

TITLE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF OAK RIDGE, TENNESSEE, BY CREATING A NEW TITLE 22, TITLED "COMMUNICATIONS IN THE RIGHTS-OF-WAY," FOR THE PURPOSE OF REGULATING COMMUNICATIONS WITHIN THE RIGHTS-OF-WAY AND FOR COMPLIANCE WITH THE COMPETITIVE WIRELESS BROADBAND INVESTMENT, DEPLOYMENT, AND SAFETY ACT OF 2018.

WHEREAS, the City desires to amend the City Code to regulate communications within the rights-of-way, which includes provisions for compliance with the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018 (Tennessee Code Annotated §13-24-401 et seq.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

Section 1. The Code of Ordinances, City of Oak Ridge, Tennessee, is hereby amended by creating a new Title 22, titled "Communications," which new title shall read as follows:

TITLE 22
COMMUNICATIONS IN THE RIGHTS-OF-WAY

CHAPTER 1
GENERALLY

Section 22-101. Purpose.

The purpose of this chapter is to establish general requirements and procedures for permitting the installation of communications facilities in City rights-of-way.

Section 22-102. Definitions.

For the purpose of this title the following definitions shall apply, except where the context clearly indicates a different meaning:

"Aesthetic plan" means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the authority or designated area within the authority. 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.

"Applicant" means any person who submits an application.

"Application" means a written request submitted by an applicant to an authority.

"Authority" means the City of Oak Ridge, Tennessee, or any agency, subdivision, or any instrumentality thereof.

"Authority-owned potential support structure," "Authority-owned PSS," or "City-owned PSS" means a PSS owned by the City in the rights-of-way, including (i) a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for traffic cameras or signage; and (ii) a pole or similar structure owned/leased by the City in the rights-of-way that supports only wireless facilities, but 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. In Oak Ridge, utility poles, street light poles, and traffic signal poles are owned by the City, and are not mandated as PSS under state law.

"City" means the City of Oak Ridge, Tennessee, or any agency, subdivision, or any instrumentality thereof.

"City Engineer" means the City Engineer, or the City Engineer's duly authorized designee.

"City Manager" means the City Manager, or the City Manager's duly authorized designee.

"Colocate," "colocating", and "colocation" mean, 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.

"Communications facility" means, collectively, the equipment at a fixed location or locations within the public right-of-way that enables Communications Services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), Wireless Facilities, and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole/PSS, Tower, or Support Structure to which the equipment is attached.

"Communications service" means 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.

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

"Emergency" means an unplanned event which requires immediate action to restore service to existing customers, or events which, unaddressed, represent a significant danger to persons or property.

"Fee" means a one-time, nonrecurring charge.

"Micro wireless facility" means 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.

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

"Permittee" means an Applicant that has received a Permit under this title.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

"Potential support structure for a small wireless facility" or "PSS" means 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 colocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this title.

"Rate" means a recurring charge.

"Residential neighborhood" means an area within a local authority's geographic boundary that is zoned or otherwise designated by the local authority 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.

"Right-of-way" means the space, in, upon, above, along, across, and over property that has been designated for use as or is used for public roadways, streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, or similar purpose under the control of the authority, 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, but excluding lands other than streets that are owned by the authority. Use of public utility easements is permitted only to the extent the authority has the ability to permit use of the area or utility easement for communications facilities or poles.

"Small wireless facility" means a wireless facility with:

- (a) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and
- (b) 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.

"Small wireless facility" includes a micro wireless facility.

"Wireline backhaul facility" means a communications facility used to transport communications services by wire from a wireless facility to a network.

"Wireless facility" means any staffed or unstaffed facility used for the transmission and/or reception of wireless communications or data transmission, usually consisting of an antenna or group of antennas, radio transceivers, coaxial or fiber-optic cable, regular and backup power supplies, transmission lines, ancillary appurtenances, and equipment enclosures. The following structures or combinations of structures are considered to be wireless communications facilities: antenna-supporting structures (including replacements and broadcast), colocated antennas, roof-mounted structures, surface-mounted antennas, and stealth wireless communications facilities, but not including amateur radio facilities.

