

## **ORDINANCE 2019-38**

### **AN ORDINANCE OF THE CITY OF MT. JULIET, TENNESSEE, PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF MT. JULIET BE AMENDED BY ADDING A NEW SECTION TO ARTICLE III OF THE ZONING CODE, PART OF THE LAND DEVELOPMENT CODE, PROVIDING FOR THE INSTALLATION AND MAINTENANCE OF SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, competing demands for uses of the public right-of-way require local governments to establish regulations that will preserve the integrity, safe usage and aesthetics of the right-of-way; and

**WHEREAS**, various types of communication facilities are among the uses seeking space in the public right-of-way; and

**WHEREAS**, the City of Mt. Juliet seeks to balance the need to accommodate advanced technologies in communications with regulations that provide for proper management of the right-of-way; and

**WHEREAS**, the City further finds that such regulations are needed in order to protect the public health, safety and welfare.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF MT. JULIET, TENNESSEE, AS FOLLOWS:**

**SECTION 1:** That Article III of Part B of the Land Development Code of the City of Mt. Juliet is hereby amended by adding a new section, to be designated as Section 3-107, to read as follows:

#### **SEC. 3-107. SMALL WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

The following regulations apply to the deployment of small wireless facilities in the public right-of-way:

##### **3-107.1. - Purpose and Intent.**

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 right-of-way within the city's jurisdiction, which will provide public benefits 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. *Intent.* In enacting this section, 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 facilities and operations of such facilities lawfully located in public rights-of-way or public property;
  - d) Protect against environmental damage, including damage to trees;
  - e) Preserve the character of the neighborhoods, areas, and zones in which facilities are installed; and
  - f) Facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services.
3. *Conflicts with other regulations.* This Section supersedes all regulations adopted previously that are in conflict herewith, to the extent of such conflict.

### 3-107.2. – Definitions

1. *Application.* Except where definitions are specifically included in various articles and sections, words in the text or tables of this section 3-107 shall be interpreted in accordance with the provisions set forth in this section. Where words have not been defined, the standard dictionary definition shall prevail.

2. *Terms Defined.*

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

*Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

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

*Applicant* means any person who submits an application pursuant to this part.

*Application* means a request submitted by an applicant to the City of Mt. Juliet:

- a) For a permit to deploy or collocate small wireless facilities in the ROW; or
- b) To approve the installation or modification of a Potential Support Structure (PSS) associated with deployment or collocation of small wireless facilities in the ROW;

*Authority-owned PSS or City-owned PSS* means a PSS owned or leased 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. Authority-owned PSS does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned.

*City* means City of Mt. Juliet, Tennessee.

*Collocate, collocating, and collocation* mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace small wireless facilities on, adjacent to, or related to a PSS. "Collocation" does not include the installation of a new PSS or replacement of authority-owned PSS.

*Communications facility* means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service.

*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.

*Day* means calendar day.

*Fee* means a one-time, non-recurring 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.

*Permittee* means an applicant who has been granted a permit.

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

*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 collocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part.

*Rate* means a recurring charge.

*Residential neighborhood* means an area within the City's geographic boundary that is zoned or otherwise designated by the City 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 or ROW* means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the City, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority that are contiguous to paved roads, but excluding lands other than streets that are owned by the City.

*Right-of-way use permit or permit* means a permit for the construction or installation of wireless facilities, small wireless facilities, wireless backhaul facilities, fiber optic cable, conduit, and associated equipment necessary to install wireless facilities in the right-of-way.

*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; 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; and

*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 equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

- a) Equipment associated with wireless communications; and
- b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

*Wireless facility* does not include:

- a) The structure or improvements on, under, or within which the equipment is collocated;
- 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; and

*Wireless facility* includes small wireless facilities.

*Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or PSSs, but that is not a wireless services provider.

*Wireless provider* means a wireless infrastructure provider or a wireless services provider.

*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.

*Wireless services provider* means a person who provides wireless services.

