using the public rights-of-way.
- 9-706. Municipal right-of-way use permit issuance.
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- 9-708. Administration and enforcement.
- 9-709. Applicability.
- 9-710. Compensation to city.
- 9-711. Remitting rental fees to the city.
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- 9-714. Notices to the city.
- 9-715. Construction obligations.
- 9-716. Conditions of rights-of-way occupancy.
- 9-717. Insurance requirements.
- 9-718. Indemnity.
- 9-719. Privacy of customer information.
- 9-720. Annexation; deannexation.
- 9-721. Unauthorized use of public rights-of-way.

9-701. Purpose. The purpose of this chapter is to establish a competitively neutral policy for usage of public rights-of-way for the provision of telecommunications services and enable the city to:

- (1) Permit non-discriminatory access to the public rights-of-way for providers of telecommunications services; and
- (2) Manage the public rights-of-way in order to minimize the impact and cost to the citizens of the placement of telecommunications facilities within the rights-of-way; and
- (3) Obtain fair and reasonable compensation for the commercial use of public rights-of-way through collection of rents; and
- (4) Promote competition among telecommunications service providers and encourage the universal availability of advanced telecommunications services to all residents and businesses of the city.
- (5) Minimize the congestion, inconvenience, visual impact, and other adverse effects on the city's public rights-of-way. (Ord. #97-2, Nov. 1997)

9-702. Applicable scope. This chapter applies to all telecommunications service providers under Titles II ("Title II") and VI ("Title VI") of the Communications Act of 1934, as amended, (47 U.S.C. 201 et seq.) excluding services provided solely by means of wireless transmission. This chapter does not exempt providers of cable service or open video systems service from the requirements of Title VI and applicable FCC rules and regulations. Any requirements and obligations imposed by this chapter are in addition to any requirements imposed by Title VI or state law and regulation on such providers. (Ord. #97-2, Nov. 1997)

9-703. Definitions. (1) "Applicant." Any person who files an application with the city, under section ____,¹ in order to obtain the necessary permission to use the public rights-of-way to provide telecommunications services within the city, whether by means of the person's own facilities or by means of capacity obtained from another provider of telecommunications services.

(2) "City." The City of Linden, the present municipal corporation of Linden, together with any future annexation made pursuant to law.

(3) "City manager." The City Manager of the City of Linden, or the person designated by the city council to carry out the duties and responsibilities of the city manager. City manager shall also mean the person under the city manager's management and control designated by the city manager to administer the provisions of this chapter.

(4) "City requirements." All laws, rules, regulations, policies and directives of general application of the City of Linden, in effect at present or to be adopted in the future by the city.

(5) "Gross revenue." All revenues received by a provider for telecommunications services furnished within the city. However, revenues received for use of network capacity, switched or unswitched access, and sale of unbundled elements under 47 U.S.C. 251 (b) and (c) from resellers of telecommunications services who are in compliance with this chapter are not included. Gross revenue does not include revenue uncollectible from customers ("bad debt") and any end user taxes collected from customers.

(6) "Municipal right-of-way use permit or municipal permit." The right granted by the city to use public rights-of-way to provide telecommunications services within the city to the public or to other providers, as specified by the terms of this chapter.

(7) "Person." Any person, firm, partnership, association, corporation, company or organization of any kind.

¹Ordinance Number 97-2 from which this chapter was taken, has a blank here.

(8) "Provider." A person who has been granted a Certificate of _____¹ by the Tennessee Regulatory Authority and/or who operates or uses a telecommunications network within the city to provide telecommunications services, and who falls under the definition of section 9-702 (Applicable Scope) of this chapter.

(9) "Public rights-of-way." The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the city holds any property interest or exercises any rights of management or control over and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a telecommunications network.

(10) "Telecommunications network or network." All facilities placed in the public rights-of-way and used to provide telecommunications services.

(11) "Telecommunications services." All transmissions between or among points specified by the user, of information of the user's choosing (whether voice, video or data), without change in content of the information as sent and received, where such transmissions are accomplished through a telecommunications network. Telecommunications services include all ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter-LATA and intra-LATA toll transmissions). Telecommunications services include all services provided. Telecommunications services also include all content or value added services rendered in conjunction with transmission services. (Ord. #97-2, Nov. 1997)

9-704. Municipal right-of-way use permit required. (1) A person may not deliver telecommunications services in the city by means of a network unless the person obtains a municipal right-of-way use permit.