"Wireless facility" does not include:

- (a) The structure or improvements on, under, or within which the equipment is colocated;
- (b) Wireline backhaul facilities; or
- (c) 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.

"Wireless facility" includes small wireless facilities.

"Wireless provider" means a person who provides wireless service.

"Wireless services" means any service using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.

Section 22-103. Permit required.

- (1) **Permit Required.** It shall be unlawful for any person, firm, corporation, association or others, to construct any new communications facilities within the City rights-of-way, or to make any excavation in any street, alley, or right-of-way, or to tunnel under any street, alley, or right-of-way for the purpose of installing communication facilities without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other facilities may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the City's Municipal Building is open for business, and said permit shall be retroactive to the date when the work was begun.
- (2) **Rules and Regulations.** The City Manager from time to time will promulgate rules and regulations regarding work in the rights-of-way. Such rules and regulations may require that applicants provide bonds for projects of a given size and scope, operate vehicles that are clearly marked with the company's name and contact information and such other requirements as are beneficial to the City and within the scope of common practice and law. The applicant's certification of compliance with rules requiring maintenance of infrastructure deployed in right-of-way; rules requiring relocation or timely removal of infrastructure in right-of-way no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in right-of-way under emergency conditions, if any, that the City imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in right-of-way no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in right-of-way under emergency conditions, if any, that the City imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the right-of-way. Applicants shall comply with all applicable federal, state, and local statutes, ordinances, rules, regulations, and policies.

Section 22-104. Applications and renewals.

- (1) **Permit Application.** Applications for such permits shall be made to the City Manager, or such person as the City Manager may designate to receive such applications, and shall state thereon the location of the intended communications facilities, including small cell wireless antennas or excavation or tunnel, the person, firm, corporation, association, or others doing the actual installation, the name of the person, firm, corporation, association, or others for whom the work is being done, plans in as great as detail as is required by the City Engineer showing the exact location, type and scope of all work to be performed, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. Such application shall be rejected or approved by the City Manager.
- (2) **Applications for Subsurface Structures.** All applications for mains, conduits, manholes and other subsurface structures shall be accompanied by a construction plan and typical cross sections showing as nearly as possible the existing underground structures and the location of the proposed structure.
- (3) **Copy of Permit at Work Site, Available for Inspection.** A copy of the permit must be maintained at the work site at all times during construction. Upon request, it shall be available for inspection by the City.
- (4) **Work Without Permit, Fees.** A person who begins work within the right-of-way or performs any work so closely adjacent as to create a hazardous roadway condition, or to restrict pedestrian or vehicle flow within the right-of-way without having first received a permit and/or temporary traffic control permit, may be subject to additional fees. This shall not apply to emergency situations.

- (5) No City-Provided Existing Conduit for Use. The City does not provide existing conduit for telecommunications companies for use.
- (6) Renewal of Permit. A permittee desiring to renew a permit prior to the expiration of the permit shall file an application with the City for renewal of its authorization, which shall include the information and documents required for an initial application and other material information reasonably required by the City Engineer.
- (a) The City shall make a determination accepting or denying the renewal application in writing to the permittee.
- (b) The City shall timely process any renewal application provided that (i) permittee is not then in material default under any provision of the permit, or in material non-compliance with this chapter, and (ii) has otherwise satisfactorily performed all of its obligations under the permit, and this chapter during the expiring term. In the event the City elects not to renew, it shall provide a written basis for such non-renewal. Determinations to grant or deny a renewal application shall be made on a nondiscriminatory and competitively neutral basis. The City shall not unreasonably delay, condition, withhold or deny the issuance of a renewal permit.

Section 22-105. Compliance with permitting requirements.