3-107.3. - *Permitted use; application and fees.*

1. *Permitted use.* Collocation of a small wireless facility or installation of a new, replacement, or modified PSS shall be a permitted use, subject to the restrictions in this section.
2. *Permit required.* No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first obtaining a right-of-way use permit from the city. Any right-of-way use permit shall be reviewed, issued and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the city may from time to time establish for effective management of the right-of-way, and otherwise shall conform to the requirements of this section and applicable law.
3. *Permit applications.* All applications for Right-of-way use permits filed pursuant to this chapter shall be on a form, paper or electronic, provided by the city. The applicant may include up to twenty (20) small wireless facilities within a single application. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.
4. *Application requirements.* The application shall be made by the wireless provider or its duly authorized representative and shall contain the following:
  - a) The applicant's name, address, telephone number, and e-mail address;
  - b) The names, addresses, telephone numbers, and e-mail addresses of all consultants, contractors and subcontractors, if any, acting on behalf of the applicant with respect to the filing of the application or who may be involved in doing any work on behalf of the applicant;
  - c) A site plan for each proposed location with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the 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.
  - 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 ROW requirements for deployment of any

associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;

- g) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements (as set forth in Section 3-107.9 below); rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the City imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the City imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
  - h) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.
  - i) A statement that all wireless facilities shall comply with all applicable codes.
- 5. *Approval or Denial of Application; Response Time.* The City responds to the applications for permit per the timelines prescribed in federal law and in T.C.A. Section 13-24-409(b), as may be amended, regarding the approval or denial of applications, and the City shall respond to applications per the specific requirements of T.C.A. Section 13-24-409(b)(3), as may be amended. The City reserves the right to require a surcharge as indicated in T.C.A. Section 13-24-409(b)(7)(F)(i), as may be amended, for high-volume applicants.
  - 6. *Deployment after Permit.* An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the 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 a new application fee.
  - 7. *Multiple Permit 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.
  - 8. *Bridge and/or Overpass Special Provision.* If the Applicant's site plan includes any collocation design that includes attachment of any facility or structure to a bridge or overpass, then the applicant must designate a safety contact. After the Applicant's construction is complete, the Applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass

maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the Applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction the Applicant shall provide notice of the evidence to the safety contact.

9. *Information updates.* Except as otherwise provided herein, any amendment to information contained in a permit application shall be submitted in writing to the city within 30 days after the change necessitating the amendment.
10. *Application fees.* Unless otherwise provided by law, all permit applications for small wireless facility pursuant to this section shall be accompanied by a fee in accordance with T.C.A.13-24-407. This fee shall be two hundred dollars (\$200) for the first application by any entity, and thereafter the fee shall be one hundred dollars (\$100.00) each for the first five (5) small wireless facilities and fifty dollars (\$50.00) each for additional small wireless facilities included in a single application.

3-107.4. - *Facilities in the ROW; maximum height; other requirements.*

1. *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, PSSs for the collocation of small wireless facilities, and associated equipment shall be consistent in size, mass, shape, and color to similar facilities and equipment in the immediate area, and its design for the PSS shall meet the adopted aesthetic plan, subject to following requirements:
  - a) Collocation is recommended, when possible. Should the wireless provider not be able to collocate, the wireless provider shall provide justification in the application.
  - b) When unable to match the design and color of existing utility poles/PSSs in the immediate area small wireless facilities and/or new PSSs should be designed using stealth or camouflaging techniques, to make the installation as minimally intrusive as possible including stealth poles that are black or bronze in color, powder-coated and that do not exceed 16 inches in diameter. The city reserves the right to request a street light on the PSS.
  - 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 boundaries separating residential lots larger than 0.75 acres and within fifteen (15) feet of the property boundaries separating residential lots 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. *Compliance with Underground Facilities.* Subject to waivers as determined by the Mt. Juliet Regional Planning Commission, an Applicant must comply with existing requirements to place all electric, cable, and communications facilities underground in a designated area of a ROW, as determined by any applicable Mt. Juliet regulations.