(2) The use of public rights-of-way for the delivery of any service not covered by this chapter is subject to all other applicable city requirements. (Ord. #97-2, Nov. 1997)

9-705. Application to provide telecommunications services using the public rights-of-way. (1) Any person proposing to provide telecommunications services by means of a telecommunications network located within the public rights-of-way ("Applicant") shall submit an application to the city manager. The application, in a form to be prescribed by the city manager, shall describe all services the applicant wishes to provide, outline applicant's

¹Ordinance Number 97-2 from which this chapter was taken, has a blank here.

proposed network, and identify the uses of and potential impact on the public rights-of-way.

(2) The city manager shall have the duty to review applications submitted under this chapter and administer the provisions of this chapter regarding the granting or denial of a municipal right-of-way use permit to applicants. The city manager shall issue municipal right-of-way use permits, and shall administer and enforce compliance with respect to all municipal right-of-way use permits granted under this chapter. The city manager shall submit a report annually to the city council analyzing whether any requirements imposed by each section of this chapter result in

(a) Anticompetitive effects in the market for telecommunications services in the city, as defined by federal law, and/or

(b) Discrimination in favor of or against a holder of a Certificate of Convenience and Necessity, _____, _____¹ under state law. (Ord. #97-2, Nov. 1997)

9-706. Municipal right-of-way use permit issuance. (1) If the city manager finds that the application meets the requirements of this chapter, the city manager shall cause to be prepared a municipal right-of-way use permit for issuance to the applicant.

(2) The city manager shall complete all deliberations towards issuing a municipal right-of-way use permit, and shall issue the permit or a written denial within 60 days of the receipt of an application. The applicant shall respond to all reasonable information requests of the city manager during this consideration period. Any delays in providing such information shall be documented in writing by the city manager, who may cite any delays or refusals in obtaining information from an applicant as grounds for denial of a permit. (Ord. #97-2, Nov. 1997)

9-707. Petition for reconsideration. The act of granting, denying or terminating a municipal right-of-way use permit is an exercise of the police power of the city. A person whose application for a municipal right-of-way use permit is denied must petition the city council for reconsideration before seeking judicial remedies, and must file a petition within 45 days of the written denial of such application by the city manager. A petition is considered denied if the city council does not act within 45 days after the petition is filed with the city clerk. (Ord. #97-2, Nov. 1997)

¹Ordinance Number 97-2 from which this chapter was taken, has blanks here.

9-708. Administration and enforcement. (1) The city manager shall administer this chapter and enforce compliance with a municipal right-of-way use permit granted under this chapter.

(2) A provider shall report information that the city manager requires in the form and manner prescribed by the city manager relating to the use of public rights-of-way for the right-of-way occupancy authorized by a municipal right-of-way use permit granted under this chapter.

(3) The city manager shall report to the city council the city manager's determination that a provider has failed to comply with this chapter. (Ord. #97-2, Nov. 1997)

9-709. Applicability. (1) Sections 9-715 (Construction), 9-716 (ROW Occupancy), and 9-717 (Insurance) of this chapter apply only to a provider that owns or controls physical facilities in the rights-of-way.

(2) Section 9-718 (Indemnity) of this chapter applies to a provider that has a property interest in a network. (Ord. #97-2, Nov. 1997)

9-710. Compensation to city. (1) To compensate the city for the use and occupancy of the public rights-of-way, a provider shall pay a municipal right-of-way rental fee calculated as follows:

(a) Rights-of-way rental fee. Each provider shall be subject to a 5% annual fee based on gross revenue obtained from the provision of telecommunications services within the city.

(b) Non-monetary consideration. To the extent allowed by state and federal law, the city may include non-monetary consideration from each provider as a condition of any municipal right-of-way use permit. To the extent not expressly prohibited by applicable law, a provider may agree to furnish to the city non-monetary consideration in the form of telecommunications services, network capacity, conduit, or other infrastructure at the provider's direct cost. The city manager shall apply a credit or an offset for any non-monetary consideration received to the annual right-of-way rental fee. The city manager shall publicly disclose the form of non-monetary consideration and the credit amount.