- (1) Duty to Provide Information. Within ten (10) days of a written request from the City, a permittee shall furnish the City with information sufficient to demonstrate the following: that the permittee has complied with all requirements of this chapter; that all fees due to the City 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.
- (2) No Substitute for Other Required Permissions. No permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the City for the privilege of transacting and carrying on a business within the City or any permit or agreement for occupying any other property of the City.
- (3) No Waiver. The failure of the City to insist on timely performance or compliance by any permittee holding a permit shall not constitute a waiver of the City's right to later insist on timely performance or compliance by that permittee or any other permittee holding such permit. The failure of the City to enforce any provision of this chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this chapter on any other occasion, nor shall the failure to enforce any prior ordinance or City Charter provision affecting the right-of-way, any wireless facilities, or any user or occupant of the right-of-way act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.
- (4) Transitional provisions.
- (a) Any wireless provider and/or entity holding a permit or other authorization from the City to own, construct, install, operate, and/or maintain facilities in the right-of-way to provide services may continue to conduct those activities expressly authorized until the earlier of the following: i) the conclusion of the present term of its existing authorization, or ii) 180 days after the effective date of this chapter. Notwithstanding the foregoing, any such person shall apply for a superseding permit pursuant to this chapter within ninety (90) days after the effective date of the chapter and shall be subject to the terms and conditions of this chapter. Upon such application, such person shall be allowed to continue to own, operate and/or maintain wireless facilities in the right-of-way until such permit becomes effective.

- (b) Any person that owns or operates any facilities currently located in the right-of-way, the construction, operation, or maintenance of which is not currently authorized but is required to be authorized under this chapter, shall have ten (10) days from the effective date of this chapter to apply for a permit. Any person timely filing such an application shall not be subject to penalties for failure to hold a permit, provided that said application remains pending. Nothing herein shall relieve any person of any liability for its failure to obtain a permit, or other authorization required under other provisions of this chapter or City ordinances or regulations, and nothing herein shall prevent the City from requiring removal of any communications facilities installed in violation of this chapter or City ordinances or regulations.

Section 22-106. Restoration of Streets, Etc.

Any person, firm, corporation, association, or others making any installation of small cell wireless facilities or excavation or tunnel in or under any street, alley, sidewalks, public place, or City right-of-way in the City shall restore said street, alley, sidewalks, public place, or City right-of-way to its original condition promptly upon the completion of the work for which the installation, excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, public way, or City right-of-way, the City Manager shall give notice to the person, firm, corporation, association, or others that unless the installation, excavation or tunnel is refilled or restored properly within a specified reasonable period of time, the City will cause the work to be done and charge the expense of doing the same to such person, firm, corporation, association, or others. If within the specified time the conditions of the above notice have not been complied with, the City will cause the work to be done and the total cost, including administrative costs shall be charged to the person, firm, corporation, association, or others who made the installation, excavation or tunnel. Should any right-of-way damages affect the maintenance of stormwater systems, the provisions of City Code §14-508 shall apply to remediate effects caused by the damages to be repaired.

Section 22-107. Insurance and Bonding Requirements.

- (1) **Insurance.** Each permittee shall, at all times during the entire term of the permit, maintain insurance, and require each contractor and subcontractor to maintain insurance, with a reputable insurance company authorized to do business in the State of Tennessee and which has an A.M. Best rating (or equivalent) no less than "A" indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of permittee's wireless facilities in the rights-of-way. Said insurance shall cover any and all damages to the City caused by the permittee or the permittee's contractor or subcontractors. The amounts of such coverage shall be not less than the following:
- (a) **Workers' compensation and employer's liability insurance.** Tennessee statutory requirements.
 - (b) **Comprehensive general liability.** Commercial general liability with a limit of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury, property damage, and including products, completed operations, contractual liability, independent contractor's protective liability, and personal injury liability protection. If such insurance contains a general aggregate limit, it shall apply separately to the work/location or be no less than \$2,000,000.00.
 - (c) **Commercial automobile liability.** Commercial automobile liability including all owned, non-owned, and hired vehicles with a limit of not less than \$1,000,000.00 each accident. Such insurance shall include coverage for loading and unloading hazards.
 - (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.