3. *Replacing an existing City-owned PSS.* City-owned PSS may be replaced for the collocation of small wireless facilities. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of 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 T.C.A. 13-24-408(g), as may be amended.
  - b) The city reserves the right to require a street light on the new PSS.
4. *Maximum Height.* A new PSS installed or an existing PSS replaced in the ROW shall not exceed the greater of:
  - a) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;
  - b) Fifty feet (50') above ground level; or
  - c) For a PSS installed in a residential neighborhood, forty feet (40') above ground level.
5. *Maximum Height for Small wireless facilities.* Small wireless facilities shall not extend:
  - a) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or
  - b) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.
6. *Suspended Small Wireless Facilities.* No application, fee, rate, and/or approval is required for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in T.C.A. Section 68-101-104.
7. *Construction in the rights-of-way.* All construction, installation, maintenance, and operation of wireless facilities in the right-of-way by any wireless provider shall conform to the requirements of the following publications, as from time to time amended: The Rules of Tennessee Department of Transportation Right-of-Way Division, the National Electrical Code, and the National Electrical Safety Code, as might apply.
8. *Mt. Juliet Regional Planning Commission Approval.* Generally applications can be approved by the Zoning Administrator or his/her designee. Unless otherwise provided in this ordinance, the Mt. Juliet Regional Planning Commission approval shall be required for:
  - a) Any wireless provider that seeks to construct or modify a PSS or wireless facility that is determined to not comply with the height, diameter, design, color standards and expectations set forth in subsections 1 – 7 above.
  - b) New PSSs shall not be permitted to be installed in the rights-of-way in areas in which no utility poles, streetlight poles, or PSSs exist at the time of application without prior approval by the Mt. Juliet Regional Planning Commission.
9. *Additional criteria* Any regulation regarding the location, type, and/or design of small cell facilities and utility poles shall be subject to change.



3-107.5.- *Effect of permit.*

1. *Authority granted; no property right or other interest created.* A permit authorizes an applicant to undertake only certain activities in accordance with this section 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.

3-107.6. - *Maintenance, removal, relocation or modification of small wireless facility and fiber in the ROW.*

1. *Notice.* Within 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 and support structures 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 of existing facilities.* With respect to each wireless facility installed pursuant to a right-of-way use permit, permittee is hereby permitted to enter the right-of-way at any time to conduct repairs, maintenance or replacement not substantially changing the physical dimension of the wireless facility. Permittee shall comply with all rules, standards and restrictions applied by the city to all work within the right-of-way. If required by 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 permit, except in the event of an emergency. In the event of emergency, permittee shall attempt to provide advance written or oral notice to the public works director.
3. *Removal of existing facilities.* If the permittee removes any wireless facilities, it shall notify the city of such change within 60 days.
4. *Damage to facilities or property.* A permittee, including any contractor or subcontractor working for a permittee, shall avoid damage to any wireless facilities and/or public or private property. If any wireless facilities and/or public or private property are damaged by permittee, including any contractor or subcontractor working for permittee, the permittee shall promptly commence such repair and restore (to a comparable or better condition) such property within ten business days unless such time period is extended by the public works director or his designee. Permittee shall utilize the Tennessee One Call System prior to any disturbance of the rights-of-way and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.
5. *Emergency removal or relocation of facilities.* The 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 providers sole cost. Should the wireless facility be collocated 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 of facilities.* Upon abandonment of a small wireless facility within the rights-of-way of the city, the wireless provider shall notify the city within 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 collocated 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.

*3-107.7- Public right-of-way rates—Attachment to city-owned/leased PSSs and new PSSs installed within the public right-of-way or city-owned/leased property.*

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

*3-107.8. - Remedies; violations.*

1. In the event a reasonable determination is made that a person has violated any provision of this section, or a right-of-way use permit, such person shall be provided written notice of the determination and the specific, detailed reasons therefor. Except in the case of an emergency, the person shall have 30 days 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.

*3-107.9. - General provisions.*

1. *Insurance.* Each permittee shall, at all times during the entire term of the right-of-way use permit, maintain and require each contractor and subcontractor to maintain insurance with a reputable insurance company authorized to do business in the State of Tennessee and which has an A.M. Best rating (or equivalent) no less than "A" indemnifying the city from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of permittee's wireless facilities in the rights-of-way. The amounts of such coverage shall be not less than the following:
  - a) *Worker's compensation and employer's liability insurance.* Tennessee statutory requirements.
  - b) *Comprehensive general liability.* Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage with limits no less than \$1,000,000.00 per occurrence, combined single limit, and \$2,000,000.00 in the aggregate.