(c) Credit for cable television franchise fees and other contributions. Any telecommunications provider who is currently franchised by the city under state and federal law and regulations to provide cable television service shall receive a credit against the annual rights-of-way rental fee for any cable television franchise fees paid to the city, or any other non-monetary contributions to the city under a cable franchise agreement.

(2) A provider may pass through to customers the municipal right-of-way rental fee on a pro rata basis, at its discretion, as permitted by state and federal law. The city does not require or recommend a charge on a per line or per customer basis. (Ord. #97-2, Nov. 1997)

9-711. Remitting rental fees to the city. A provider shall remit the municipal right-of-way rental fee on a quarterly basis. Payment shall be made on or before the 45th day following the close of each calendar quarter for which the payment is calculated. (Ord. #97-2, Nov. 1997)

9-712. Audits. (1) On 30 days notice to a provider, the city may audit a provider at any time. The provider shall furnish information to demonstrate its compliance with the municipal right-of-way use permit.

(2) A provider shall keep complete and accurate books of accounts and records of business and operations in accordance with generally accepted accounting principles for a period of five years. If the Federal Communications Commission requires, a provider shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed in 47 CFR Part 32 or its successor. The city may examine the provider's books and records.

(3) A provider shall make available to the city, for the city to examine, audit, review and copy, in the city's offices, upon the city manager's reasonable written request, its books and records including papers, books, accounts, documents, maps, plans and other provider records pertaining to a municipal right-of-way use permit granted under this chapter. A provider shall fully cooperate in making records available and otherwise assist the city examiner. The city examiner shall not make copies of customer specific information. (Ord. #97-2, Nov. 1997)

9-713. Transfers. (1) A provider may not transfer a municipal right-of-way use permit unless the city manager approves the transfer in writing.

(2) A change in control of a provider is a transfer requiring city manager approval. A change of 25 percent or greater in the ownership of the provider establishes a rebuttable presumption of a change in control.

(3) If a provider attempts to transfer or transfers the provider's municipal right-of-way use permit without approval of the city manager, the city manager may revoke the municipal right-of-way use permit. If a municipal right-of-way use permit is revoked, all rights of the provider under the municipal right-of-way use permit end.

(4) A provider may transfer, without the city manager's approval, the facilities in the rights-of-way under a municipal right-of-way use permit to the provider's affiliate or to another provider who has a municipal right-of-way use permit under this chapter. The provider transferring the facilities remains subject to all applicable obligations and provisions of the municipal right-of-way use permit unless the provider to which the facilities are transferred is also subject to these applicable obligations and provisions.

(5) The city manager must act on a request for transfer of a municipal permit within 90 days of receipt of the request from the provider. Any request

for a transfer of a municipal permit not acted upon within 90 days shall be deemed to have been approved. (Ord. #97-2, Nov. 1997)

9-714. Notices to the city. (1) A provider shall notify the city manager in writing contemporaneously with the transmittal of all petitions, applications, written communications and reports submitted by the provider, to the Federal Communications Commission and the Public Utility Commission, or their successor agencies relating to matters affecting both the use of public rights-of-way and the telecommunications services authorized by a municipal permit granted under this chapter. A provider shall furnish the city manager copies of the documents upon request.

(2) If a provider notifies the city of the confidential nature of information, the city manager shall maintain the confidentiality of the information to the extent permitted by law. Upon receipt in the city manager's office of requests for confidential information the city shall notify the affected providers of the request by facsimile transmission. (Ord. #97-2, Nov. 1997)

9-715. Construction obligations. (1) A provider is subject to the police powers of the city, other governmental powers, and the city's rights as a property owner under state and federal laws. A provider is subject to city requirements and federal and state rules in connection with the construction, expansion, reconstruction, maintenance or repair of facilities in the public rights-of-way.

(2) A provider shall place certain facilities underground according to applicable city requirements.