- (2) **Additional Insured.** The City, its officials, officers, employees, and volunteers shall be designated or endorsed as additional insureds on the insurance policies required by this section (except worker's compensation and employer's liability insurance) with respect to liability arising out of work or operations performed by or on behalf of the permittee under this title. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this section. Permittee shall provide the City with at least thirty (30) days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of premium of the policy coverages.
- (3) **Contractors' and Subcontractors' Insurance.** Permittee shall impose similar insurance requirements as identified in this section on its contractors and subcontractors.
- (4) **Bonds.** Each permittee shall provide to the City a surety bond in the amount of \$500,000.00 to secure the permittee's performance of its obligations and adherence to all requirements.

Section 22-108. Indemnification.

Each permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance 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 City in which it is claimed that personal injury, including death, or property damage was caused by the permittee's construction, installation, operation, maintenance or removal of permittee's wireless system or wireless facilities in the rights-of-way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other reasonable costs of indemnification.

Section 22-109. As-built maps.

As the City controls and maintains the right-of-way for the benefit of its citizens, it is the responsibility of the City to ensure that such public right-of-way meet the highest possible public safety standards. Upon request by the City and within thirty (30) days of such a request, a permittee shall submit to the City Engineer (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 communications facilities within the right-of-way, provided in standard electronic or paper format in a manner established by the City Engineer. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Open 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 communications facilities in the right-of-way shall update such maps as required under this chapter upon written request by the City.

Section 22-110. Inspection of work.

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

Section 22-111. Proprietary information.

If a person considers information it is obligated to provide to the City 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 Open Records Act (Tennessee Code Annotated, § 10-7-101 et seq.) as amended, and other applicable law, the City 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 City shall provide written notice to the person in the following circumstances: i) if the City receives a request for disclosure of such proprietary and confidential information and the City Attorney determines that the information is or may be subject to disclosure under applicable law; or ii) if the City 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 City's notice, then the City may disclose the information without further written notice to the person.

Section 22-112. Rights of the City.

- (1) **Policies and Procedures.** The City Manager is authorized to establish such written policies and procedures consistent with this chapter as reasonably deemed necessary for the implementation of this chapter.
- (2) **Police Powers.** The City, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.
- (3) **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.

CHAPTER 2

RIGHT-OF-WAY OCCUPANCY, OBSTRUCTION, EXCAVATIONS, AND CUTS

Section 22-201. Purpose and Scope.

This chapter seeks to address concerns related to right-of-way buried facilities within the City. This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Section 22-202. Definitions.

For the purpose of this chapter the following definitions shall apply, except where the context clearly indicates a different meaning:

"Curb" means that construction parallel to and adjoining the edge of the paving or roadway surface of the street definitely marking the limits of that portion of the street to be used by vehicular traffic.

"Driveway" means that portion of the street lying between the curblines of the street and the property line of the street used for ingress and egress to property adjoining a street, by vehicles.

"Excavation" means the digging of any ditch, drain, trench, hole, or similar activity; whether permanent or temporary.

"Obstruction" means any structure, embankment, device, item or thing placed or existing within the right-of-way of the City government which hinders, impedes or affects the flow of traffic, whether such obstruction is permanent or temporary.

"Sidewalk" means that portion of the street generally reserved for pedestrians' use. Unless otherwise permitted, it shall be laid so that the property side of the walk shall be parallel to and identical with the property line of the street.

"Specification" means the standard specifications and plans for construction procedures and materials on file in the office of the City Engineer, and their subsequent revisions.

"Street" means all public thoroughfares within the corporate limits of the City, such as alleys, avenues, highways, boulevards, streets and the like, and shall include all that portion of the public way from property line to property line dedicated to the public use, and includes sidewalks, driveways, grass plots, curbs and that portion of the street used by vehicles.

Section 22-203. Permit Required.