- c) *Commercial automobile liability.* Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this section with limits no than \$1,000,000.00 per occurrence combined single limit each accident.
- d) *Commercial excess or umbrella liability.* Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

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

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

- 2. *Indemnification.* Each permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the 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.
- 3. *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 30 days of such a request, a permittee shall submit to the Engineering Department (or shall have otherwise maintained on file with the department) as-built maps and engineering specifications depicting and certifying the location of all its existing small wireless facilities within the right-of-way, provided in standard electronic or paper format in a manner established by the Director of Engineering, or his or her designee. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Public Records Act (Tennessee Code Annotated, § 10-7-101 et seq.) to the maximum extent of the law. After submittal of the as-built maps as required under this section, each permittee having small wireless facilities in the city right-of-way shall update such maps as required under this chapter upon written request by the city.
- 4. *Right to inspect.* With just and reasonable cause, the city shall have the right to inspect all of the small wireless facilities, including aerial facilities and underground facilities, to ensure general health and safety with respect to such facilities and to determine compliance with the terms of this chapter and other applicable laws and regulations. Any permittee shall be required to cooperate with all such inspections and to provide reasonable and relevant information requested by the city as part of the inspection.

5. *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 Public 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 30 days following receipt of the city's notice, then the city may disclose the information without further written notice to the person.
6. *Duty to provide information.* Within ten 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.
7. *No substitute for other required permissions.* No right-of-way use permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the 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.
8. *No waiver.* The failure of the city to insist on timely performance or compliance by any permittee holding a right-of-way use 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 right-of-way use permit. The failure of the city to enforce any provision of this chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this chapter on any other occasion, nor shall the failure to enforce any prior ordinance or city Charter provision affecting the right-of-way, any wireless facilities, or any user or occupant of the right-of-way act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.
9. *Policies and procedures.* The city is authorized to establish such written policies and procedures consistent with this chapter as the city reasonably deems necessary for the implementation of this chapter.
10. *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.
11. *Severability.* If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this chapter invalid.

**SECTION 2.** In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the City, the provision in this ordinance shall prevail.

**SECTION 3.** If any section, subsection, clause, provision or portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this ordinance.


**SECTION 4.** That this ordinance shall take effect from and after its final passage and publication thereof, or fifteen days after its first passage, whichever occurs later, the general welfare of the City of Mt. Juliet, Wilson County, Tennessee, requiring it.

PASSED: 8/12/2019


  
Ed Hagerty, Mayor

FIRST READING: 7/9/2019  
SECOND READING: 8/12/2019

ATTEST:

  
Sheila S. Lockett, MMC  
City Recorder

APPROVED AS TO FORM:

  
L. Gino Marchetti, Jr.  
City Attorney

  
Kenny Martin, City Manager

**TENNESSEE PERMIT APPLICATION FOR PUBLIC RIGHT-OF-WAY, SMALL WIRELESS FACILITY, MICRO- WIRELESS FACILITY, POSSIBLE SUPPORT STRUCTURE ("PSS") AND/OR WIRELESS SUPPORT STRUCTURE INSTALLATION**

**City of Mt. Juliet, Tennessee**

(This Permit form conforms to, and incorporates the provisions of the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018" (the "2018 Wireless Act", Tenn. Code Ann. §§ 13-24-401 to – 412).)

DATE APPLICATION SUBMITTED BY APPLICANT: \_\_\_\_\_

DATE RECEIVED: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_

NUMBER OF FACILITIES INCLUDED ON THIS APPLICATION (UP TO 20): \_\_\_\_\_

☐ New Submission  
☐ Resubmission

<b>APPLICANT INFORMATION (Check here if same as structure owner.)</b>			
APPLICANT NAME:		WIRELESS SERVICE PROVIDER (if different from applicant):	
COMPANY CONTACT OR REP:		PHONE:	
MAILING ADDRESS:			
CITY:		STATE: <b>TN</b>	
ZIP:		EMAIL:	
APPLICANT EMERGENCY CONTACT [TENN CODE §13-24-409(g)(4)] name, company):		(emergency email and phone number)	
APPLICANT SAFETY CONTACT FOR ATTACHMENTS TO BRIDGES OR OVERPASSES [TENN CODE §13-24-409(j)] (name, company, address, phone number, email):			
APPLICANT TRACKING NUMBER:			
Is applicant an FCC-licensed provider of wireless services? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, please describe:			
<b>PROJECT INFORMATION</b>			
NUMBER OF WIRELESS FACILITY SITES:	Number of new PSS to be installed:		
	Number of colocations on existing third-party PSS/on replacement of existing third-party PSS:		
	Number of colocations on existing city-owned PSS:		
	<b>TOTAL</b>		