(3) At the city's request, a provider shall furnish the city accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of facilities performed by the provider in the public rights-of-way. If any information furnished is erroneous as to the location of facilities, and reliance on this information results in construction delays or additional expenses, the provider who furnished the erroneous information shall be liable for the cost of delays and the additional expenses.

(4) The construction, expansion, reconstruction, excavation, use, maintenance and operation of a provider's facilities and property are subject to applicable city requirements.

(a) A provider shall perform excavations and other construction in the public rights-of-way in accordance with all applicable city requirements, including the obligation to use trenchless technology whenever possible. The director of public works shall waive the requirement of trenchless technology if he determines that field conditions warrant the waiver. A provider shall minimize interference with the use of public and private property and shall follow the construction directions given by the city.

(b) When a provider completes construction work, a provider shall promptly restore the public rights-of-way in accordance with applicable city requirements. A provider may excavate only for the construction, installation, expansion, repair, removal, and maintenance of the provider's facilities.

(c) The city may require a provider to allow attachment of another provider's facilities to its poles and conduits, in accordance with the city charter, state and federal law.

(d) A provider shall furnish the director of public works and the city manager with construction plans and maps showing the routing of new construction at least 45 days before beginning construction that involves an alteration to the surface or subsurface of the public right-of-way. A provider may not begin construction until the plans and drawings have been approved in writing by the director of public works.

(e) If the city manager declares an emergency and requests the removal or abatement of facilities, by written notice, a provider shall remove or abate the provider's facilities by the deadline provided in the city manager's request. A provider and the city shall cooperate to the extent possible to assure continuity of service. If a provider, after notice, fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the provider, without paying compensation to the provider and without the city incurring liability for damages.

(f) Except in an emergency, a provider may not excavate the pavement of a street or public right-of-way without first complying with city requirements.

(g) Within 120 days of completion of each new segment of a provider's facilities, a provider shall supply the city with a complete set of "as built" drawings for the segment in a format prescribed by the director of public works. A provider must obtain the city's approval before relocating the provider's facilities in the public rights-of-way. The city may not unreasonably withhold approval. A provider shall furnish a revised map including additional facilities on June 30 of each year to the director of public works showing how these facilities connect to existing facilities. (Ord. #97-2, Nov. 1997)

9-716. Conditions of rights-of-way occupancy. (1) In the exercise of governmental functions, the city has first priority over all other uses of the public rights-of-way. The city reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachment, restructuring or changes in aerial facilities, in, across, along, over or under a public street, alley or right-of-way occupied by a provider, and to change the curb, sidewalks or the grade of streets.

(2) In case of conflict or interference between the facilities of different providers, the provider whose facilities were first permitted shall have priority over a competing provider's use of the public rights-of-way.

(3) If, during the term of a municipal permit, the city authorizes landowners to occupy space under the surface of any public street, alley, or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the provider. If the city closes or abandons a public rights-of-way that contains a portion of a provider's facilities, the city shall convey the land in the closed or abandoned public rights-of-way subject to the rights granted in the municipal permit.

(4) If the city gives written notice, a provider shall, at the provider's expense, temporarily or permanently, remove, relocate, change or alter the position of provider's facilities that are in the public rights-of-way within 120 days. The city shall give notice whenever the city has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a city or other governmental entity's public improvement in the public rights-of-way. This section shall not be construed to prevent a provider's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal.

(5) A provider who holds a municipal permit may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its network. All tree trimming shall be performed in accordance with standards promulgated by the city. When ordered by the director of public works, tree trimming shall be done under the supervision of the city.

(6) Providers shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures, if the city gives written notice of no less than 48 hours. The expense of this temporary rearrangements shall be paid by the party or parties requesting and benefitting from the temporary rearrangements. Provider may require prepayment or prior posting of a bond from the party requesting the temporary move. (Ord. #97-2, Nov. 1997)

9-717. Insurance requirements. (1) A provider shall obtain and maintain insurance in the amounts prescribed by the city manager with an insurance company licensed to do business in the State of Tennessee acceptable to the city manager throughout the term of a municipal permit granted under this chapter. A provider shall furnish the city with proof of insurance at the time of filing the acceptance of a municipal permit. The city reserves the right to review the insurance requirements during the effective period of a municipal permit, and to reasonably adjust insurance coverage and limits when the city manager determines that changes in statutory laws, court decisions, or the claims history of the industry or the provider require adjustment of the coverage. For purposes of this section, the city will accept certificates of self-insurance issued by the State of Tennessee providing the same coverage.