It shall be unlawful for any person, firm, corporation, association or others, to make any excavation in any street, alley, or right-of-way, or to tunnel under any street, alley, or right-of-way for the purpose of installing telecommunication facilities without having first obtained a right-of-way use permit as herein required, and without complying with the provisions of this chapter. Such permit shall specifically state the method of excavation, none of which will include open trenching of roadways unless specifically approved by the City Engineer. It shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the City's Municipal Building is open for business, and said permit shall be retroactive to the date when the work was begun.

Section 22-204. Fees.

The fee for a permit to excavate in, or across streets, roads, allies, sidewalks, or other public ways within the City, shall be established by the City Manager and published in accordance with City Policy, and shall cover the administrative costs of review and inspection by the City. If in the opinion of the City Engineer, after appropriate inspection, any work inspected under the terms of this section fails to comply with the law, and notice is given to the permittee or his agent, and any re-inspection of the same work is required, then a fee as specified, per re-inspection may be assessed against and collected from the permittee or his agent. No portion of the permitted work per shall continue without first paying the re-inspection fee.

Section 22-205. Manner of Excavating—Barricades and Lights—Temporary Sidewalks.

Any person, firm, corporation, association, or others making any excavation or tunnel shall do so according to the terms and conditions of the application and permit authorizing the work to be done. Sufficient and proper barricades, lights, and/or flagman, shall be maintained to protect persons and property from injury by or because of the excavation being made. If any sidewalk is blocked by any such work, a temporary walkway shall be provided which shall be safe for travel and convenient for personnel to insure the safety of the general public, while maintaining adequate vehicular and pedestrian traffic flow, and providing safety warnings in accordance with federal, state, and local requirements.

Section 22-206. Time Limits.

Each application for a right-of-way use 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 City if the City restores such surface pavement. It is a violation of the permit to fail to comply with this time limitation unless permission for an extension of time is granted by the City Manager.

Section 22-207. Supervision.

All excavations and other construction must be inspected the City Engineer. Notice must be given before any work commences except in case of emergency. In the case of an emergency, notice must be given as soon as practical.

CHAPTER 3
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

Section 22-301. 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 City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City's rights-of-way and to the City as a whole.
- (2) **Scope.** In enacting this chapter, the City 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 in which facilities are installed; and
 - (f) Facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services.
- (3) **Conflicts.** This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Section 22-302. Definitions.

For the purpose of this chapter the following definitions shall apply, except where the context clearly indicates a different meaning:

"Administrative review" means review of an Application by the Authority relating to the review of issuance of a Permit, including review by the appropriate City's Administration, Public Works Department staff, Electric Department staff, and Community Development staff to determine whether the issuance of a Permit is in conformity with the applicable provisions of this chapter.

"Ancillary appurtenances" means equipment associated with a wireless communications facility including, but not limited to: antennas, attaching devices, transmission lines, and all other equipment mounted on or associated with a wireless communications facility. Ancillary appurtenances do not include equipment enclosures.

"Antenna" means any apparatus, or group of apparatus, designed for the transmitting and/or receiving of electromagnetic waves that includes, but is not limited to, telephonic, radio or television communications. An "antenna" includes any omni-directional (whip) antenna, sectorized (panel) antenna, microwave dish antenna, multi or single bay (FM & TV) antenna, yagi antenna, or parabolic (dish) antenna. An "antenna" does not include a satellite earth station.

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

"Batch application" means applications for multiple facilities submitted simultaneously by a single Provider.

"Decorative pole" means a Pole that is specially designed and placed for aesthetic purposes.

"Discretionary review" means review of an Application by the Authority relating to the review and issuance of a Permit that is other than an Administrative Review.

"Eligible facilities request" means any request for modification of an existing wireless tower that involves:

- (a) Colocation of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c) Replacement of transmission equipment that does not substantially Change the physical dimensions of such tower or base station.

"Equipment enclosure" means an enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communications signals, but not primarily to store equipment or to use as habitable space.