1. Applicant has obtained approvals from all third-party owners as applicable to proposed sites for the collocation of small wireless facilities or new PSS. TENN CODE §13-24-409(g)(3)
2. Applicant agrees to pay applicable fees and rates, repair damage (if any), and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility. TENN CODE §13-24-409(g)(4)
3. Applicant has or will comply with the City's (i) surety bond, insurance and/or indemnification requirements; (ii) rules requiring maintenance of infrastructure deployed in ROW; (iii) rules requiring relocation or timely removal of infrastructure deployed in ROW no longer utilized; and (iv) any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any and to the extent that the City has adopted and enacted such requirements on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW. TENN CODE §13-24-409(g)(5)
4. The proposed site plan and design plans included with this application 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, as certified by a licensed professional engineer. (Certification of a licensed professional engineer is attached for standards relevant to engineering.) TENN CODE §13-24-409(g)(6)

**TITLE**

DATE \_\_\_\_\_

**Please submit all the following with this completed application.**

- ☐ Preliminary site plan with a diagram or engineering drawing depicting the design for installation of the proposed small wireless facility or modification, including requirements of Manual on Uniform Traffic Control Devices. TENN CODE §13-24-409(g)(1) (All plans must be accompanied by the following certification by a licensed professional engineer: "The proposed site plan and design plans contained in this application 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.") TENN CODE §13-24-409(g)(6)
- ☐ Location of each proposed site, including the latitudinal and longitudinal coordinates of the specific location of the site. TENN CODE §13-24-409(g)(2)
- ☐ Identification of any third party PSS owner upon whose PSS the applicant intends to collocate. (Certification by applicant that it has obtained required approval from the third party PSS owner is attached.) TENN CODE §13-24-409(g)(3)
- ☐ Brief description of the facility to be installed at each proposed site in the City/County public right-of-way.

[illegible]

**>>>FOR PUBLIC WORKS DEPARTMENT STAFF USE ONLY<<<**

**RATE AND FEE SUMMARY:**

1. One-time Application Fee: \$100.00 x \_\_\_\_\_ (up to five (5) small wireless facilities) + \$50.00 x \_\_\_\_\_ (additional up to 20) = \$ \_\_\_\_\_

Surcharge (optional charge for expedited review of applications for 120/+ facilities) \$100 x \_\_\_\_\_ = \$ \_\_\_\_\_

TOTAL APPLICATION FEE (add \$200 if this is the first application by this entity): = \$ \_\_\_\_\_

APPLICATION PAYMENT RECEIVED (date): \_\_\_\_\_

2. Annual Rate for collocation on Authority-owned PSS (covers access to public right-of-way and collocation)

Total Number of small wireless facilities applied for: \_\_\_\_\_ x \$ \_\_\_\_\_ (\$100.00 max. per facility/year) = \$ \_\_\_\_\_

ANNUAL RATE PAYMENT RECEIVED (date): \_\_\_\_\_

DATE REVIEWED:     /     / \_\_\_\_\_

REVIEWER: \_\_\_\_\_

ZONING TECHNICIAN: \_\_\_\_\_

DATE APPLICATION COMPLETE:     /     / \_\_\_\_\_

RECEIPT NUMBER: \_\_\_\_\_

**ACTION:** This Permit Application shall be processed within the timelines set forth in Tenn. Code Ann. § 13-24-409(b).

☐ APPLICATION COMPLETE     ☐ APPLICATION INCOMPLETE (If incomplete for any requested site, City/County must notify Applicant within thirty (30) days of receipt of Application and specifically identify missing information per site in the space below.)

NOTES: [Note when complete if initially incomplete.]

☐ APPROVE PERMIT     ☐ DENY PERMIT (If denied for any requested site, City/County must identify each denied site and provide written explanation of the denial in the space below.)

NOTES:

\_\_\_\_\_  
Zoning Administrator (or designee)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Signature/Date