(2) The city manager may, on request and at no cost to the city, receive copies of certificates of insurance evidencing the coverage required by this section. The city manager may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless the policy provisions are established by a law or regulation binding the city, the provider, or the underwriter. If the city manager requests a deletion, revision or modification, a provider shall exercise reasonable efforts to pay for and to accomplish the change.

(a) An insurance certificate shall contain the following required provisions:

(b) Name the city and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;

(c) Provide for 30 days notice to the city for cancellation, non-renewal, or material change;

(d) Provide that notice of claims shall be provided to the city manager by certified mail; and

(e) Provide that the terms of the municipal permit which impose obligations on the provider concerning liability, duty, and standard care, including the indemnity section, are included in the policy and that the risks are insured within the policy terms and conditions.

(3) A provider shall file and maintain proof of insurance with the city manager during the term of a municipal permit. An insurance certificate obtained in compliance with this section is subject to city approval. The city may require the certificate to be changed to reflect changing liability limits. A provider shall immediately advise the city of actual or potential litigation that may develop that would affect insurance coverage related to a municipal permit.

(4) An insurer has no right of recovery against the city. The required insurance policies shall protect the provider and the city. The insurance shall be primary coverage for losses covered by the policies.

(5) The policy clause "Other Insurance" shall not apply to the city where the city is an insured under the policy.

(6) The provider shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the city for payment of a premium or assessment. Insurance policies obtained by a provider must provide that the issuing company waives all right of recovery by way of subrogation against the city in connection with damage covered by the policy. (Ord. #97-2, Nov. 1997)

9-718. Indemnity. (1) During the term of a municipal permit, a provider is liable for the acts or omissions of an entity used by the provider, including an affiliate, when the entity is involved directly or indirectly in the construction and installation of the provider's facilities. The acts or omissions of the entity shall be considered the acts or omissions of the provider.

(2) Each municipal permit granted under this chapter shall contain a provision that requires a provider to defend, indemnify and hold the city harmless against all damages, cost, loss or expense arising out of, incident to, concerning or resulting from the negligence or willful misconduct of the provider, its agents, employees, or subcontractors, in the performance of activities under the municipal permit:

(a) For the repair, replacement, or restoration of city property, equipment materials, structures and facilities which are damaged, destroyed or found to be defective; and

(b) Against any and all claims, demands, suits, causes of action, and judgements for:

(i) Damage to or loss of the property of any person including but not limited to the provider, its agents, officers, employees and subcontractors, the city's agents, officers and employees and third parties; and

(ii) Death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person including but not limited to the agents, officers and employees of the provider, the provider's subcontractors, the city, and third parties, no matter how, or to whom, the loss may occur.

(3) The city manager shall give prompt written notice to a provider of any claim for which the city seeks indemnification. The provider shall have the right to investigate, defend and compromise these claims subject to the city's prior approval. (Ord. #97-2, Nov. 1997)

9-719. Privacy of customer information. A provider shall comply with state and federal law regarding privacy of customer information. (Ord. #97-2, Nov. 1997)

9-720. Annexation; deannexation. Within thirty (30) days following the date of passage of any action affecting any deannexation or annexation, the city manager shall notify providers of this action by furnishing to the providers maps of the affected area(s), showing the new boundaries of the city. (Ord. #97-2, Nov. 1997)

9-721. Unauthorized use of public rights-of-way. (1) A person commits an offense if a person uses the public rights-of-way to provide a telecommunications service without first securing a municipal permit from the city.

(2) Each unauthorized use of the public rights-of-way and each unauthorized placement of facilities constitutes a separate offense. Each day a violation of this chapter occurs shall constitute a distinct and separate offense.

(3) An offense under this subsection is punishable by a fine of no more than \$100. (Ord. #97-2, Nov. 1997, as amended by Ord. #00-12-A, Jan. 2001)