"Height" means the height of a wireless communications facility, measured as the vertical distance from the base to the highest point of the wireless communications facility. Height includes all antennas and any other ancillary appurtenances.

"Ordinary maintenance and repair" means inspections, testing, and/or repair that maintain functional capacity, aesthetic, and structural integrity of a Communications Facility and/or the associated Support Structure or Pole/PSS that does not require blocking, damaging, or disturbing any portion of the public right-of-way.

"Provider" means any person who owns, leases, operates, installs, purchases capacity in or maintains any network or equipment within the City of Oak Ridge for Communications Services containing communication cables, wires, lines, towers, wave guides, fiber, microwave, laser beams or conduit and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing, by audio, video or other forms of electronic signals to or from subscribers or locations within the City of Oak Ridge, (hereinafter collectively referred to as "Provider's System" or "System") in, on, under or over the public rights-of-way of the City of Oak Ridge, or its successors, assigns, or transferees.

"Public utility" means any person, firm, corporation, municipal department or board duly authorized to furnish and furnishing under state or municipal regulations, to the public, electricity, gas, steam, communication, telegraph, transportation, or water; but this definition shall not include persons, firms or corporations, which, by reasons incidental to the intended uses of any generation device, sells or causes energy to be transferred to any grid of a public utility as herein defined.

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

"Replace" or "replacement" means, in connection with an existing Pole, Support Structure, to replace (or the replacement of) same with a new structure, substantially similar in design, size, and scale to the existing structure and in conformance with this chapter and any other applicable

Authority code, in order to address limitations of the existing structure to structurally support Colocation of a Communications Facility.

"Staff" means employees of the City of Oak Ridge, Tennessee, responsible for the administration of requests associated with this ordinance.

"Stealth" means Systems, components and materials used in the construction of a wireless communications facility that mask, camouflage, or conceal the wireless communications facility to make it less visually intrusive to the surrounding property. "Stealth" includes construction techniques that disguise the wireless communications facility so that it appears as another natural or artificial object that exists in the surrounding environment or which is architecturally integrated into a building or other structure. They may include, but is not limited to, architecturally screened roof mounted antennae, facade-mounted antenna as design features, clock towers, flagpoles, church towers, or "tree" poles (e.g., monopines).

"Tower" means any vertical structure which is designed and constructed primarily for the purpose of supporting one or more antennae, including self-supporting lattice towers, or monopole towers. This general term includes radio, television, microwave, common carrier, PCS, analog, digital, cellular telephone, alternative tower structures, paging, and the like.

Section 22-303. Permitted Use; Application and Fees.

- (1) **Permitted use.** Colocation of a small wireless facility or installation of a new, replacement, or modified City-owned PSS or new PSS for the colocation of a small wireless facility in the right-of-way shall be a permitted use, subject to the restrictions in this title, including conformity with all standards including the City's aesthetic plan.
- (2) **Permit required.** No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first filing an Application and obtaining a Permit from the City. Any permit shall be reviewed, issued and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the City may from time to time establish for effective management of the right-of-way, and otherwise shall conform to the requirements of this chapter and applicable law.
- (3) **Permit applications.** All applications for permits filed pursuant to this chapter shall be submitted to the City. 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. Information marked proprietary will be handled in compliance with Chapter 1 of this Title.
- (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 drawing for each proposed location with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the City to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including but not limited to the requirements of the Manual on Uniform Traffic Control Devices;
 - (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 nondiscriminatory and generally applicable right-of-way 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 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 with a Tennessee license; and
 - (h) A statement that all wireless facilities shall comply with all applicable codes.
- (5) City Response Timeframe. The City responds to the applications for permit per the timelines prescribed in Tennessee Code Annotated, § 13-24-409(b) regarding the approval or denial of applications, and the City shall respond to applications per the specific requirements of Tennessee Code Annotated, § 13-24-409(b)(3). The City reserves the right to require a surcharge as indicated in Tennessee Code Annotated § 13-24-409(b)(7)(F)(i) for high-volume applicants.
- (6) Deployment Timeframe. 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 City 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 City may require that the applicant complete a new application and pay an application fee.
- (7) Multiple Applications at Same Location. If the City receives multiple applications seeking to deploy or collocate small wireless facilities at the same location in an incompatible manner, then the City may deny the later filed application. For purposes of this section, "same location" shall be defined as collocating on the same authority-owned PSS, or deploying small cell facilities on new or modified PSSs within fifty (50) feet of each other.
- (8) Bridges and Overpasses. 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) Amendments. Except as otherwise provided herein, any amendment to information contained in a permit application shall be submitted in writing to the City within thirty (30) days after the change necessitating the amendment.

- (10) Fees. Unless otherwise provided by law, all permit applications for small wireless facility pursuant to this chapter shall be accompanied by the maximum fee established by Tennessee Code Annotated § 13-24-407 as may be amended from time to time.

Section 22-304. Facilities in the Right-of-Way; Maximum Height; Other Requirements.

- (1) Aesthetic Plan. Applicants shall follow the City's aesthetic plan. Unless otherwise determined by City staff, in an attempt to blend into the built environment, all small wireless facilities, new or modified utility poles, PSSes for the colocation of small wireless facilities, and associated equipment shall be consistent in size, mass, and color to similar facilities and equipment in the immediate area, and its design for the PSS, shall meet the aesthetic plan for the area, subject to following requirements:
- (a) Colocation is recommended, when possible. Should the wireless provider not be able to colocate, the wireless provider shall provide justification in the application.
 - (b) When unable to match the design and color of existing utility poles in the immediate area small wireless facilities and/or new PSSes shall be designed using stealth or camouflaging techniques, to make the installation as minimally intrusive as possible including stealth poles that are black or dark green in color, powder-coated and that do not exceed sixteen (16) inches in diameter. The City reserves the right to require a street light on the utility pole.
 - (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 (25) feet of the property boundary of lots larger than 0.75 acres and within fifteen (15) feet of the boundary if lots are 0.75 acres or smaller.
 - (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) No Colocation on Mast Arms Routinely Removed. Unless otherwise determined by City staff, an applicant shall not colocate on City-owned PSSes which have mast arms routinely removed to accommodate frequent events.
- (3) Replacing a PSS. City-owned PSS may be replaced for the colocation 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 City-owned PSS, the replacement PSS becomes the property of the City, subject to Tennessee Code Annotated, § 13-24-408(g).
 - (b) The City reserves the right to require a street light to meet City specifications.
- (4) Maximum Height. A new PSS installed or an existing PSS replaced in the right-of-way shall not exceed the greater of:
- (a) Ten (10) feet in height above the tallest existing PSS in place that is located within 500 feet of the new PSS in the right-of-way and, in residential neighborhoods, the tallest existing PSS that is located within 500 feet of the new PSS and is also located within the same residential neighborhood as the new PSS in the right-of-way;
 - (b) Fifty (50) feet above ground level; or

- (c) For a PSS installed in a residential neighborhood, forty (40) feet above ground level.
- (5) **Maximum Height for Small Wireless Facilities.** Small wireless facilities shall not extend:
 - (a) More than ten (10) feet above an existing PSS in place as of the effective date of this part; or
 - (b) On a new PSS, ten (10) feet above the height permitted for a new PSS under this section.
- (6) **Construction in Right-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, the National Electrical Safety Code, and all others that may apply.
- (7) **City Approval.** Unless otherwise provided in this chapter, City approval shall be required for:
 - (a) Any wireless provider that seeks to construct or modify a utility pole, PSS or wireless facility that is determined to not comply with the height, diameter, design, color standards and expectations set forth in subsections above.
 - (b) New utility poles or PSSes shall not be permitted to be installed in the rights-of-way in areas in which no utility poles, streetlight poles, or PSSes exist at the time of application without prior approval by the City.
- (8) **Additional Criteria.** From time to time, 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 and compiled into the City's aesthetic plan. 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.

Section 22-305. Effect of permit.

- (1) **No Property Right 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.** In all other circumstances, the permit expires in twelve (12) months.

Section 22-306. Maintenance, Removal, Relocation or Modification of Small Wireless Facility and Fiber in the Right-of-Way.

- (1) **Notice.** Within ninety (90) days following written notice from the City, 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 within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way. The City 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.** With respect to each wireless facility installed pursuant to a 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 City to all work within the right-of-way. If required by the City, 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 right-of-way use permit, except in the event of an emergency. In the event of an emergency, permittee shall attempt to provide advance written or oral notice to the City Engineer.
- (3) **Removal.** If the permittee removes any wireless facilities, it shall notify the City of such change within sixty (60) days.
- (4) **Damage.** 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 such property within ten (10) business days. 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/Relocation by City.** The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any serious public health or safety emergency. If circumstances permit, the City 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 colocated on property owned by a third-party, the City 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.** Upon abandonment of a small wireless facility within the rights-of-way of the City, the wireless provider shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the wireless provider to remove all or any portion of the small wireless facility if the City reasonably determines that such removal will be in the best interest of the public health, safety and welfare. Should the wireless facility be colocated on property owned by a third-party, the City 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) **Failure to Remove.** Failure to remove wireless facilities pursuant to this chapter will result in no future permits being granted.

Section 22-307. Attachment to City-Owned/Leased Utility Poles and New Utility Poles Installed Within the Public Right-of-Way or City-Owned/Leased Property.

- (1) **Annual Rate for Attachment to City-Owned/Leased Pole.** The rate to place a small wireless facility on a City-owned or leased pole in the right-of-way shall be in the maximum amount established by State Law. All equipment owned by a single permittee attached to a City-owned pole shall constitute a single attachment and therefore a single use of a City-owned pole. 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 City for that initial year's use of the PSS. This rate will be due January 1 of each year of the permit.

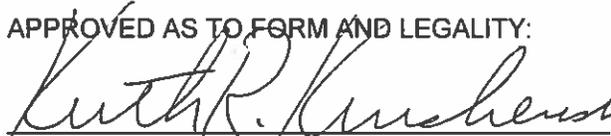
- (2) Annual Rate for New Pole on City-Owned/Leased Property. A wireless provider authorized to place a new utility pole within public right-of-way or on City-owned or leased property shall pay to the City for use of the right-of-way or property in the maximum amount established by State law. This rate will be due January 1 of each year of the permit.
- (3) Make-Ready Work Necessary for Support. For City-owned or leased utility poles in the rights-of-way, the City shall negotiate in good faith with the applicant for any make-ready work necessary to enable the pole to support the requested small wireless facility, including pole replacement if necessary, and the applicant shall be responsible for payment for said work.

Section 22-308. Remedies; Violations.

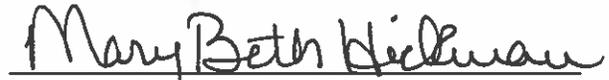
In the event a reasonable determination is made that a person has violated any provision of this chapter, or a permit, such person shall be provided written notice of the determination and the specific, detailed reasons therefor. Except in the case of an emergency, the person shall have thirty (30) days to commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the City, in its reasonable judgment, may extend the time period to cure, provided that the person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the City may take all actions authorized by this chapter and/or Tennessee law and regulations.

Section 2. This ordinance shall become effective ten (10) days after adoption on second reading, the welfare of the City of Oak Ridge requiring it.

APPROVED AS TO FORM AND LEGALITY:


Kenneth R. Krushenski, City Attorney


R.G. Chinn, Jr., Mayor Pro Tem


Mary Beth Hickman, City Clerk

First Reading: 10/14/2019
Publication Date: 10/17/2019
Second Reading: 11/12/2019
Publication Date: 11/15/2019
Effective Date: 11/22/2019